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Standing Committee on Banking, Trade and Commerce.  
Proceedings









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Third Session—Twenty-eighth Parliament

1970-71

# THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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OF PROCEEDINGS

(Issues Nos. 1 to 54 inclusive)

+ Nos. 1-3

1972

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1970

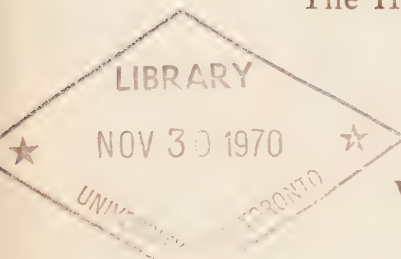
## THE SENATE OF CANADA

PROCEEDINGS OF THE  
STANDING SENATE COMMITTEE ON

# Banking, Trade and Commerce

The Honourable SALTER A. HAYDEN, Chairman

No. 1



WEDNESDAY, OCTOBER 28th, 1970

Complete Proceedings on Bill S-2,  
intituled:

"AN ACT RESPECTING STATISTICS OF CANADA".

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

*Chairman:* The Honourable Salter A. Hayden

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 27, 1970:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Carter, for the second reading of the Bill S-2, intituled: “An Act respecting statistics of Canada”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.”

Robert Fortier,

*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, October 28th, 1970.

(1)

Pursuant to adjournement and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider:

Bill S-2 "An Act respecting statistics of Canada".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Connolly (*Ottawa-West*), Desruisseaux, Everett, Gelinas, Hays, Hollett, Isnor, Kinley, Lang, Macnaughton and Molson—(15).

*Present, but not of the Committee:* The Honourable Senator McDonald—(1).

*In attendance:* E. Russell Hopkins. Law Clerk and Parliamentary Counsel.

*Witnesses:*

*Dominion Bureau of Statistics:*

Walter E. Duffett, Dominion Statistician; L. E. Rowbottom, Assistant Dominion Statistician; H. L. Allen, Assistant Dominion Statistician.

*Department of National Revenue:*

H. F. Herbert, Assistant Deputy Minister, Systems and Planning.

*Department of Justice:*

D. D. Pratt, Legal Division.

Upon motion it was Resolved to report the said Bill without amendment.

After discussion and upon motion it was Resolved to reprint 10,000 copies of the Report of the Committee on the White Paper "Proposals for Tax Reform".

At 11:00 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, October 28th, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-2, intituled: "An Act respecting statistics of Canada", has in obedience to the order of reference of October 27th, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Wednesday, October 28, 1970

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The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-2 respecting statistics of Canada met this day at 9 a.m. to give consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Honourable senators we have one bill before us for consideration this morning Bill S-2 the Statistics Act. We have here Mr. Walter Duffett, the Dominion Statistician who will lead the panel in discussion.

**Mr. Walter Duffett, Dominion Statistician:** Yes, Mr. Chairman. I have some of my colleagues here to help me if necessary.

**The Chairman:** That is good. We also have Mr. Rowbottom, Assistant Dominion Statistician and Mr. Allen, Assistant Dominion Statistician. We have others in reserve in case your questions require more extensive coverage. I think possibly the best way to start would be to have some open remarks from Mr. Duffett.

**Mr. Duffett:** Thank you, sir. I welcome this opportunity to make a few introductory remarks on the statistics bill before you today. As Senator Robichaud pointed out in introducing the bill, it contains a variety of provisions designed to update the legislation, to meet the needs of users, and to protect the privacy of respondents.

Senators Connolly (Ottawa West) and Choquette in their remarks clearly identified the most important features of the bill, and I will confine my comments to these aspects. These points were, briefly:

- (1) the penalty features of the legislation and the compulsion these imply;
- (2) the rising cost of the statistical system;
- (3) the burden of response, especially on small firms;
- (4) the need to protect the privacy of businesses and individuals.

Penalties for non-response are a necessary feature of a statistical system but, fortunately, one which is not often imposed. Persuasion and assistance to respondents meet nearly all our needs. Prosecution of business firms has not been necessary in recent years, nor in the case of individuals except for a few isolated cases in connection

with the census of population. Of course, it may be necessary at some time to consider prosecution of a few recalcitrant respondents where all other efforts have failed. The penalties have been adjusted to conform to rising prices and incomes, in order to preserve an incentive to co-operate, but the prison terms remain unchanged; the minimum penalties have in fact been eliminated altogether.

An effort to keep down rising costs and minimize response burden is evident in two main changes in the act. The first is designed to confirm and extend in a selective fashion the present structure of several hundred co-operative agreements by which D.B.S. and the provinces share identical questionnaire forms in meeting their survey needs. This avoids a great deal of possible duplication. The proposed changes take into account the growing needs and sophistication of the provincial statistical offices, and will encourage them to develop rigorous legislative and other protections to privacy.

The proposed use by D.B.S. of unincorporated business and personal income tax information for statistical purposes is an extension of a highly successful and quite acceptable system of using corporate income tax material which has been in operation since 1965. We believe that the new arrangements would enable us to eliminate some 10,000 firms from the present obligation to report under the annual census of manufactures, and that it could before long greatly reduce the reporting burden of some 60,000 to 80,000 other firms in a variety of fields.

The senators rightly pointed out the dangers of disclosure of income tax records and we would propose to ensure that whatever material was brought to D.B.S. would be stored under special precautions in a central location. I find it difficult to see that use of these records by D.B.S. for purely statistical purposes could constitute a precedent for wider use for other reasons. As Senator Robichaud pointed out last evening, D.B.S. is not really concerned with looking at individual records, but with aggregating them, and has had a good deal of experience in a variety of fields with information at least as sensitive as records of income. It may be of interest to honourable senators to know that income tax records have been successfully used for years for statistical purposes in the United States and Scandinavia without adverse repercussions.

I shall be happy to provide information about further features of the bill or about D.B.S. operations. The organization is a large and complex one and I have several of my colleagues here to assist in meeting your needs.



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**The Chairman:** Mr. Duffett, would you say that the statistics you have been producing to date are less beneficial than they would have been if you had had this income tax information that you are seeking now?

**Mr. Duffett:** Yes, they have been less complete, but most of all, they have been more costly.

**The Chairman:** How have they been less complete?

**Mr. Duffett:** The best illustration, I think, is in the fields of unincorporated businesses. Small businesses are of very widespread interest to legislators at all levels, and to trade associations.

**Senator Isnor:** For what reason?

**Mr. Duffett:** Because there is a feeling that small businesses need particular attention and particular help from government. Small businesses, it is felt, operate under certain handicaps, particularly in competition with large firms or, in particular, I suppose, firms from abroad.

**The Chairman:** You know, Mr. Duffett, that was a very interesting remark you made. We should have had it when we had our hearings on the White Paper on taxation. It may be a little late for that now, but we will keep a record of it.

**Senator Connolly (Ottawa West):** He certainly adopted the principle.

**The Chairman:** He certainly approved of the principle we were asserting.

**Senator Isnor:** What makes you say that the financial returns you now receive, which you say are confidential—what use do you make of those financial returns?

**Mr. Duffett:** From small businesses?

**Senator Isnor:** Yes.

**Mr. Duffett:** Small businesses are in total, if you had them all together, quite an important element in the Canadian economy and in particular fields such as services, transportation and construction, small firms still are very important. Obtaining information from small firms by conventional methods, sending questionnaires, is difficult for us, and is particularly burdensome to the firms themselves. In many cases, they do not have a permanent accounting staff, so it becomes necessary for the owner of the enterprise to prepare the forms himself, or to hire an accountant to do it for him.

**Senator Isnor:** In other words, you are adding to the expense of that particular individual firm.

**Mr. Duffett:** To some degree. In some degree we are adding expense to all firms, by asking them to fill out questionnaires. It is particularly burdensome in the case of small firms.

**Senator Isnor:** How many new forms have you sent out in the last twelve months, seeking additional information?

**The Chairman:** You mean, senator, additional forms?

**Mr. Duffett:** My colleague Mr. Berlinguette is more concerned with manufacturing. My impression is that there were very few indeed. The statistical system is a pretty mature one now and additional surveys tend to be relatively rare in the fields of manufacturing and merchandising. Mr. Berlinguette nods, so I gather this is the case.

**Senator Isnor:** In the last one you sent out, you inquired in regard to the number of employees. Then you went on—full-time, part-time. How do you account for the part-time if they are employed by two or three firms?

**Mr. Duffett:** We are primarily interested in the number of employees in each enterprise and there could be a certain duplication in the case of people who have more than one job. For example, I should think possibly seasonal employees—fishermen in Newfoundland perhaps who work part-time in fishing and part-time driving a truck. This is the case so far as inquiries directed to business enterprises are concerned. Other surveys are directed to households but in that case the individual who has more than one job will be counted only once.

**The Chairman:** Is the truck driver who also fished counted as two jobs?

**Mr. Duffett:** It is counted as two jobs. Also the civil servant who may have a job during the day with the Government and some spare time work in the evening has in fact two jobs.

**Senator Connolly (Ottawa West):** I was concerned when I spoke about this bill I must say that I did not read it until I was in the chamber so some of the things you have said have modified a good deal the remarks I made. This is the first time that by legislation a department of Government other than National Revenue, Taxation, has had access to corporate and personal income tax returns?

**Mr. Duffett:** Yes and no. The Dominion Bureau of Statistics has had access to corporate income tax returns—corporate income tax returns—since 1965.

**Senator Connolly (Ottawa West):** Individual ones?

**Mr. Duffett:** No, no, corporate returns.

**Senator Connolly (Ottawa West):** Individual corporate returns?

**The Chairman:** Individual corporate returns.

**Mr. Duffett:** All corporate returns above a certain size as specified in the Corporations and Labour Unions Returns Act. We use, for that purpose, the Corporations and Labour Unions Returns Act, since 1965.

**Senator Connolly (Ottawa West):** Is that a power conferred by statute.

**The Chairman:** Yes.

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**Mr. Duffett:** What happened was that the Corporations and Labour Unions Returns Act was passed in 1962 and involved the D.B.S., which administered it, in obtaining separate financial statements from corporations in addition to those already filed with income tax authorities. Many respondents, including some trade associations, suggested to us that it would be simpler and more effective if we simply utilized the returns submitted for income tax purposes. An amendment was brought in in 1965 which permitted this. There have been literally no complaints about this arrangement from business firms.

**Senator Connolly (Ottawa West):** Certainly from the point of view that it reduces the amount of paper work that the corporation does, it is beneficial. When you get a corporate return and now when you would get an individual return, would you continue, under this legislation, not to use it individually or to publish anything about the individual return, but rather to deal with classes and groups?

**Mr. Duffett:** This is the case. This in fact is what we do with all the information we receive. We are forbidden by law to publish anything which will disclose the operations of an individual firm.

**Senator Everett:** Is this an exception to that rule? Do I not read in here that you can disclose actually, in relation to the provinces?

**Senator Connolly (Ottawa West):** I was going to come to that point, as it is important, but go ahead.

**Mr. Duffett:** It is part of the new bill. Under the present legislation, as I mentioned, we share surveys with the provinces. This is legal, because the respondent in each case signs a form indicating that he is prepared to have it used by both groups. This is provided for under the secrecy clause of the act. These arrangements will continue but there is another provision—in clause 10 of the new bill—which recognizes the fact that in some provinces the statistical offices are becoming more sophisticated and in fact obtain a large amount of information from the public. In cases of this kind, joint surveys will be permitted to continue, with the important exception that the respondent will not have to give his specific approval to the arrangement. This is a liberalization of the relationship with the provinces but it is surrounded by a number of qualifications.

The first qualification is that we would enter into an arrangement of this kind only by order in council and only in fact if we felt that the arrangements within the province were adequate to ensure secrecy. In fact, in clause 10 of the bill it is specified that an arrangement of this kind is dependent on the province having substantially the same legal requirements, legal conditions, as exist now at the federal level; that the provinces have the power to require firms to report.

I might say here that at the moment none of the provinces have sufficiently rigorous legislation to qualify under this provision. Some are very close to it and I

would expect that a few of the provinces will amend their legislation accordingly.

**Senator Connolly (Ottawa West):** I take it that under the proposed law you will be furnished copies of every income tax return, if you so request.

**Mr. Duffett:** Not exactly. There is a difference between what happens under the Corporations and Labour Unions Returns Act and what will happen under the new arrangement. Under the Corporations and Labour Unions Returns Act we receive the actual income tax forms, hold them for a short time and then pass them on to the Department of National Revenue. Under the new arrangement the DBS staff would go to the Department of National Revenue and with their assistance extract from the forms, extract from the material, what it is that we need. There is a good deal of material submitted in the case of unincorporated businesses which would not interest us and we would make an extract of that. That would be returned to the Bureau of Statistics and kept in a centrally located place and handled by a relatively small number of people. But the individual forms we would not receive.

**Senator Isnor:** What type of information do you mean by that?

**Mr. Duffett:** The sort of information that would interest us is aggregates, total sales, total profits, elements of cost which are shown in any financial statement submitted to the income tax people. The inputs of labour, material, amounts set aside for depreciation—essentially the sorts of things that appear on an income tax statement, a business income statement.

**Senator Isnor:** You have been getting that information for years, the total sales of individual stores.

**Mr. Duffett:** Yes, we have. We have been getting quite a lot of this material for years, and it is our hope that we will be able to obtain it without going to the firms themselves. I mentioned that in the case of the annual census of manufacturers we believe that we can eliminate about 10,000 firms immediately from the survey obligation and 60,000 to 80,000 firms in other areas in due course.

**Senator Connolly (Ottawa West):** Do you keep the corporate income tax returns after you have extracted the information you want?

**Mr. Duffett:** No. The Assistant Deputy Minister of National Revenue, Mr. Herbert, is here and can explain in detail what happens on their side, but what happens is, as I understand it, that the forms come from the regional offices to the head office in National Revenue. On the way they pause briefly in the Bureau of Statistics where they are kept in a locked cage and under special security arrangements. We take from the forms the material we require and these are then passed on to the Department of National Revenue. Is that correct, Mr. Herbert?

**Mr. H. F. Herbert, Assistant Deputy Minister, Systems and Planning, Department of National Revenue:** Mr.



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Chairman, we are dealing with two separate things here. First there are the arrangements with regard to corporate returns which have been in existence since 1965, as Mr. Duffett has said. In the case of corporate material, because they are relatively few in number, being about 350,000 or so in number, we receive two copies of such returns from the taxpayers. One copy stays in our district offices where it is the main vehicle for assessment and dealing with the taxpayer from our point of view. The second copy comes to our head office in Ottawa via D.B.S., and, while it is on its way through D.B.S., they extract the kind of financial and other data they are interested in. That situation, as I say, has been running for over five years.

**Senator Connolly (Ottawa West):** Does that include the taking of the name, address and all the rest of it of the company?

**Mr. Herbert:** I think that in D.B.S. they have a file with the name and address in order to follow up on their responses. They have a master file on magnetic tape.

**Senator Desruisseaux:** Is that permissible under actual laws?

**Mr. Herbert:** It is provided for, senator, under the Corporations and Labour Unions Returns Act. Now we return to the new proposed legislation. In the case of individuals, because they number now almost nine million a year, and almost for the purposes of logistics, we require only one return from the taxpayer. This is filed directly to our data centre in Ottawa where we go through the necessary procedures to verify the correctness, and it is at this point, while it is in Ottawa briefly, that staff in our building would extract the extra data that D.B.S. are now seeking to get. The return would then go back to our district offices as it has always done.

**The Chairman:** That is, the D.B.S. staff would do the extracting?

**Mr. Herbert:** No, it would likely be our staff working under their direction. Perhaps it would be supervised to some extent by some of their key people who have to make sure that what is being extracted is being done properly. But the confidentiality of the returns remains intact. We have a secrecy provision and D.B.S. have an even more stringent secrecy provision, and I am aware of no situation where any taxpayer's affairs have leaked, if I may put it that way, because of the arrangements we have had.

**Senator Molson:** Would that information of individuals be identified in going from National Revenue to D.B.S.?

**Mr. Herbert:** I would say that most of the information that would go to them would be in magnetic tape form, aggregated, and unidentified as to any individual at all.

**Mr. Duffett:** May I interrupt for a moment? Some of it would have to be identified for the reason that, if we are going to use some of this information as a substitute for some of the things we now get from small businesses, it

would be necessary to have the name of the enterprise in order to combine it with what we already get from small business firms. So some of it would have to be identified.

**Senator Molson:** That is small business. What about the case of individuals?

**Mr. Duffett:** In the case of individuals it is less necessary. The Department of National Revenue already produces a pretty substantial tabulation of personal incomes. We would hope to assist them to improve this. There might be occasions on which we would need to have the names of individuals —

**The Chairman:** Why would there be an occasion where the name of the individual would be important?

**Mr. Duffett:** Frankly, I cannot think of an occasion at the moment.

**The Chairman:** Neither can I.

**Senator Connolly (Ottawa West):** But the authority is there in the act now for you to do it.

**Mr. Duffett:** No, but it would be in the bill.

**The Chairman:** It is in the bill. It is not in the law now, Senator.

**Senator Connolly (Ottawa West):** It is in the bill. That is what I meant.

**Mr. Duffett:** Another case, for example, where we would not require names is in using income tax information to study migration from one province to another. In the present situation it is very difficult for us to determine the flow of people from one province to another and, consequently, to make a good inter-census estimate of the population. In that case we are just interested in the number of bodies moving from one place to another and, although it might be interesting to have information as to the occupation and other facts of that sort, the names of the individuals are of no concern.

**Senator Molson:** I do not see why you need the names of any individuals from individual income tax returns. I fail to see how that should be of any vital consequence to D.B.S.

**Mr. Duffett:** In general, I agree with you. On the other hand one hesitates to make an absolute commitment on something as important as this because there could conceivably be a situation or circumstances in which we wish to combine this material with other information we had in the Bureau of Statistics in order to produce more meaningful data.

**The Chairman:** What, for instance?

**Mr. Duffett:** For example if one wanted to take a sample of census information, which gives a great deal of information at quinquennial intervals about education and occupation and so on, it might be desirable to make certain studies which would combine the information available with the information obtained for income tax purposes and for that you would need names and addresses.



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**The Chairman:** But going back to this question, you want to gather information, I suppose, as to various classes of occupations and the income in those groups and then to aggregate that?

**Mr. Duffett:** Yes.

**The Chairman:** You do not deal with the individual?

**Mr. Duffett:** No.

**The Chairman:** And having aggregated that information, it has limited use.

**Mr. Duffett:** Perhaps it has limited use, but this is what statistics are. They are aggregations of individual returns, and the rules of the game are that you do not disclose individual records.

**The Chairman:** But having got to that point of the aggregate, I am trying to understand of what use and under what circumstances it might be desirable that you should get individual names and individual income reports.

**Mr. Duffett:** Well, as I was mentioning before, this is necessary if you are going to blend records obtained from National Revenue with those of the D.B.S. I mentioned this in connection with small businesses.

**The Chairman:** But we are talking about individuals.

**Mr. Duffett:** Right. In the case of individuals, we obtain a great deal of information, as I mentioned, through the census, and it might be desirable to take a sample of persons from a census and feed in certain additional information which would come from income tax returns.

**The Chairman:** But on a census return you do not get a statement of a man's income, do you?

**Mr. Duffett:** Yes, we do. But this is not what I was referring to. There are other characteristics which we learn from the census. There is information about education and occupation and the numbers of dependents.

**Senator Everett:** Mr. Chairman, is this checking to see if the information given on the census is correct?

**Mr. Duffett:** This might be of some interest to us, but I might say that it would not be of interest to the Department of National Revenue because the flow is one way.

**Senator Everett:** The Department of National Revenue might not be interested, but you, given certain returns from the census, might well use those returns with the income tax returns to check the accuracy of the returns given by the census.

**Mr. Duffett:** Well, for example, if we felt that the information on taxi drivers' earnings as submitted to one or the other was low, a comparison might be interesting and useful.

**Senator Everett:** But you were saying also you would like to check occupations and the number of people in

the household. Why would you want to use the tax return to check that information?

**Mr. L. E. Rowebottom, Socio-Economics Statistics Branch, Dominion Bureau of Statistics:** It is not so much a question of checking, but a question of the adequacy of the questions asked to obtain information about occupation. This is an exceedingly difficult statistic to compile, and depending upon how you ask questions concerning occupations, you will get quite a wide range of answers. The way in which the questions are asked determines the validity of statistics of occupation. It is a very difficult question for an individual to respond to, and if you ask me what my occupation is, I may say that I am a civil servant which really is not my occupation but is the industry in which I work. The possibility of determining the way in which householders are able to cope with questions about occupation when asked one way and when asked another way is an important possibility in improving the way in which both we and the Department of National Revenue might formulate the questions we ask concerning occupation.

Another possibility, and my colleagues can correct me if I am wrong on this, of its importance as a way in which we might use the individual information, is that the Department of National Revenue is not concerned with the publication and calculation of statistics concerning family income, whereas from economic and sociological viewpoints and the structuring of government policy that income available to the family unit is a very important determinant and most of the DBS income statistics which we now compile from sample surveys relate to the family, and the possibility of using National Revenue information to compile family income statistics is an important addition.

**Senator Everett:** But don't you ask those questions on the census? You say you get income information on the census, but don't you ask those questions on a family basis?

**Mr. Rowebottom:** But the census is only once every ten years, and income statistics derived from the census become available only once every ten years.

**Senator Everett:** But here you are talking about using specific names and terms. Surely in compiling information in the years between the census you would be using the general information and there would be no need to have the individual names.

**Mr. Rowebottom:** The point I was trying to make was that to construct family income we would need it. The fact is, and I cannot think of an exception, that all our statistics that we publish are based on individual returns of one kind or another, and our whole business involves the additional aggregation of additional information, which is private to the individual who supplies it to us, into statistics which are very important descriptors of economic and social conditions and which do not reveal anything about the individual on which the statistics are based. That is the whole process.

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**The Chairman:** It occurs to me that statistics that National Revenue put out quite often are out of date. We had reason to study the latest ones available to us when we were conducting hearings on the White Paper and they were for 1967. Now in that you are given groupings, classes, such as doctors, lawyers, engineers and you are given the numbers, but you are not given the names, of course, and they do strike the average income related to that classification. Now what more is it that you want? Why are not those statistics good enough for your purpose?

**Mr. Duffett:** Well, they are good and they will continue, and I hope that when we can go to National Revenue and study with them individual forms and methods of improving individual forms that these will in fact become better. The Department of National Revenue is, however, not a statistical agency. It is an administrative agency; it assembles certain material up to a certain degree of detail and sophistication. Pure statistics is more concerned with the analysis and interpretation of material, and it is probable that we will utilize this power to come a good deal closer to income characteristics and so on in this way.

To answer your query more directly, there is the point that has been mentioned by Mr. Rowebottom, that for many purposes family income statistics are necessary. We would like to be able to combine the material from National Revenue in order to prepare statistics on incomes of families.

**The Chairman:** I am just wondering, will there not be a duplication? What you are really saying is that the National Revenue takes the bare statistical study along to a certain end which suits them, and then you come along and pick it up. Why do we need two agencies doing it?

**Mr. Duffett:** I can say that our relations with National Revenue are sufficiently close that I think duplication is extremely unlikely. There was the possibility of duplication, for example, when we obtained access to corporation income tax returns. The Department of National Revenue prepared something popularly known as the Green Book, which was a study of corporation incomes. In that particular case this job was transferred to the bureau and the bureau now does this. I do not think, however, that in this case we would take over the personal income tax studies they do. We would do certain things, they would do certain things, and I am quite satisfied they would not be the same things.

**Senator Everett:** What do you mean by saying that your relationships with the Department of National Revenue are sufficiently close? Could you enlarge on that and tell us how close they are?

**Mr. Duffett:** We see people in the Department of National Revenue very frequently; we work with them very closely. We do not at this point exchange information on personal records.

**Senator Everett:** You do not?

**Mr. Duffett:** No.

**Senator Everett:** Is it your intention, if this legislation goes through, that you will?

**Mr. Duffett:** In a one-way sense, in that we will have access, as has been described, to income tax information on individuals for the purposes we have been discussing. It should be pointed out, however, that this is a one-way street. The Department of National Revenue understands and accepts the fact that information which we obtain is covered by the Statistics Act and cannot be made available to them.

**The Chairman:** Are you satisfied that this will not create a duplication which will cost the taxpayer more money?

**Mr. Duffett:** I am satisfied. In fact, the present bill contains one additional duty that was implied before but is now specified, and that is that the duty of the Dominion Bureau of Statistics is to endeavour to avoid duplication.

**Mr. Herbert:** I wonder if I could respond to the senator's question about the relationship between National Revenue and D.B.S. I would not want the impression left that we have some cosy information exchange arrangement. We have in fact never been able to get any information out of D.B.S. That is point number one. Our relationships are very close in this way. We rely upon their sampling experts, for instance, to help us design our own samples, not only for producing statistics but for other work we do. We have a close relationship with them in the passing of aggregated data from our Green Book material, which they wish to manipulate and use in other ways for their production of national accounts and so on. There is a continuing relationship because there is a relationship with corporation returns.

**Senator Everett:** Both comments relate to the flow of information from the bureau to National Revenue. I am more interested in the information that goes the other way, from National Revenue to D.B.S. Would you care to comment on that? I know you are talking about the Green Book, but would you care to comment further on that? Do you consider yourself an agency of D.B.S.?

**Mr. Herbert:** No, only in this sense, that the Government has established the Dominion Bureau of Statistics as a statistical agency of government, and when requests come from the private sector or from provincial governments, from research workers to D.B.S. concerning the compilation of some kind of special statistical run on taxes and income, they are the group that will come to us and ask, "Can you run your computer and produce this compilation", which will often have some bearing on the kind of thing now in the Green Book. But never is any information about any single taxpayer ever passed.

**Senator Everett:** Under this bill there could and probably would be.

**Mr. Herbert:** Under this bill the sampling experts of D.B.S. would probably want to look at individual returns



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in order to construct the kind of data they want us to pass to them, usually in magnetic tape form.

**Senator Everett:** Do not you feel uncomfortable about that?

**Mr. Herbert:** No. We have had five years experience now under the system involving corporation material, and I can recall no instance of any taxpayer complaining or saying that the affairs of his corporation had ever leaked.

**Senator Connolly (Ottawa West):** Can I carry this a step further? Under the bill, as Senator Everett has pointed out this morning, detailed information under an agreement with the province can be passed on by D.B.S. to the province. Would that also include this particular kind of information that we are now discussing?

**Mr. Duffett:** No, it would not. Clause 16(3) (a) specifies that any information we obtain from a department of government cannot be further utilized without their express permission, and I am sure that permission would not be forthcoming in this case.

**Senator Connolly (Ottawa West):** Why?

**Mr. Duffett:** Because they do not wish, I assume, to have income tax information used beyond the Dominion Bureau of Statistics.

**Senator Connolly (Ottawa West):** What you say and what they say now depends upon the attitude of the individual, the approach of the individual, to existing law. If the existing law is broadened and we do not have conscientious public servants like yourself and the people you deal with in National Revenue doing it this way, under the law it could be completely wide open and the provinces could, as I understand what you are telling me, get an individual's income tax returns as well as corporate returns.

**Mr. Herbert:** The provinces for which we collect taxes, which are nine out of ten, now have full access to any return if they wish. They do get data from us, and each province gets a magnetic tape each year of its particular taxpayers, their incomes and names.

**Senator Connolly (Ottawa West):** That is a good answer.

**Mr. Herbert:** We are only agents for them in the collection of their taxes. These are their returns.

**The Chairman:** Mr. Herbert, the thing bothering me was that if you deal with individuals and D.B.S. now goes to the individual returns and gets the names and incomes, the amounts, this is all information that you aggregate by classes now. They are coming in under your study and your computerizing and aggregating of income tax returns?

**Mr. Herbert:** I think what Mr. Duffett said was that in a very few cases they may wish to accept the actual name more for long range purposes and identification in

some of their own records, than for any interest in the name itself.

**Mr. Rowebottom:** I think it would be fair to generalize on this. The D.B.S. collaborates closely with many government departments and uses their records which under the law are available for statistical purposes. We collaborate now closely with national revenue for the production of statistics which are not done by national revenue. Most of the statistical production will continue to be done by national revenue, but the possibility of our collaborating with them more closely would be substantially increased if we were allowed to look at individual returns for statistical purposes.

We were talking a moment ago about the flow of information from national revenue to D.B.S. We have a flow now of individual imports and export invoices from national revenue to D.B.S. for the purposes of compiling important export statistics. This is the only instance I am aware of—it is the only instance—where any information comes from national revenue. But we do have access and we do work with the individual export and import invoices and this access is provided under the law and by Governor in Council.

**The Chairman:** We were asking you the uses or the purposes and the point served by having access to individual returns. You mentioned some study on family income?

**Mr. Rowebottom:** Yes.

**The Chairman:** If you look at the income tax returns, about the only source of family income study there would be are the returns filed by married people on the basis of a single person—in other words, they are not entitled to the marriage rate.

**Mr. Rowebottom:** That is correct.

**The Chairman:** So that would be the only group, the only combination of tax returns, of individual returns.

You have married returns of single persons, single persons who have certain dependency deductions, married persons who file as married persons and get exemption, and that must be on the basis that that is family income. Then you have a married person who files as a single person because his wife has an income over and above the permitted amount. You do not need to look at all the income tax returns to get information on the family unit. You need only one grouping.

**Mr. Rowebottom:** I think you would have to bring together the individual tax returns which do comprise the family unit.

**The Chairman:** Because the income tax division now, in its statistics does that. We are able to extract from that, all these groupings that I am talking about.

**Mr. Rowebottom:** My colleagues can correct me. My understanding is—

**The Chairman:** We have material filed illustrating all the different groupings that I have mentioned to you this morning. So it is there in some form. Certainly, we do



[Text]

not profess to be geniuses but we were able to have it extracted for us, without any assistance from the Income Tax Division.

**Senator Lang:** Presumably a married couple who would have children under 21 could have them getting an income and not claim it as a deduction by the spouses. That would not show on the return.

**Mr. Rowebottom:** The methodology of that is fairly complex but it does involve bringing together tax returns which comprise the family unit beyond those which are currently brought together.

**Senator Hays:** In the field of agriculture, what information would you be receiving under this proposed legislation, that you are not receiving now? D.B.S. sends out a questionnaire to each agriculturalist in Canada. What will you be receiving that you are not receiving now? What will be the additional cost to the agriculturalist as a producer? What will he have to do that he is not doing now?

**Mr. Rowebottom:** I cannot think of anything. Nothing. The possibility of his doing less is the important possibility. I quite frankly confess not to know with precision ways in which current surveys, which we now take from the agriculturalist, could be replaced by the returns of national revenue. But that is a distinct possibility. And, looking in the years ahead, over the next ten to twenty years, it could become a very substantial possibility. I can conceive of no way in which this bill could increase the reporting responsibilities for farmers.

**Senator Hays:** So the possibility would be that he would have less to report?

**Mr. Rowebottom:** That is correct.

**Senator Hays:** What countries have an act now on their books and what countries do not?

**Mr. Duffett:** A statistics act?

**Senator Hays:** A similar act.

**Mr. Duffett:** Almost every country that I can think of has a statistics act. Even very small countries like Trinidad, Barbados, Guyana and Ghana have a statistics act. In a sense, perhaps, this is more important in the developing countries, because most of those countries are engaged in various kinds of economic planning. In order to do this, they require information. In order to get the information they have statistics acts. Virtually every country I can think of has one.

**Senator Hays:** Is this bill patterned almost the same as the statistics act in Great Britain and the United States?

**Mr. Duffett:** They tend to be slightly different. They contain the same elements but may tend to be a little different, because in the United States you have a fragmented system, a system in which the Bureau of the Census, the Bureau of Labour Statistics, the Department of Health, Education and Welfare, the Department of

Agriculture, all collect statistical information. The legal foundation for that is usually built into their own acts. Virtually every act in every country has two important characteristics—one is an obligation to report to the statistics office, but there is a counterpart, that is the promise of secrecy, which means that when an individual or a farmer does report, he is assured that the information will not be used against him. So there is this in common.

**Senator Hays:** Are there clauses in this bill being introduced which are not in the act in the United States?

**Mr. Duffett:** Not that I am aware of. For example, the Americans have had access to income tax statistics for quite a period of time. The statistics acts of the provinces in Canada are gradually coming closer to this form. The acts of the Province of Quebec and the Province of Alberta are very similar. The one in Quebec is, I think modelled on this.

**Senator Hays:** So why have we not had this act before?

**Mr. Duffett:** We have had this act. This is simply a revision really of the existing act. It is an extensive revision, so it becomes a new act. It has been in existence since 1918, when the Bureau of Statistics was formed. The act passed in 1918 was an assembly of bits of legislation scattered through different departments.

**Senator Hays:** So this is tidying it all up?

**Mr. Duffett:** This is tidying it up.

**The Chairman:** Do you prepare statistics on grants made to students to pursue university studies, to get special degrees such as a Ph.D., and things of that kind?

**Mr. Duffett:** We have an education statistics division in the Bureau of Statistics, which comes under Mr. Rowebottom. Perhaps he would care to say something.

**Mr. Rowebottom:** We do periodically compile a publication called "Awards for Graduate Study", which describes the nature of the awards which are available to students for pursuing post-graduate work.

**The Chairman:** Do you specify it under the heading of the nature of the graduate study that is to be pursued?

**Mr. Rowebottom:** My recollection is that there is a classification of the awards by subject of the study.

**The Chairman:** All you do, however, is compile them.

**Mr. Rowebottom:** Yes.

**The Chairman:** The authority by which the grant is made exists elsewhere.

**Mr. Rowebottom:** Entirely. This is a compendium of awards that are available. It is merely an information function that we are performing—which is, of course, our total function.

**The Chairman:** When you are getting even the individual information from National Revenue, you get it

[Text]

at the stage of the individual reporting. You do not get the results of the action by the department in making the assessment.

**Mr. Rowebottom:** Not at all.

**The Chairman:** Whether that increases or decreases the income figure.

**Mr. Rowebottom:** Well, yes.

**The Chairman:** You do not get that information?

**Mr. Rowebottom:** I would assume not.

**The Chairman:** Is that correct, Mr. Herbert?

**Mr. Herbert:** Yes, Mr. Chairman. Even the statistical data which we extract for our Green Book is only based upon the return after it has had that quick assessment that we do at the data centre. All of the changes to returns that are made as a result of audit or as a result of other action appear later in other kinds of statistics but not in the Green Book. It is such a small percentage of the total that it is not significant, although it may not seem that way to the individual taxpayer.

**The Chairman:** An individual might have a different view.

**Mr. Herbert:** Yes, I think he might.

**The Chairman:** He might think it was very heavy.

**Senator Gélinas:** Mr. Chairman, would it be possible for the Department of National Revenue to supply data or statistics required by D.B.S. by computer instead of having to go to the files of the individuals to get the information they request?

**Mr. Herbert:** With respect to the kind of data that the D.B.S. data centre now gathers under the Corporations and Labour Unions Returns Act, the only way we could pass that to them by computer is if we were to do the extract work, and a lot of this material is of no interest to us whatever for income tax purposes, and this is why the return flows through them.

**Mr. Duffett:** There is a point, though, that in the case of personal income tax returns it is altogether likely that the information which would be extracted for the use of D.B.S. would be on magnetic tape.

**Senator Everett:** Clause 10, subclause (4), reads:

(4) Where any information, in respect of which an agreement under this section applies, is collected by Statistics Canada from a respondent, Statistics Canada shall, when collecting information, advise the respondent of the names of any statistical agencies with which the Minister has an agreement under this section and to which the information received from the respondent may be communicated under that agreement.

What happens in the case of a statistical agency that collects that information—the information is already collected, but you have an agreement to pass it on to a

province? That statistical agency could presumably have collected the information without informing the respondent. They would not be required to do so under the act.

**Mr. Duffett:** I am not quite sure of the picture you have in mind. The sort of thing intended here is that a province, having, in accordance with the specifics above, acquired an acceptable statistics act, would approach us for a joint agreement of this kind. If their proposal was acceptable, an Order in Council would be passed. Under these circumstances common forms would begin to be used and on the form it would say that this information was being collected for the benefit of the Dominion Bureau of Statistics and for the Bureau of Statistics in the province of "X". This is what this act says. It says that the respondent must know that the Bureau of Statistics in his province is a party to the arrangement.

**Senator Everett:** That is correct, but let us deal with the Department of National Revenue, for example. They might want to pass on information.

**Mr. Duffett:** This clause refers only to statistical agencies of the province. Under clause 10 (1) it says that the minister may enter into agreements with the government of a province for the exchange with, or transmission to, a statistical agency of the province.

**Senator Everett:** Right.

**Mr. Duffett:** So that the two parties to this are the Dominion Bureau of Statistics and the statistics office of the province. The Department of National Revenue is not a party to it.

**Senator Everett:** Let us assume you want to get information from a respondent. You are required by that clause, are you not, to inform him that that information is going to be transmitted to the statistical agency of the particular province?

**Mr. Duffett:** That is correct.

**Senator Everett:** But if you are using information, if the information you are transmitting is information that was obtained by another department of the federal Government, then presumably you would not be able to follow—

**Mr. Duffett:** Subparagraph (4) here envisages and applies, I think, only in the case of information obtained by an individual. Let us say, a company in the province of Quebec.

**Senator Everett:** I am sorry, I do not understand your reply.

**Mr. Duffett:** What happens under this particular clause is that the information is being obtained by an entity, an individual or a company in a province. This individual receives a form on which it is stated that this information will be used by the Dominion Bureau of Statistics and the statistics office of the province of, for example, Quebec.

**Senator Everett:** The information is obtained by that person or from that person.



[Text]

**Mr. Duffett:** From that person, yes.

**Senator Everett:** You are saying in clause 10 (1) that the fact that the minister can enter into an agreement with a province to transmit applies to any specific statistical inquiry.

**Mr. Duffett:** Yes.

**Senator Everett:** It would seem that you could transmit to a province information, for example, on individual tax returns under that agreement.

**Mr. Duffett:** I think not.

**The Chairman:** Subclause (2) may have some application, Senator.

**Senator Everett:** It may well.

**Mr. Rowebottom:** Perhaps it would help if I were to illustrate the sort of arrangement which is contemplated under this clause.

**Senator Everett:** I think we know the sort of arrangement contemplated, Mr. Rowebottom. We understand the sort of arrangement. We are now talking about the legal sufficiency of the act. In other words, whether it is properly drafted. It is required under clause 10, subclause (4) that the respondent be informed, and any information that he gives may be passed on to the provinces under an agreement between the minister and the particular province.

**Mr. Rowebottom:** That is correct. May I add this qualification, however, that in this situation and under this agreement the respondent is in effect providing the information to both agencies—both, for example, the Quebec Bureau of Statistics or the Alberta Bureau of Statistics and the Dominion Bureau of Statistics at the same time.

**Senator Everett:** Is there anything in clause 10, though, that says that is the fact? That is your intention, but is there anything in clause 10 that says that that is actually the fact?

**Mr. Rowebottom:** Yes.

**Senator Everett:** Is there anything in clause 10 that would preclude you from entering into an agreement with the province to provide the province with the specific information collected, say, by the Department of National Revenue.

**Mr. Duffett:** There is in fact section 16(3)(a) which is the secrecy clause. It specifies that information collected by the Dominion Bureau of Statistics shall be passed on only to the extent agreed upon by the collector thereof, which in this case would be the Department of National Revenue which retains control over the information.

**Senator Everett:** But if National Revenue agreed to pass it on, what then?

**Mr. Duffett:** Well, there are two considerations here. The first one is as Mr. Herbert has pointed out that the provinces already have this information.

**Mr. Rowebottom:** They are prohibited from using the information from tax returns for any purposes except the administration of income tax.

**Senator Everett:** The point is well taken, but first of all you are already passing on that information if they request it, and secondly they are very hobbled in the way they use it. I am not necessarily dealing with National Revenue although I am using that as an example. What I am saying is this; I can envisage under this clause a situation where a department of government like National Revenue can obtain information from a respondent without informing the respondent it was going to be passed on and then the federal authority could enter into an agreement with the provincial authorities to pass that information on so that clause 10(4) could not be complied with.

**Mr. Duffett:** I think we have traced this one down. Subsection (4) refers to statistics collected by Statistics Canada—collected by what is now the Dominion Bureau of Statistics, and we do not collect income tax statistics.

**Senator Everett:** So what you are saying for the record is that the only information that could be passed on to the province is that information that is collected directly by Statistics Canada from respondents.

**Mr. Duffett:** Yes.

**Senator Everett:** And any information collected by the proxy of anybody else is not available to be passed on to the provincial authorities.

**Mr. Duffett:** Not under this clause.

**Senator Everett:** Is there any clause in the bill, and I want this on the record, that would permit you to pass on information obtained by proxy?

**Mr. Rowebottom:** May I say that we could not do it because the respondent would not know we were doing it, and the law says he has to know.

**The Chairman:** Well, Mr. Rowebottom, if you stop right there for a moment; there is a further limitation and that is as to the type of statistical information that may be the subject matter of such an agreement. I mean the province, for instance, must have the right to collect that information itself before it can be the subject matter of an agreement with the Dominion.

**Mr. Rowebottom:** Yes, and if I may generalize on this point, whenever any information comes to the Dominion Bureau of Statistics from some other originator—and we do receive a great deal of such information, some of which is very personal, and a large proportion of it comes from the provinces, from registrars of birth, deaths and marriages, from police officers, courts, mental institutions and, of course, from federal agencies too, such as the import and export invoices which are referred to—the bill says, and it is very explicit on the



[Text]

point, that in no instance may D.B.S. pass such information to anyone without the agreement and consent of the original collector, and if anyone came to us and said "We would like information which you derived from somebody else," we would ask them to go back to that person who supplied it to us, say a registrar, or Health and Welfare, or the Department of Agriculture. We would say "You go and talk to them and if they will provide us with a written statement saying 'We would appreciate it if on our behalf you would make such information available' we will do it," but in that instance we are clearly an agent of the originator and we would not do it without their precise instructions.

**Senator Everett:** Looking at clause 29 which is the penalty clause, can you tell me whether clauses 29 and 30 vary from the wording of the corresponding sections in the present Statistics Act?

**Mr. Duffett:** I think they are almost identical. If you like I can read you the section in the present Act. It is section 35 of the present Act. They are identical except for the amount of the fine.

**The Chairman:** They appear to be.

**Mr. Rowebottom:** Yes, they are identical. Imprisonment in both cases is for three months but the fine has been increased from \$100 to \$500.

**The Chairman:** Let us clarify that by giving the section numbers. The witness has correlated clause 29 of the bill with section 35 of the present act.

**Senator Everett:** He states they are identical except for the amount of the fine, but is the same true of section 30?

**The Chairman:** Clause 30 of the bill would appear to relate to section 36 of the act.

**Senator Everett:** Is it identical?

**The Chairman:** Again the penalties are increased.

**Mr. Duffett:** Clause 30 of the bill and section 36 of the act are, I think identical except for the fact that the fine is different. The minimum fine has been dropped. There was a minimum fine in the act.

**Senator Everett:** And is clause 21 identical to the corresponding section?

**Mr. Rowebottom:** Excuse me a moment, Mr. Chairman. For the record I think it should be made clear that clause 30 is identical except that a minimum fine is no longer compulsory. That has been dropped.

**Senator Everett:** I think I understand that.

**Mr. Duffett:** May I make a correction to what I have said before. Clause 30 of the bill is not absolutely identical. The word "department" has been inserted in addition to corporation. In the old act there was reference to "access to documents of corporations". In this case departments of government have been added.

**Senator Connolly (Ottawa West):** That in effect is the one that refers particularly to the tax department.

**The Chairman:** That is right.

**Mr. Duffett:** Well, to all departments.

**Senator Connolly (Ottawa West):** It would refer to all departments, but our primary concern this morning has been in connection with the tax department.

**Mr. Duffett:** It is a broader issue than that though. It gives us the legal basis for obtaining information from all kinds of government records. It is quite important to the act. There was an inquiry about clause 31?

**Senator Everett:** Clause 21.

**Mr. Duffett:** Clause 21 in the new bill represents a consolidation of a number of statistical fields that were mentioned throughout the previous act. It consolidates about six or seven sections.

**The Chairman:** The main one being section 32.

**Mr. Duffett:** Section 32. I think it is important to realize that section 21 of this bill, which is a list of statistics we may produce, is really illustrative, because it says that we may collect statistics on "all or any of the following matters".

**The Chairman:** It says more than that, Mr. Duffett.

**Mr. Duffett:** Yes, "any other matters prescribed".

**The Chairman:** It says:

any other matters prescribed by the Minister or by the Governor in Council.

**Mr. Duffett:** Yes.

**Senator Everett:** It starts without limiting the generality of the foregoing. However, I think we use the *ejusdem generis* rule. Is it your view that anything not included in items (a) to (f) would require the authority of the Governor in Council?

**Mr. Duffett:** Or the minister.

**Senator Everett:** The minister or the Governor in Council.

**Mr. Duffett:** Item (u) specifies:

any other matters prescribed by the Minister or by the Governor in Council.

**Senator Everett:** Is it your view that to obtain details of statistics not included in items (a) to (f) you would have to have such authority?

**Mr. Duffett:** Mr. Pratt, who is the departmental solicitor, is here, and perhaps it would be more appropriate for him to comment on this.

**Mr. D. D. Pratt, Deputy Director, Legal Services, Department of Industry, Trade and Commerce:** You are referring to paragraph (u) in clause 21?

[Text]

**The Chairman:** Yes, that is correct, is it not, Senator Everett?

**Senator Everett:** I am sorry, I was using paragraphs (a) to (f). It should be (a) to (t). That is correct, I am referring to paragraph (u), and the preamble to the clause.

**Mr. Duffett:** I think the question is whether we could inquire into items other than those mentioned here without the formal prescription by the minister or the Governor in Council in accordance with paragraph (u).

**Mr. Pratt:** As I understand it, the intention is that you can require any other matter with the approval of the Governor in Council.

**Mr. Duffett:** Or the minister.

**Mr. Pratt:** Or the minister.

**Senator Hays:** It covers the waterfront.

**The Chairman:** I think another way of putting it is if you took paragraph (f), which was referred to, concerning immigration and emigration, anything that relates to that subject matter may be inquired into by the department on its own initiative and under the authority of this clause. It would only be a subject matter that is not enumerated.

**Mr. Pratt:** That is correct.

**Senator Everett:** But if the subject matter were not enumerated would the words "without limiting the duties of Statistics Canada" require the authority of the minister or the Governor in Council?

**Mr. Pratt:** I do not really understand the question.

**Senator Hays:** Use an example.

**The Chairman:** Pollution.

**Senator Everett:** The list is so wide that I do not think you could find anything not included in it.

**The Chairman:** What about ecology?

**Senator Everett:** I am sure ecology is there somewhere. Assuming for the moment ecology was not there and you wanted to get some statistics on ecology, do you feel that the power in clause 21 would be sufficient to permit Statistics Canada to ask for information, or do you feel they would have to go to the minister or the Governor in Council to get authority?

**Senator Connolly (Ottawa West):** Let us take a practical example. Let us take the number of chemical firms, pulp and paper firms, companies in that category, that are actually putting waste directly into rivers, lakes and other bodies of water. Would you get that without invoking paragraph (u)?

**Mr. Rowebottom:** No.

**Mr. Duffett:** Probably not. I suppose it might come into health and welfare.

**The Chairman:** Or water utilities.

**Senator Connolly (Ottawa West):** Is that there?

**The Chairman:** Yes. Mr. Pratt, maybe you would agree if you look at clause 3 as well as clause 21, clause 3 provides the area within which the authority of D.B.S. can operate.

**Mr. Pratt:** Yes.

**The Chairman:** Its study or its inquiry or search for information under clause 21, under any of it, would have to fit within the boundaries prescribed under clause 3.

**Mr. Pratt:** You are not limiting the duties under clause 3, but as I understand it there is no intent for any change from section 32 of the present act.

**The Chairman:** No.

**Mr. Pratt:** It would permit an inquiry into any subjects, with the approval of the minister or the Governor in Council.

**The Chairman:** There is a limitation on you as well, I would think, such limitation as clause 3 imports.

**Mr. Pratt:** In the field of statistics?

**The Chairman:** Yes.

**Mr. Pratt:** In the scope prescribed in clause 3.

**The Chairman:** That is the broad limiting section.

**Mr. Pratt:** I think that is correct.

**The Chairman:** Any other question?

**Senator Isnor:** This perhaps has nothing to do directly with the bill, I was wondering if Mr. Duffett would put on the record his budget for 1970.

**Mr. Duffett:** For 1970-71?

**Senator Isnor:** Yes.

**Mr. Duffett:** The total amount is \$38,421,000. This includes an amount of \$5,220,000 for census purposes, the preparation of the census. The reason I cite the census is that it is something that fluctuates from one time to another.

**The Chairman:** What is the increase as against the previous year?

**Senator Isnor:** That was my next question.

**Mr. Duffett:** Before the census or after?

**The Chairman:** What figure for 1969 would relate to the figure you gave of \$38 million?

**Mr. Duffett:** \$32,393,000.

**The Chairman:** Is the \$5 million for the census included in the figure of \$38 million?



[Text]

**Mr. Duffett:** Yes.

**The Chairman:** So you are pretty well holding yourselves to your expenditures or estimates of the previous year.

**Mr. Duffett:** If you remove the census, there is still an increase.

**The Chairman:** Not very much.

**Mr. Duffett:** Not a great deal. For 1970-71, ex census, it was \$33,201,000, and the previous year it was \$29,146,000. The increase of course covers a number of things, including salary increases.

**Senator Hays:** With this additional access to information will you be able to reduce your budget?

**Mr. Duffett:** It has been suggested to us that we should start with agriculture, but we have resisted.

**The Chairman:** It may be that one of the statistical studies that should be made in the compilation of information would be a study on ways and means of reducing expenditures.

**Mr. Duffett:** A study is made annually within the Bureau of Statistics, I can assure you, on that subject.

**The Chairman:** I am giving it a broader connotation than that. I mean, every place where public money is spent.

**Mr. Duffett:** I am not sure that a bureau of statistics would be qualified to do that.

**The Chairman:** There could be a comparative study and an analysis as to the things that cause changes and what are the elements which enter into them.

**Mr. Duffett:** It could apply...

**The Chairman:** You have not undertaken that yet. It may be we could add that clause to the bill as one of your duties.

**Senator Connolly (Ottawa West):** I would like Mr. Duffett to comment, first of all, on the secrecy provisions as they affect people in the statistics field and will, under this bill counterpart the secrecy provisions that apply to the Department of National Revenue. I would just add one further suggestion, that he might also let us know whether or not the use of the magnetic tapes and the computers in any way opens the door to a broadening of the receipt of information by people who perhaps would not be authorized to have it and who may not be covered by the secrecy oath—if there is such a thing.

**Mr. Duffett:** Perhaps I can refer to the second question first. Information on magnetic tape is entirely processed within the Bureau of Statistics. We have our own computer centre. Computer centre employees, and employees of the Bureau of Statistics in every respect execute the same responsibility as this, and this material is entirely processed within the D.B.S.

**Senator Connolly (Ottawa West):** In other words, you have a data bank there and that data bank is for you alone and no one else has access to it?

**Mr. Duffett:** That is right.

**Senator Connolly (Ottawa West):** What about the data bank which the Department of National Revenue, Taxation, has? Is it in the same category?

**Mr. Herbert:** We are in a corresponding situation. All our employees are sworn to secrecy under the Income Tax Act and all our computing process is dealt with in our own system by our own employees.

**Senator Connolly (Ottawa West):** And no one else has access to the data?

**Mr. Herbert:** No.

**Senator Connolly (Ottawa West):** And it does not hook up to any other data system?

**Mr. Herbert:** No.

**Senator Connolly (Ottawa West):** Any system that transmits information?

**Mr. Herbert:** No.

**Senator Connolly (Ottawa West):** Is there any technical way in which this can be done? We hear talk about infiltration in high places, public organizations. Could there be infiltration into your data bank by some technical method?

**Mr. Herbert:** I have read one or two articles dealing with national security in the United States, where they were concerned about exotic methods by which spies could tap a line—where they tap a telephone line and draw the data off. We are not on any interception lines. There are no lines coming into our computer that would allow that.

**The Chairman:** Do you run tests or studies or surveys for the Department of Finance?

**Mr. Herbert:** We run tax models.

**The Chairman:** I am thinking of information in connection with the White Paper.

**Mr. Herbert:** We have a tax model computer which is a magnification of any identified tax data in it, which we run off on our computer or on another computer in Ottawa, by a company, on the basis that there is no personal information and no possibility of leakage.

**The Chairman:** They are an aggregate of the classes. Mr. Duffett, what about the additional information that is required now under Bill C-4 that was passed in the last session, the Canada Corporations Act? This information will be returned to the Department of Consumer Affairs. Will you get it from the Department of Consumer Affairs?

**Mr. Duffett:** No. There is no connection at all between our operations and the operation of that bill.



[Text]

**The Chairman:** Under this bill you can get it by agreement, can you not?

**Senator Connolly (Ottawa West):** It is another department of government, and you can ask for it.

**Mr. Duffett:** In fact, we already have entirely satisfactory information under the Corporations and Labour Unions Returns Act, much richer than that.

**The Chairman:** There is not much secrecy about it in your department unless the way in which you put it forward, when the same information is filed in another department and open to the public.

**Mr. Duffett:** The information that is filed under the Corporations Act, of course, would apply only to a federally incorporated company.

**The Chairman:** That is right.

**Senator Connolly (Ottawa West):** I think you said earlier that your secrecy requirements are more stringent than those of National Revenue. Is that so?

**Mr. Duffett:** This is a statement by Mr. Herbert.

**Mr. Herbert:** The penalties are somewhat higher.

**Senator Connolly (Ottawa West):** The penalties against people divulging information?

**Mr. Herbert:** That is so.

**The Chairman:** Have you had instances where you have had to apply penalties?

**Mr. Herbert:** No sir.

**The Chairman:** Or where you have applied them?

**Mr. Herbert:** My knowledge is from 27 years of National Revenue work. No information leak, and no prosecution for leak. We strengthened the act a few years ago, when we suddenly realized that the secrecy provisions did not embrace people who had left our employment. We have extended it now to them as well. We did once attempt to introduce some partnership basis in regard to tax appeal cases and we were roundly ticked off by the chairman, where one partner did not agree with the other as to the shares of income. That is the only instance I know of of that kind of leakage.

**The Chairman:** You have people who worked in the department and leave the department and may practice in this same general area. Is your oath such that it still covers them and that they have responsibility to observe secrecy?

**Mr. Herbert:** The law now says that if they disclose any information they obtained while they are in our employ, they can be prosecuted.

**The Chairman:** Honourable senators, are there any other questions? Are you ready to report the bill? Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** Honourable senators, could I have a motion from the committee. We printed 12,000 copies of our report on the White Paper and we have less than 200 copies left. There was a big distribution to government stores. The suggestion now is that we might print another 10,000. The cost of printing another 10,000 would be about \$3,300. If we printed 5,000 more, it would cost about \$2,500. I think we could anticipate that there will be a second substantial demand, as and when we get to legislation time, next year. I think we should get the copies printed now. Is that approved?

**Hon. Senators:** Agreed.

The committee adjourned.



Third Session—Twenty-eighth Parliament  
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# THE SENATE OF CANADA

PROCEEDINGS OF THE  
STANDING SENATE COMMITTEE ON

## Banking, Trade and Commerce

The Honourable SALTER A. HAYDEN, Chairman

No. 2

WEDNESDAY, NOVEMBER 4th, 1970

Complete Proceedings on Bill S-4,

intituled:

“An Act to implement an agreement amending the Trade Agreement  
between Canada and New Zealand”.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 28, 1970:

"Pursuant to the Order of the Day, the Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill S-4, intituled: "An Act to implement an agreement amending the Trade Agreement between Canada and New Zealand", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, November 4th, 1970.  
(2)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider:

Bill S-4 "An Act to implement an agreement amending the Trade Agreement between Canada and New Zealand".

*Present:* The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Carter, Hollett, Isnor, Kinley, Macnaughton and Molson—(9).

*Present, but not of the Committee:* The Honourable Senator Urquhart—(1).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk and Director of Committees.

*Witnesses*

*Department of External Affairs:*

Mr. J. R. Roy, Acting Head, Commonwealth Policy Division;

Mr. W. H. Montgomery, Legal Division.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

At 10:00 a.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, November 4, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-4, intituled: "An Act to implement an agreement amending the Trade Agreement between Canada and New Zealand", has in obedience to the order of reference of October 28, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, November 4, 1970

[Text]

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-4, to implement an agreement amending the Trade Agreement between Canada and New Zealand, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have a quorum. We just have one bill this morning, Bill S-4, an act to implement the agreement amending the Trade Agreement between Canada and New Zealand.

We have here Mr. Roy, who is Acting Head, Commercial Policy Division, Department of External Affairs. On his right is Mr. Montgomery of the Legal Division of the Department of External Affairs. Mr. Roy is going to carry the ball so we will ask him for an opening statement on the purpose and effect of the bill. Senator Urquhart, you sponsored the bill; have you anything to add?

**Senator Urquhart:** No, I have nothing further to add.

**Mr. J. R. Roy, Acting Head, Commercial Policy Division, Department of External Affairs:** This bill is required to put into effect the Canada-New Zealand trade Protocol, which amends the 1932 Trade Agreement between Canada and New Zealand. The trade Protocol was signed on May 13, 1970, in Wellington by the Prime Minister and the Right Honourable Keith Holyoake, Prime Minister of New Zealand. The Protocol does not alter the basic framework governing the conduct of our bilateral trade with New Zealand. However, it does update the present agreement and provides for certain benefits of mutual advantage.

There is a new provision on anti-dumping, which will allow Canada to fulfil its obligations under the International Anti-Dumping Code. At the same time it provides for roughly equivalent treatment of Canadian goods by the New Zealand authorities.

The Protocol also includes an amendment which provides for an undertaking by Canada to seek, through administrative arrangements, to minimize difficulties to New Zealand exporters arising from the requirement of the 1932 agreement to ship direct to Canada in order to obtain British Preferential tariff treatment.

Thirdly, a new article on consultations and the establishment of a joint Canada-New Zealand consultative committee will provide the means and mechanisms for

dealing more effectively with a wide range of bilateral problems. The consultative committee will meet either at the ministerial or official level not less frequently than once every two years and would be free to discuss subjects of mutual interest and concern. However, these would be mainly economic.

Fourthly, the Protocol provides for consultation in advance of major changes in preferential tariff treatment that one or the other government might contemplate.

Since the original trade agreement between Canada and New Zealand, signed in 1932, was introduced in Canada as an act of Parliament, the amending protocol must be introduced as amending legislation. In approving the protocol for formal acceptance by Canada, the Cabinet decided that the required amending legislation should be introduced in Parliament as soon as the legislative timetable permits, and this is the reason for the introduction of the bill at this time.

I have no more comments to make in the form of introduction.

**The Chairman:** What does Canada do, if anything, in this amending agreement in relation to the provisions in the anti-dumping legislation? I am thinking particularly of the provision there for countervailing duties and for surtax in certain circumstances. Is there anything in this bill that would bargain away those rights?

**Mr. Roy:** No, I do not think so. We have, of course, accepted the anti-dumping code, implementing Article VI of GATT, and the terms of the original agreement, I understand, were in conflict with this new obligation, i.e. this obligation as recently adopted by Canada. Accordingly, in order to set the matter straight we have requested and obtained a modification to the trade agreement with New Zealand.

**The Chairman:** Then this agreement is really to update the earlier New Zealand agreement, and to remove any conflict there might be between that earlier agreement and our anti-dumping legislation. Is that right?

**Mr. Roy:** That is correct.

**Senator Molson:** There is no explanation here of the articles being amended. For example, Articles IV and V of the agreement are deleted. Frequently when legislation is prepared the changes are shown. In this case we have got blanks on the explanation side.

**The Chairman:** Would you address yourself to that, Mr. Roy? I have the original articles here.

[Text]

**Senator Molson:** What do they deal with, Mr. Chairman?

**The Chairman:** This is in the original legislation of 1932.

**Senator Burchill:** Which is being deleted in this bill.

**The Chairman:** Yes. New provisions are substituted in Article II. Article IV in the original reads:

Goods entitled to entry under Article I hereof shall not be subject to Section 6 of the Customs Tariff of Canada unless previous notice has been given by the Government of Canada to the Government of New Zealand that the importation of such goods would prejudicially or injuriously affect the producers or manufacturers of similar goods in Canada, and if, at the expiration of a period of thirty days from the date of such notice, remedial measures satisfactory to the Government of Canada are not put into effect by the Government of New Zealand, then the provisions of the said Section 6 may be applied to such goods.

At the option of the Government of Canada any importation thus complained of, other than perishable goods, may be held in bond during the said period of thirty days.

That reference to Section 6 of the Customs Tariff is the provision that we had in relation to dumping until we dealt with the changes proposed by the principle which is asserted in GATT; that is, under section 6 all you had to do was prove that the price on the home market was higher, and then you did not have to prove damage or injury, that was dumping. You have now taken that out and added:

"treatment no less favourable than that accorded to goods the growth, produce or manufacture of [other] countries."

**Senator Carter:** Does this new agreement represent a liberalization of trade greater than was possible under the old agreement?

**The Chairman:** No. What I understood Mr. Roy to say was that principally it was to update the earlier agreement and bring it in line with our new anti-dumping provisions, which conform to the requirements of GATT, to which we were a party.

**Senator Carter:** When I listened to what you read out of Article IV of the old agreement and compared it with the one we are replacing it by, it seemed to me that there was a liberalization as well.

**The Chairman:** Mr. Roy, would you regard it as being a liberalization?

**Mr. Roy:** I am not sure that with respect to Article IV there is any greater liberalization, but I think we can read some liberalizing tendency into the new bill, that is the Protocol of agreement with respect to direct shipments. Direct shipments had to be certified, the bill of lading had to be certified if a direct shipment was

impossible in order to enjoy British preferential treatment in Canada. This is now no longer necessary; a simple general statement is acceptable. This to some extent means that we have made our procedure somewhat more flexible.

**Senator Carter:** Any liberalization is incidental. The main purpose is to bring it up to date?

**Mr. Roy:** That is the main purpose of the protocol, yes.

**The Chairman:** I read to you the old Article IV.

**Senator Molson:** What about Article V?

**The Chairman:** Article V says:

Goods entitled to entry under Article II hereof—

That is the earlier agreement—

shall not be subject to Sections 11 and 12 of the Customs Amendment Act, 1921, of New Zealand, unless previous notice has been given by the Government of New Zealand to the Government of Canada that importation of such would prejudicially or injuriously affect the producers or manufacturers of similar goods in New Zealand, and if, at the expiration of a period of thirty days from the date of such notice, remedial measures satisfactory to the Government of New Zealand are not put into effect by the Government of Canada, then the provisions of the said Sections 11 and 12 or either of them may be applied to such goods.

This is just the old Article IV in reverse. Article IV had the act of force being the Government of Canada; in Article V the act of force is the Government of New Zealand giving the notice. Those are deleted, and what you have in their place is this "treatment no less favourable", which you find in Article II of the new treaty, the amending treaty. That is correct, is it not?

**Mr. Roy:** Yes, sir.

**Senator Molson:** Are there any changes other than direct shipment?

**Mr. Roy:** Yes, but in what sense do you mean?

**Senator Molson:** Well, it is a change that is not spelled out in the schedule, is it not? Are there any other changes in requirements that would occur in keeping with this?

**Senator Urquhart:** The only two substantial changes have to do with the anti-dumping provisions and the direct shipments.

**Mr. Roy:** That is right. Otherwise the only other substantial matter is in relation to the consultative committee and to consultations.

**Senator Burchill:** What are the latest figures covering trade between Canada and new Zealand?

**Mr. Roy:** The latest figures I have for the whole of 1969 in our trade with New Zealand are: exports of \$37 million by Canada to New Zealand, and imports of \$41.2 million from New Zealand.



[Text]

**Senator Burchill:** About fifty-fifty then.

**The Chairman:** Skimming through this amending agreement, Senator Molson, these are the particulars in which it would appear they change the existing agreement; that is, bringing the agreement into line with our new concept of anti-dumping and also to deal with direct shipments.

**Senator Molson:** Direct shipments are not peculiar to New Zealand. It is a modification that is occurring elsewhere, is it not?

**Mr. Roy:** I believe that is true, yes.

**The Chairman:** This is not what you would call special treatment being accorded only to New Zealand. Is that right?

**Mr. Roy:** No. That is right.

**The Chairman:** This is in line with Government policy and getting away from the direct shipment concept.

**Mr. Roy:** Yes.

**Senator Molson:** What about the old Article 6—deleted?

**The Chairman:** The old Article 6 ties in with Articles 4 and 5 of the old agreement and says:

Subject to the provisions of Articles 4 and 5 hereof, nothing in this agreement shall affect the right of either party to this agreement to impose any special duty or tax on goods imported into Canada or New Zealand provided that, except for specially arranged between the Governments of Canada and New Zealand, such special duty or tax does not exceed that imposed upon similar goods imported from Great Britain.

This has been deleted and I take it that there has been nothing substituted in place of this?

**Mr. Roy:** That is correct.

**The Chairman:** What is the rationale behind the deletion?

**Mr. Roy:** The way I read this article is that we do in fact give British preferential treatment to New Zealand in so far as special duties or taxes are concerned and this is now limiting the preferential aspect. That part is gone.

**Senator Macnaughton:** Under Article 4(2) the two governments shall implement procedures, including the establishment of a joint Canada-New Zealand consultative committee. Under subsection (1) it says "on any related trade or economic matter of interest". Under what department would that committee fall? Would it be External Affairs, the Department of Trade and Commerce, or which department?

**Mr. Roy:** This committee would fall under External Affairs but it would of course involve other departments that have an interest in the dialogue between Canada

and New Zealand, especially in so far as it relates to economic and trade affairs.

**Senator Macnaughton:** The reason for the question is that, with the proposed entry of Great Britain into the common market, New Zealanders are extremely disturbed in regard to meat export. Is there any indication of that in this joint committee to explore ways and means of increasing trade, for example in meat, or any other product, between New Zealand and Canada. That is a very serious question for New Zealanders.

**Mr. Roy:** The committee as I envisage it would be able to consider such questions. It would be able to have officials or ministers on both sides who would be able to discuss such matters.

**The Chairman:** This would be an *ad hoc* committee, would it not?

**Mr. Roy:** No, this would be an established committee.

**The Chairman:** This does not propose to make use, so far as Canada is concerned, of the anti-dumping tribunal, to which special powers are being assigned in the bill now before the Senate to deal with related trade and economic matters?

**Mr. Roy:** No, it is not. It concerns the whole range of trade problems and could go beyond that, but it is not specifically related to the anti-dumping tribunal.

**The Chairman:** By subscribing to Article 4, has Canada tied its hands in relation to any reference by the Minister of Finance or the Governor in Council to the anti-dumping tribunal which is set up under the new bill that is before the Senate; and in the case of anything of trade, related to trade and commerce, must that, if it affects New Zealand, go to this point committee rather than be a reference by Canada on its own part to the anti-dumping tribunal?

**Mr. Roy:** No, I do not think so. I do not think it must go first to the committee.

**The Chairman:** It could go to the Canadian committee, on the basis of gathering all the necessary information, I suppose?

**Mr. Roy:** The committee exists only when it meets jointly. There are no members specifically indicated on the Canadian side of the committee that would hold meetings separately from time to time.

**The Chairman:** I understand.

**Mr. Roy:** I would presume that that is your suggestion.

**The Chairman:** I understand that. I was asking the question whether this agreement in Article 4 would preclude a reference by the Governor in Council of Canada to the anti-dumping tribunal of one of these questions, after this agreement becomes law and after the new anti-dumping provisions become law.

**Mr. Roy:** I do not think so. No.

[Text]

**Senator Carter:** Does Article 5 mean that New Zealand and Canada would work out between them preferential tariffs which would not apply to the regular preferential tariffs with Commonwealth countries, which would be different?

**Mr. Roy:** I do not think that is the purpose of Article 5. I think it is a consultative article, meant to focus attention on any proposed changes in preferential treatment that the two countries grant one another. This permits us to consult with New Zealand and vice versa, should consideration be given to the proposing of major changes in such treatment, granted reciprocally.

**Senator Hollett:** What are the principal exports to New Zealand? I understand that there are \$31 million of them.

**Mr. Roy:** For 1969 I have the figure for the total exports by Canada, \$37 million.

**Senator Hollett:** What do they consist of mostly—the big values?

**Mr. Roy:** The big exports for Canada are sulphur, aluminum pigs and bars, aircraft and parts, potash, copper piping, tubing, plastic and synthetic rubber, plastic film and sheet, asbestos fibres. Those are the items that account for trade over \$1 million in 1969. Sulphur is over \$5 million.

**The Chairman:** And the imports?

**Mr. Roy:** The imports for 1969 are beef and veal, sausage casings, wool, lamb. Those are the items that are over \$1 million in 1969.

**Senator Hollett:** There are imports from New Zealand? Beef, and so on?

**Mr. Roy:** Yes.

**Senator Kinley:** Is there any seasonal condition in this? I notice lamb, a large import from New Zealand.

**Mr. Roy:** I cannot say; I do not know.

**Senator Kinley:** Adopting this, it means you will not sell a thing cheaper than the price in your own country. I take it this bill places dumping in the field of discussion and negotiation. If you have dumping you have to have a conference on it with the committee? Is that the idea of the bill?

**Mr. Roy:** I do not think that is the case, but we are obliged to consult, once we have initiated action.

**Senator Kinley:** You cannot be absolute about it, you must consult about it?

**Mr. Roy:** Yes, you must consult on request.

**Senator Kinley:** It is a good bill.

**Senator Hollett:** Does that P. E. Trudeau have anything to do with our Prime Minister? I notice the signature is P. E. Trudeau; I take it it is the Prime Minister.

**The Chairman:** Well, obviously it is the same name.

**Senator Hollett:** I mean was he Prime Minister then?

**Mr. Roy:** The Protocol was signed on May 13, 1970.

**Senator Hollett:** He was Prime Minister then all right.

**Senator Molson:** Keith Holyoake was also the Prime Minister of New Zealand.

**Senator Carter:** I am still a little puzzled with respect to the answer to my question relating to article 5. It was purely consultative, but it is consultative with respect to changes. What is the purpose of consulting if you are not going to bring in changes? That implies that there is going to be a different set of tariffs for New Zealand than preferential tariffs for other Commonwealth countries.

**The Chairman:** I would take it, Mr. Roy, that the contents of the agreement is the arrangement that must be observed between New Zealand and Canada unless they get together, consult and agree to certain interpretations. Is that correct?

**Mr. Roy:** Presumably the consultations can lead to adjustments whereby if damage is being done this is pointed out to the party concerned, if it is within the power of that party to make rectification, that rectification, hopefully, will be made and the injury or supposed injury will disappear.

My understanding is that if that is not possible, then the regulations of each country enter into force.

**Senator Blois:** Is it not possible that if special agreements are made between the two countries, they and our anti-dumping bill will work against each other. Who would make the final decision in such a situation?

**The Chairman:** You will notice in article 2 of this amended agreement that there is provision that the Government of Canada, in the application of its anti-dumping legislation and regulations, shall accord to goods the growth, produce or manufacture of New Zealand treatment no less favourable than that accorded to goods the growth, produce or manufacture of countries signatory to GATT.

Now, this is using many words to say that New Zealand will be treated no less favourably. That simply means, as I take it, that whatever our anti-dumping law is, it will not apply in a different manner to New Zealand than to other nations.

Should such an article be contained in the agreement, would it not follow that if this is our law it will be applied even-handedly? That is about all it means. It does not contradict and cannot contradict what we have agreed to in GATT and the implementing legislation.

**Senator Molson:** I move that we report the bill without amendment.

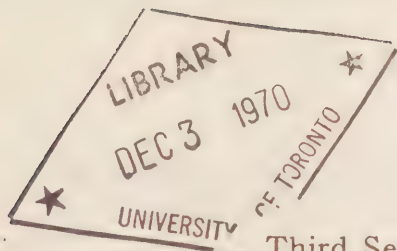
Agreed.

The Committee adjourned.









Third Session—Twenty-eighth Parliament  
1970

## THE SENATE OF CANADA

PROCEEDINGS OF THE  
STANDING SENATE COMMITTEE ON

# Banking, Trade and Commerce

The Honourable SALTER A. HAYDEN, Chairman

No. 3

TUESDAY, NOVEMBER 10th, 1970

Complete Proceedings on Bill S-6,

intituled:

“An Act to amend the Anti-dumping Act”.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, November 4, 1970:

"The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Blois resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Bourget, P.C., for the second reading of the Bill S-6, intituled: "An Act to amend the Anti-dumping Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Martin, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,

*Clerk of the Senate.*

# Minutes of Proceedings

Tuesday, November 10th, 1970.  
(3)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 A.M. to consider:

Bill S-6 "An Act to amend the Anti-dumping Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Carter, Connolly (*Ottawa West*), Hays, Hollett, Isnor, Kinley, Macnaughton, Molson and White—(12).

*In attendance:* E. R. Hopkins, Law Clerk and Parliamentary Counsel; Pierre Godbout, Director of Committees and Assistant Law Clerk and Parliamentary Counsel.

*Witnesses:*

*Department of Finance:*

R. K. Joyce, Director,  
International Economic Relations and Trade Policy  
Division;  
J. P. C. Gauthier, Vice-Chairman,  
Anti-Dumping Tribunal.

*Department of National Revenue:*

H. D. MacDermid, Chief,  
Valuation Section,  
Customs Appraisal Division.

Upon motion it was Resolved to amend Clause 3 of the Bill.

*Note:* (The full text of the amendment appears by reference to the Report of the Committee immediately following these Minutes.)

Upon motion it was Resolved to report the said Bill as amended.

At 11:00 A.M. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Tuesday, November 10, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-6, intituled: "An Act to amend the Anti-dumping Act", has in obedience to the order of reference of November 4, 1970, examined the said Bill and now reports the same with the following amendment:

*Page 2:* Strike out lines 10 to 15, inclusive, and substitute therefor the following:

"16A. The Tribunal shall inquire into and report to the Governor in Council on any other matter or thing in relation to imports that might be injurious to the trade or commerce of Canada that the Governor in Council refers to the Tribunal for inquiry and report."

Respectfully submitted.

SALTER A. HAYDEN,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Tuesday, November 10, 1970

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to Bill S-6 to amend the Anti-Dumping Act.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Honourable senators, our witnesses this morning are Mr. R. K. Joyce, Director, International Economic Relations and Trade Policy Division, Department of Finance, Mr. J. Craig Oliver, International Economic Relations and Trade Policy Division, Department of Finance and Mr. J. P. C. Gauthier, Vice-Chairman, Anti-dumping Tribunal. From the Department of National Revenue we have Mr. H. D. MacDermid, Chief, Valuation Section, Customs Appraisal Division. So, honourable senators, you will see we have a good panel.

Would you care to make an opening statement, Mr. Joyce, and then we can get down to the business of the meeting?

**Mr. R. K. Joyce, Director, International Economic Relations and Trade Policy Division, Department of Finance:** Mr. Chairman, and honourable senators, this is a relatively short bill. Its primary purpose is to broaden the powers of the Anti-dumping Tribunal so it can inquire into and report to the Governor in Council on any other matter in relation to the trade and commerce of Canada that the Governor in Council refers to it for inquiry and report. The bill also provides for a number of other technical amendments, most of which are based on the experience gained in the operation of the present act for the last 22 months.

If I might deal first with the proposed additions to the powers of the tribunal, in clause 3 of the bill it is proposed to amend the present act by adding immediately after section 16, which deals with investigations by the tribunal, a new section 16A which will permit the tribunal on reference from the Governor in Council to inquire into other cases where dumping is not involved. The concept here is similar to that of subsection (5) of section 4 of the Tariff Board Act under which the Tariff Board has the duty to inquire into, "any other matter or thing in relation to the trade or commerce of Canada that the Governor in Council sees fit to refer to the Tariff Board for inquiry and report".

**The Chairman:** Perhaps we should stop there for a few minutes because this is the main clause in the bill. When I was giving the explanation on second reading, I had

assumed, and I have been confirmed since in my assumption, that the granting of additional authority to the Anti-dumping Tribunal was intended so that the Governor in Council might refer to the tribunal matters relating to imports and Canadian production where there is no question of dumping but where the complaint is that there may be injury or threatened injury to the trade of Canada.

Now, if that is the purpose, and I understand it is, this is really broadly drawn, so that without any relation to imports, any item that comes under the description of trade and commerce may be referred by the Governor in Council to the Anti-dumping Tribunal. Now you may say, "Well, there is a discretion in the Governor in Council", but one always likes to be able to put one's finger on the principle of the bill to see that the bill gives effect to that. In the memorandum which I had from the department and in the illustration which I gave to the Senate on second reading, that illustration was as to why it was touching on the point of injury or threatened injury to production in Canada by reason of the financing being done by developed countries on the basis that the Canadian company which secures the financing must purchase the products in that country that does the financing. Now there is no question of dumping there.

**Senator Connolly (Ottawa West):** Mr. Chairman, would you deal with that again. I did not hear the beginning, and I apologize.

**The Chairman:** Which part of it?

**Senator Connolly (Ottawa West):** The part about the credit from the foreign country.

**The Chairman:** The memorandum which I referred to on second reading went along this line; that some foreign governments have begun to offer their export financing facilities to support sales to developed countries on condition that machinery and equipment to be purchased with the proceeds of the loan be obtained from producers in the country which guarantees the loan.

Then it says:

When Canadian borrowers arrange financing for all or part of the cost of a major development through such foreign government export financing facilities and consequently make their purchases of machinery and equipment overseas Canadian manufacturers of machinery and equipment lose opportunities to supply this particular part of the Canadian market.

It goes on to say that part of the complaint of Canadian manufacturers is that some of these Canadian producers who are securing these foreign loans are also under the benefit of the Canadian Government's Regional Economic Expansion scheme, so that they are getting grants from the Canadian Government as well, and the Canadian manufacturer was complaining that in those circumstances he is threatened with injury so far as his production is concerned.

I gather that this was one of the reasons which prompted the government to introduce this additional authority of reference, where there is no question of dumping but of what shall the policy be, because of injury or threat of injury to Canadian production in these circumstances. That is a fair statement, is it not, Mr. Joyce?

**Mr. Joyce:** Yes, sir, I would not disagree with it at all, except to say that the intention is perhaps a little broader. The case you cite is obviously one of the more important cases, but there may be other instances which do not involve concessional financing where it may be judged by the government that there is injury or threat of injury to Canadian producers as a result of imports. There may be no dumping involved whatsoever. The government would propose in these cases to take action against imports, possibly through surtax action, which it would be justified in doing under the international rules of the General Agreement on Tariffs and Trade.

At the moment the determination as to whether or not there had been an injury would be made by the Governor in Council, possibly with a departmental inquiry.

What is being suggested now is that since we have a tribunal set up, admittedly to deal with cases of dumping, but whose job is to address itself to the question as to whether or not there has been injury or threat of injury—a tribunal which presumably has acquired, over the course of the last 22 months, a certain expertise in looking into this question—it would make sense, in other instances where the government might wish to take action against imports which were threatening injury, to ask this tribunal to make the determination.

**The Chairman:** That is exactly the point I am making. The illustration I gave about foreign countries financing is only one type, and I was not attacking it on that basis. I was saying that the avowed purpose—and you have confirmed that—is to make use of the expertise which the Anti-dumping Tribunal has obtained. This is what the memorandum which came to me said. It said:

To date determinations of injury required as a basis for action under these sections of the Tariff...

...which I read to the senators when I was explaining the bill, where it only requires action by the Governor in Council...

...have been made administratively with the approval of the Governor in Council. However, with the increasing experience of the Anti-dumping Tribunal in determining injury under the terms of the Anti-dumping Act, we feel that its expertise could be usefully employed in making injury deter-

minations in these other situations as well, and thereby contribute to the more effective operation of these particular provisions of the Customs Tariff.

Under the present legislation the tribunal is not authorized to make such determinations.

All I am saying is that if this is the purpose, then why do we not say, it, instead of creating an authority in the Anti-dumping Tribunal where you could either use it or the Tariff Board for the same purpose?

**Senator Beaubien:** Once the matter has been referred to the tribunal, who takes action? Does the tribunal just recommend or does it take action?

**The Chairman:** The Anti-dumping Tribunal?

**Senator Beaubien:** Yes.

**The Chairman:** On this extended authority they are being given...

**Senator Beaubien:** They just recommend to the government?

**The Chairman:** It is to inquire and report. That is all they do. The decision whether the surtax or countervailing duties will be applied is a decision that the Governor in Council has to take afterwards. He may or may not take it, as he sees fit.

**Senator Beaubien:** In other words, this bill does not change anything as far as government action is concerned?

**The Chairman:** No.

**Senator Beaubien:** It is just to be referred to this tribunal, and they are to report back?

**The Chairman:** Under this new section 3 you can get a determination of injury through the reference to the Anti-dumping Tribunal. What I am saying is, if that is the intention, then that is what the section should say. It should not be so broad that you could refer any matter of trade and commerce, whether it relates to an import or not, to the Anti-dumping Tribunal.

**Senator Molson:** Why is not the word "injury" included in the clause?

**The Chairman:** I do not know.

**Senator Molson:** Reading from your memo you said "injury determination".

**The Chairman:** Yes.

**Senator Molson:** This is, as you say, so broad it does not have to be in relation to any of these things we are discussing.

**The Chairman:** It does not have to be in relation to imports; it does not have to be in relation to injury.

**Senator Connolly (Ottawa West):** Would the earlier parts of the section answer Senator Molson's question? In



other words, reading this in isolation, perhaps we are a little restricted in our consideration.

**The Chairman:** Under the present bill—well, we will turn up section 16.

**Senator Hays:** While you are looking that up, could I ask a question?

**The Chairman:** Certainly, Senator Hays.

**Senator Hays:** You said in your opening remarks "in light of experience," Mr. Joyce. What specific experience did you have that made you want to amend the act?

**Mr. Joyce:** I think perhaps the Vice-Chairman of the Anti-dumping Tribunal might be better equipped to speak to that.

**Mr. J. P. C. Gauthier, Vice-Chairman, Anti-dumping Tribunal, Department of Finance:** Mr. Chairman and honourable senators, the experience that the tribunal has had is over a very varied number of sectors of the industry, over the past 22 months. Although we cannot say that it has been terribly brisk sometimes, business has certainly picked up over the last eight or 10 months. We have had types of cases such as those at this moment. We have just completed the transformer case, and we are going to consider glycol and the imports of chlorine next week. So we can jump from imports of glace cherries from France to work boots from eastern countries, to transformers from the United Kingdom, Germany, Sweden, France, Italy and Japan, and imports of chemicals from the U.S. So the expertise acquired is over varied sectors and also over a wide variety of imports.

**Senator Hays:** Let us get back to the cherries. You said we could use this provision. How could we have used it previously? Do you mean there is an over-production in the United States, and this sort of thing?

**Mr. Gauthier:** No. This case was against France, and the producers of glace cherries in Canada complained that they had been dumping from France, which is the main exporter in the world, not only to Canada but also to the U.S. and European markets.

**Senator Hays:** These are the cherries that go into martinis?

**Mr. Gauthier:** Those they call maraschinos.

**Senator Connolly (Ottawa-West):** These go into old fashioned.

**The Chairman:** Senator, how can you think of that so early in the morning?

**Mr. Gauthier:** The glace cherries go to the bakery trade. So, in studying a case of dumping which might affect Canadian production, we have access to all of the information—the marketing information, the financial information, the distribution information—that forms the structure of an industry in Canada. Incidentally, when cases of dumping come to the attention of the tribunal it considers only those that affect a wide sector of an industry. For instance, if one producer, whose production

would represent only 5 or 6 per cent of the total Canadian production, complained of dumping then we would be precluded by the provisions of the act from considering injury, so when we do consider injury it is on account of dumping affecting whole sections of industry, or the majority of producers.

Expertise is gained by a study in depth of that sector of the industry and the international ramifications governing the distribution of its product to different countries, and we also gain an insight into the organization of a foreign industry.

An example of this is the case of transformers in regard to which a decision was rendered last Friday. Seven countries and all of the Canadian industry were involved in this case. The hearings lasted 32 days. We wanted to see how the other producers in Sweden, France, the United Kingdom and Belgium were organized, and what type of management they had, what their business philosophy was, and what their research and development resources were, which we did over a very short period of time because we were still limited by the 90 days in which we have to give our decision.

We gained an insight on this occasion into a rather important sector of heavy manufacturing in Europe. I think it is through this exposure, through different business philosophies, different approaches, and different resources that we acquire this expertise.

**Senator Hays:** Do you not have the power under the present act?

**Mr. Gauthier:** Only as regards dumping.

**The Chairman:** These cases, Mr. Gauthier, about which you are talking, and in respect of which decisions have been made, have been considered under the existing act which was passed in 1968-69, and they were considered because there was an element of dumping. "Dumping" is defined as occurring when the price at which the imported article is offered for sale, or is sold, in Canada is lower than the market price for like goods in the country of origin. This is the dumping feature. But, what we are talking about this morning is a situation in which there is no dumping. We then look at the circumstances under which these imports come into Canada, and the allegations that their entry is threatening or causing injury to Canadian production. This is a new authority.

**Senator Hays:** Yes, it broadens the whole act.

**The Chairman:** Yes, but not as to making a decision, but as to making a study and report as to whether there is injury or a threatened injury by reason of these conditions in relation to imports.

**Senator Hays:** Even before the matter is brought before the tribunal. Are you not prejudging what might happen?

**The Chairman:** No, because all that the tribunal, with the added authority that is being given to it, does in a case of this kind, where there is no dumping alleged, is to hear all the evidence and make a report as to whether it finds that these imports in these circumstances are

causing or threatening injury to Canadian production. That decision goes to the Governor in Council, and then it is up to the Governor in Council to decide whether a surcharge or countervailing duties will be applied. This is an added power.

The whole point I was raising for discussion here was if this is the intended additional jurisdiction, why is it taken so broadly that they can hear and report on any item in relation to the trade and commerce of Canada. There is no limitation on it. If this is why they want the authority then why do they not take it in that fashion?

**Senator Blois:** Mr. Chairman, I objected strenuously in the chamber to the fact that this is so broad. It has nothing to do with dumping at all, as I see it. It seems to me that they can look at the freight rates charged on grain. It is much too broad as it stands at the present time, and it could be worded differently so that it has something to do with dumping. As it is presently written they could look into the fares charged airline passengers, because it says "anything in relation to the trade or commerce of Canada".

**The Chairman:** A wording that I would suggest for your consideration is, "in relation to imports that might be injurious to the trade or commerce of Canada".

**Senator Blois:** That, I think, would cover it.

**The Chairman:** Yes, that would cover the situation.

**Senator Kinley:** Mr. Chairman, the other day when we were dealing with the New Zealand trade agreement we made special provisions about anti-dumping, and it seemed that dumping would be a matter for consultation between the two parties. Has that any relation to this bill?

**The Chairman:** No. Perhaps you could explain that, Mr. Joyce.

**Mr. Joyce:** I am sorry, Mr. Chairman, but I did not follow the question.

**The Chairman:** We had before us the other day the updating of the New Zealand Trade Agreement, and there was reference in it to a consultative committee which, as I understood it, was to resolve differences if Canada complained to New Zealand about the way certain products were coming into Canada, or New Zealand complained to Canada. Machinery was provided in that trade agreement for the purpose of attempting to resolve the difficulty, but that does not mean that they were giving up any rights they might have under the Anti-dumping Act that we have in force. This was just providing machinery for resolving those differences; is not that right?

**Mr. Joyce:** Yes. We have that with both New Zealand and Australia in the original trade agreements with those countries. You are quite right. It is just a provision for consultation prior to taking action. The problem now is that the international anti-dumping code which we agreed to in the GATT does not really provide for that sort of consultation, and therefore to the extent that one

deals with dumping cases involving New Zealand goods on the basis of the trade agreement with consultation, and does not so deal with the imports of goods from other countries on that basis, it can be charged that one is discriminating in favour of New Zealand. So, following negotiations with the New Zealand Government it has been agreed now that the trade agreement will be amended, in effect, to take out that advance consultation procedure so that imports from New Zealand will be treated in the same manner as imports from any other country so far as the anti-dumping provisions are concerned.

**Senator Kinley:** Are there any seasonal conditions in this bill?

**Mr. Joyce:** No, sir, there is nothing specifically dealing with seasonal distribution. The Anti-dumping Act as such applies to any goods. This bill, of course, simply amends the act and does not affect the basic features.

**Senator Kinley:** It is the question of seasonal implication when we compete with the United States.

**Mr. Joyce:** You are quite right; there are many problems not strictly in relation to dumping. These have to be overcome outside the provisions of the dumping legislation. One of them is the problem of seasonal importations of fruit and vegetables.

**Senator Connolly (Ottawa West):** Mr. Chairman, I have a double-barreled question which I will ask in two parts. It relates to the matter you raised originally. I will ask the question by way of an example.

Let us say that a Canadian organization decides to go to West Germany to buy some production equipment which is available in Canada. There are export encouragement laws in West Germany which permit long term credit to the Canadian buyer. He can obtain this machinery over a long period of time, perhaps three or four years or longer, at a very much reduced rate of interest. Let us say that the prevailing rate in Canada today is 9 per cent or 10 per cent, he might obtain it for 4 per cent or 5 per cent. Therefore they are subsidizing exports.

This is a situation where relatively the same type of machinery is produced in Canada. I suppose that in such a case the Canadian manufacturer could appear before the department and ultimately the tribunal and report the loss of this business, resulting in injury. Is that the fact?

**Mr. Joyce:** Yes and no, sir. If these export credits were such as to create a dumping situation and the Deputy Minister of National Revenue could establish that dumping had occurred, then, of course, it could be referred to the tribunal for an injury determination.

**The Chairman:** Without this bill.

**Mr. Joyce:** Without this bill.

**Senator Connolly (Ottawa West):** Could I stop you there? A producer in Germany buying this equipment would probably have to pay the going rate, because it is going to be used in Germany for production purposes.



For instance, he would have 30 days or 90 days at 10 per cent. The Canadian buyer is bonused to the extent of a 4 per cent or 5 per cent rate and a longer term because the West Germans wish to encourage the exports and earn the foreign exchange.

Is that a dumping situation?

**Mr. Joyce:** It could be.

**The Chairman:** Well Mr. Joyce, it might be a subsidy.

**Mr. Joyce:** There are the two aspects. It may be a subsidy, but whether it is a subsidy or not it could still be dumping, and vice versa.

**The Chairman:** That is right.

**Mr. Joyce:** The problem here is the method of determining whether in fact it is dumping within the ground rules laid out in the act. In other words, nominal value versus export price.

**Senator Connolly (Ottawa West):** Is the sale in this case not being made at a price lower to the Canadian manufacturer in view of the terms, interest rate and length of time, than is available in the country of origin?

**Mr. Joyce:** I would like to refer the question to Mr. MacDermid of the Department of National Revenue. However, before doing so I might say in general that such a case might well involve an element of dumping. The problem is the method of calculation. The two prices have to be brought to a comparable basis. Then the decision must be made whether in fact the price in the home market is the same or higher than the price at which sales would be made in the Canadian market.

There is a technical problem with respect to the performing of this calculation.

**Senator Connolly (Ottawa West):** If the price is the same but the terms are better, is it dumping?

**Mr. Joyce:** I would say there is a *prima facie* case there, the export price being less than the nominal value.

**Mr. H. D. MacDermid, Chief, valuation section, customs appraisal division, Department of National Revenue:** Mr. Chairman, I think the answer given by Mr. Joyce is correct, that there is a *prima facie* case of dumping in such a situation if the terms to the Canadian importer are preferred to those granted on sales in the domestic market.

We have had no actual experience under the Anti-dumping Act related to this type of situation. However, if a complaint were lodged under the Anti-dumping Act we would in all probability find dumping.

**Senator Connolly (Ottawa West):** But this is a practice that has been developed in many foreign countries in an endeavour to develop export sales, is it not?

**Mr. MacDermid:** Yes it is, sir.

**Senator Connolly (Ottawa West):** And the test in this case, I take it, is the fact that for this particular equip-

ment, which can be manufactured in Canada, a Canadian producer would lose the business and that is where the injury takes place?

**Mr. MacDermid:** Yes.

**The Chairman:** You would have to establish that there is injury, or threatened injury.

**Senator Connolly (Ottawa West):** Yes, but he has lost his sale.

**The Chairman:** It depends on who he is and what the relationship of his production is to the total Canadian production. Those are all factors to be taken into consideration by the Anti-dumping Tribunal.

**Senator Connolly (Ottawa West):** With those considerations, which I accept, let me take it a step further and visualize a situation where a Canadian importer is carrying on a very large operation. He requires financial assistance to compete and finds that he obtains better terms for his equipment because as the result of its installation and this new capital expenditure in the country where he buys it, he is going to make sales of his product of tremendous value.

Now, there is injury, for instance, to Canadian General Electric with respect to certain transformers they might have sold to this man had he not decided to buy in West Germany. On the other hand, West Germany will take the product resulting from this capital investment and we as a country will have export sales of that commodity.

Now, is the tribunal to set a balance between one and the other and rule that the overall injury is minimal? Sure you lose the value of the sales of the transformers, but you get the value of the export product which is produced from the use of this equipment and other equipment, of course, in the sales to the foreign country that produced the transformers. It is a double-barreled question.

**The Chairman:** Both those barrels seem to be moving in a line that is parallel to what this bill purports to cover, and since parallel lines meet at infinity, that is a long time to wait. The point here is that the amendment does not involve any question of a finding as to dumping; it is to give an additional authority to the Anti-dumping Tribunal to make a determination of injury where there is no allegation of dumping.

**Senator Connolly (Ottawa West):** Well, let me take Canadian General Electric as an example. When they or some other manufacturer of this type of product are involved and you try to determine injury to Canadian trade and commerce, are you going to look only at the loss of the sale of the equipment or are you going to look at the whole picture and say that in the end we are going to gain?

**The Chairman:** Well, Mr. Gauthier, the Chairman, is here. Certain guidelines have been fully formulated, and I would imagine that the transformer case as and when you have finished with it will establish some guidelines

that may be a direction to industry. I am not sure you want to pronounce on what your guidelines may be in advance.

**Mr. Gauthier:** Mr. Chairman, we certainly have not established guidelines with respect to the text of the amendment or the new act at this stage. In answer to Senator Connolly, however, I think that the crux of the problem has been touched on in the sense that in determining injury under the present act, we have to consider only injury to production of like goods in Canada. We don't consider injury, for instance, to consumer interests. According to the present act, as it presently reads, it is the production of like goods in Canada. Therefore we will not be in a position and our terms of reference will not permit us to take into consideration consumer interests or trade interest or economic interests.

Under the proposed amendment the question is quite different as you have put it down, Mr. Chairman. It is to report to the Governor in Council on any other matter or thing in relation to the trade and commerce of Canada. In my own mind and in the minds of my colleagues I believe we had interpreted this as being injury to industry from other causes. I do not want to detract from the objectives that the Department of Finance might have, but having discussed this with my colleagues, I think our own frame of mind is such that we considered the amendment as being aimed at injury from other causes to Canadian industry.

**Senator Molson:** I do not want to step ahead of Senator Hays, but my question is exactly on the point developed by Mr. Gauthier. I would like to ask what is the purpose of this parallel. Obviously the Department of Finance has some purpose in suggesting this amendment. They must have had some purpose in making the wording as vague as they have done, and they must have some designed use for the act as amended by this paragraph. Now I think we are all fumbling and saying, "why is this for injury?" and "What is the effect of this?" But we do not know what the purpose of the paragraph is, and I would like Mr. Joyce to tell us why the paragraph is suggested as it is.

**The Chairman:** Mr. Joyce has to keep in mind the letter sent by the Department of Finance to me in preparation of the explanation on second reading in which they do state a purpose which I read this morning.

**Senator Molson:** I am afraid I am not entirely clear. Would you read it again, Mr. Joyce?

**Mr. Joyce:** Might I attempt to deal with it? It is possible that the letter sent to Senator Hayden was not precise enough in its explanation. Let us distinguish between the immediate problem and problems that might occur in the future. The immediate problem we see, and the immediate reason we are suggesting that this clause should be included, is that there are cases where no dumping is involved, but where Canadian producers are injured or threatened with injury as a result of the importation of like or directly competitive products.

In these cases the Government of Canada has the authority under domestic law and is entitled by virtue of international agreements to take certain actions, notably the surtax act or to impose countervailing duties if there are export subsidizations. In those cases, however, to meet the requirements of international law one must establish that there has been or is a threat of injury. This at the moment is done by the Governor in Council.

The purpose of this clause—the immediate purpose of clause 3—is to provide that in future the Governor in Council can refer this type of question to an independent body for an injury determination, and the independent body the Government has in mind is the Anti-dumping Tribunal, because they do precisely this type of job in relation to dumping cases. So we are really saying that that would be the logical independent body to refer the question of injury determination to in non-dumping cases. This then brings up the next question as to why the wording is so broad. I think there are two or three possible remarks I could make on that. There is a tendency, as I am sure you are aware, for legal draftsmen to seek refuge in established terminology, and this is the type of wording used in the Tariff Board Act where, for completely different reasons, it was decided that the Tariff Board could be used as an independent tribunal to look into questions even though the Government was not specifically asking it to consider whether or not tariffs should be changed.

I think I can mention the most recent report on knitwear as a case in point. This was a general reference to the Tariff Board to look into the situation in that industry. It is a reference which would not have been made at all to the Tariff Board if the Textile Review Board had been in a position to do so. This is one reason why it is adopting similar type of wording to that of the Tariff Board Act. It may not be an adequate reason, but it is a reason.

Now, apart from that, I think another reason for keeping the wording fairly broad is pointed up by the remarks of Senator Connolly. If this were worded in such a way as to deal specifically with the case I mentioned, the immediate intention, namely to deal with cases of injury where there are imports but not necessarily dumped imports, there is a danger that that might be too limited, that one would be thinking of injury in whatever terms injury might be defined in international parlance—namely, injury to producers. But it could be that at some point in time the government might wish to see whether imports were causing injury to consumers. This would not necessarily mean that the government could then take tariff action or surtax action because under the international rules this might not be permissible, but it is conceivable there might be other things the government might decide to do, given that it had been established by an independent tribunal that there had been injury to consumers, if not to producers.

**Senator Connolly (Ottawa West):** Or to foreign trade.

**Mr. Joyce:** Yes, sir, this was the other point I was coming to, that you had mentioned, the possibility that though there is injury to Canadian producers, in meet-



ing that injury you may in fact be damaging export interests of other Canadian producers.

**The Chairman:** Mr. Joyce, do you not think that is drawing a long bow? What particular aptitude would the Anti-dumping Tribunal have to deal with a matter which does not involve injury in relation to dumping or otherwise, of the nature that you must find in order to get action under the Anti-dumping Act? They are going to have two or three sets of guidelines, are they, with a vehicle already established—the Tariff Board, which has been doing this kind of work?

**Mr. Joyce:** I am simply saying that the tribunal—and as Mr. Gauthier pointed out the example of the transformer case—as a result of its investigations, acquires a knowledge and expertise that may be useful to be brought to bear on certain questions, and these questions conceivably might be a little wider than the specific question as to whether there has been injury as a result of the increased imports.

**Senator Molson:** I cannot see it would be other than in the case of imports though.

**Mr. Joyce:** Quite frankly, sir, I cannot either, at the moment.

**The Chairman:** Right on this point, when you bring in the question of the consumer, the Governor in Council, even under section 7(1)(a) of the Customs Tariff now, where he may apply surtax, is limited to the case of where the conditions are such as to cause or threaten serious injury to Canadian producers of like or directly competitive products. So if your conception is that in this section you are going to give the Anti-dumping Tribunal authority to study that relationship by reference, to committees, where is action going to take place?

**Senator Hays:** And how are you going to do it?

**The Chairman:** Yes, how are you going to do it?

**Senator Hays:** Where you are protecting the consumer and the producer in an act dealing with dumping.

**Senator Macnaughton:** Where the tribunal finds there is no dumping or injury, is the government bound to accept that finding?

**The Chairman:** That is a double-barreled question, senator.

**Senator Macnaughton:** Yes—or can the government say, “Thanks very much for the information, but we are going ahead.”?

**The Chairman:** Let us take, first of all, if they find there is no dumping and no injury.

**Mr. Joyce:** In the first place, the tribunal does not find whether or not there is dumping. That is a decision of the Deputy Minister of National Revenue. The tribunal addresses itself only to the question of injury.

**The Chairman:** It may express an opinion, I think, under the original act.

**Mr. Joyce:** It may express an opinion in certain cases, about whether goods are of broadly similar characteristics; but, by and large—I was trying to simplify—the job of the tribunal is to address itself to the question of whether or not there has been injury.

I think the government has to accept, where the tribunal has determined there is no injury...

**Senator Macnaughton:** “Has to” or “should” accept? The government has authority to refuse, I presume?

**Mr. Joyce:** Yes, I say the government has to accept—has to “recognize” may be a better way of putting it. I think it is still open to the government to disagree and itself to determine that there was injury.

**Senator Connolly (Ottawa West):** When you say the government, what you mean is the Department of National Revenue?

**The Chairman:** No, the Governor in Council.

**Mr. Joyce:** I mean the Governor in Council.

**Senator Connolly (Ottawa West):** I know, but it is on the recommendation of the Department of National Revenue.

**Mr. Joyce:** It depends. If you are talking about surtax action, it is on the recommendation of the Minister of Finance. Nonetheless, it is the Governor in Council, and this means a decision by ministers, if you like.

I think the government retains its power to determine whether there has been injury or not, but I think that this would seriously restrict it in the exercise of its power. If, in fact, an independent tribunal has ruled there is not injury, I would think the government would find it rather difficult to proceed with surtax action, invoking in defence of that surtax action that injury has occurred. It is certainly within its powers to do so, but I think it might find it somewhat embarrassing, certainly in international circles. Does this answer your question?

**Senator Macnaughton:** Yes, it does.

**The Chairman:** It is not an order of the Anti-dumping Tribunal under this proposed section; it is just a report.

**Mr. Joyce:** I suppose one could draw a parallel with the Tariff Board, where the Tariff Board may recommend certain action with respect to the tariffs, and the government may choose to implement or not implement, on the basis of this and other things it takes into consideration.

**Senator Macnaughton:** I guess the Prime Minister is the only one to give a final answer.

**Senator Hays:** I was a bit confused on the consumer where you said the tribunal may be interested in the consumer aspect.

**The Chairman:** Mr. Joyce suggested that as being a “way out” reason—I do not mean that unkindly—for giving this very broad power.

**Senator Hays:** I am thinking of something that has not been brought before the tribunal, Danish bacon. In Denmark they have a two-price system, and we have a great surplus of bacon today, the price being half what it was a year ago. The last time I was in the market you could buy Danish bacon much cheaper than they are selling it to the Danish people because they do have a two-price system. They make as much money on it as they do in servicing the other, but the consumer is buying at a cheaper price and the producer is injured by this importation. I think it is dumping, but I do not know who would bring it forward. Would the consumer be injured or would the producer be injured?

**The Chairman:** The only test under existing legislation—and that is not being changed here—is injury to the producer.

**Senator Hays:** I would think that the tribunal would not be interested in the other part. It would be interested just in the dumping part.

**Mr. Joyce:** Let us assume that there is a dumping situation here. What you are saying is that the producers may or may not choose to initiate a request.

**Senator Hays:** They may be so fragmented.

**Mr. Joyce:** However, an investigation can be initiated by the Deputy Minister of National Revenue on his own responsibility. The fact that Canadian producers, because they are fragmented, do not choose to initiate an investigation, an investigation might still be initiated.

If I may, I should like to go back to the consumer question. Senator Hayden said it was far out, and I do not think he was far wrong. You were pressing me, in a sense, and I was trying to envisage what one might consider at the extreme, but it is quite clear that the intention at the moment is to deal with those cases where there are importations which do not necessarily involve dumping but where the Government might wish to take action on the ground that there has been injury. The real purpose of broadening the powers of the tribunal is to provide that the Governor in Council can ask an independent tribunal, namely, the Anti-dumping Tribunal, to make an injury determination and to make a finding as to whether or not there has been injury.

**The Chairman:** That raises again the question that I put to you originally. In those circumstances, if this is the area of operation, why should we expand section 3 to a depth that covers anything in relation to the trade or commerce of Canada, whether it is imports or not?

**Mr. Joyce:** I have two answers to that. One is that to the extent that you word it tightly there is always a danger that one might find that inadvertently one has limited the terms of reference or the powers of the tribunal to deal with the case that one wishes it to deal with.

**The Chairman:** Mr. Joyce, on that point, if you are going to draft legislation that goes into all those points, you will never get anything finalized. This would appear to me to be the main purpose for which this extension of

authority is being sought. If it does not go far enough then you can come back. How you could anticipate situations arising where you would need this broad authority in reference to the Anti-dumping Tribunal is beyond me. I just cannot comprehend why a tribunal as specialized as this tribunal would be the one selected to deal with matters that do not involve its specialty.

**Senator Connolly (Ottawa West):** Mr. Chairman, what about the example I gave of where even if there was a possible element of dumping, the net result—to use Senator Isnor's word—or overall result is beneficial to Canada because of the increase in the foreign exchange that is generated by Canadian sales to the country where the equipment is purchased? Would not this broader wording allow the tribunal to consider both factors—not only the injury to the manufacturer, but the ultimate benefit in the form of increased trade to the country?

**The Chairman:** But, senator, there is nothing in the legislation that deals with the overall result. It deals with injury to the producer.

**Senator Connolly (Ottawa West):** But if you say “in relation to the trade or commerce of Canada” your wording is pretty broad.

**The Chairman:** What I was saying was that the function or specialty of the Anti-dumping Tribunal is dumping and injury.

**Senator Hays:** That is right.

**The Chairman:** They now want the additional authority to deal with injury where there is no dumping. Is that all right? They can have it, but they come in and want to have jurisdiction in relation to any other matter or in relation to the trade or commerce of Canada, and that is a large order because the Anti-dumping Tribunal has a specialty.

**Senator Molson:** It is not even external, which is perhaps a weakness.

**Senator Hays:** The terms of reference are pretty wide. They are away out in so far as dumping is concerned.

**The Chairman:** Can we resolve this? What is the view of the committee? If we were seeking to have this proposed section deal with the situation that the Government wishes to cover—that is, no dumping, but a determination of injury to the producer in Canada by reason of imports where there is no dumping—then I suggest we could put in three or four words so that that phrase would read “in relation to imports that might be injurious to the trade or commerce of Canada”. That would give them all that jurisdiction.

**Senator Molson:** Do you need anything other than “in relation to imports”. Why should this tribunal not consider any matters relating to imports?

**The Chairman:** It is a question of injury.

**Senator Molson:** But this is a broad investigation. I really cannot see what would be harmful as long as it



concerns imports. The only thing that disturbs me here is that it seems to include interprovincial trade.

**The Chairman:** If there was any intention to get a finding—and Mr. Joyce said there was—under section 7(1)(a) of the Customs Tariff where there is no dumping but injury or threatened injury by reason of the importation of certain products, then the finding of the tribunal must be a finding of injury, or the minister would not have support for invoking the surtax. Up to the present time the minister and the Governor in Council make both decisions—that is, they decide there is injury, and then they apply the surtax. The idea now, as I understand it from Mr. Joyce, is to divide those functions, and have the Anti-dumping Tribunal make the determination of injury or no injury. If they determine injury, then either Senator Molson or Senator Macnaughton asked: In those circumstances, does the minister or the Governor in Council have to accept that finding. Mr. Joyce's answer was very fair. He said that international relations being what they are, if you have a finding of an independent body that there has been no injury, it would be very difficult for the minister and the Governor in Council to go against that finding and apply the surtax.

**Senator Macnaughton:** But, on the other hand, he could.

**The Chairman:** Oh yes, he could.

**Senator Isnor:** Why should they not have that authority?

**The Chairman:** They have the authority. I am saying that if that is the authority they want then that is the authority we are prepared to give them.

**Senator Isnor:** That is what we have been arguing about.

**The Chairman:** No, Senator Isnor, we have been arguing about the fact that in order to have what they are asking they do not need as broad a section as they have in this bill.

**Senator Isnor:** It does not do any harm.

**The Chairman:** That would be a simple way of approach to all legislation; whatever it is we could say: Let them have it, it does not do any harm.

**Senator Hays:** I think the terms of reference are too broad. If the tribunal deals with dumping then its jurisdiction should be confined to dumping and injury to producers.

**Senator Macnaughton:** I like your wording, Mr. Chairman. Would you repeat it?

**The Chairman:** My suggestion was that after the words "in relation" we insert the words "to imports that might be injurious to the trade or commerce of Canada."

**Senator Connolly (Ottawa West):** Mr. Chairman, I hark back to the example in which as a result of an importation there could be injury to the trade or commerce of

Canada in one sense, and that is in the fact that this particular sale is lost. However, in the long run there may be advantage to the trade and commerce of Canada greater in value than the loss of the sale.

Now, why not say both imports and exports?

**Senator Macnaughton:** Your wording would cover this case.

**Senator Molson:** The tribunal does not function with respect to exports.

**Senator Connolly (Ottawa West):** The wording suggested, Senator Macnaughton, would restrict the test of injury to whether or not the Canadian producer lost the sale.

**The Chairman:** That is the only way in which the surtax can be applied. Under the present law, the Customs Tariff Act, not this bill, there must be injury to the Canadian producer.

**Senator Connolly (Ottawa West):** But suppose that in the broader context there is an ultimate net advantage to the trade and commerce of Canada, then the test will not be the ultimate value but did they lose this sale?

**The Chairman:** More law would be needed in that case, because the minister or the Governor in Council now have to apply surtax where there is injury or threatened injury to the Canadian producer in relation to imported goods.

**Mr. Joyce:** I am not sure though, Mr. Chairman, with all due respect, that it should be tied too closely to surtax. This is obviously the immediate problem, but the development of other problems can be conceived. It may be that although the Government does not have in mind taking surtax action it is concerned with regard to the general situation in an industry where there is import competition. It wishes the tribunal to consider that industry and decide whether or not there has been injury in the broader sense of the term, not necessarily in the limited sense that would be necessary in order to justify surtax action.

**The Chairman:** To stop right there, this is what the Tariff Board does now, is it not?

**Mr. Joyce:** One can make reference to the Tariff Board on those grounds because the provision in the Tariff Board legislation is as broad as the provision suggested for this.

**The Chairman:** Maybe that is where it belongs.

**Mr. Joyce:** Possibly, sir. However, if you include in this legislation a clause as broad as that in the Tariff Board legislation, then you leave it up to the Governor in Council to decide whether or not that reference should be made to the Tariff Board or to this tribunal.

It would depend partly on the workload and partly on the relative expertise of the two tribunals.

**The Chairman:** With respect to your latter ground, the expertise of the Anti-dumping Tribunal is in the area of injury or threatened injury to the producer. The Tariff Board has a basis of experience and has dealt much more broadly along the lines you have indicated in this question.

**Senator Molson:** I see one difficulty in Senator Connolly's premise. There are probably two different industries affected. One is injured and the other benefiting. However, it would be rather improbable that it would be an injury and a benefit to the same industry in the same transaction.

**Senator Connolly (Ottawa West):** That is quite true; it is obvious in my example. The injury would be to a manufacturing organization in Canada; the benefit would be to an exporter who used the imported goods to produce foreign exchange by exporting to the country where the equipment was manufactured.

**Senator Molson:** We would need a Solomon to deal with that.

**Senator Connolly (Ottawa West):** I do not think so; it seems to be a matter of policy.

**The Chairman:** That brings us into the area of national policy of balancing exchange as an element against injury to the Canadian producer.

What is the feeling of the committee with respect to clause 3?

**Senator Blois:** I move we amend it as you suggested.

**The Chairman:** I have suggested this limitation, which is in line with the present intention for the use of this extended authority. Does the committee support that change?

**Senator Connolly (Ottawa West):** I certainly do not wish to vote against the chairman, because he carries us so far on these matters. What does Mr. Joyce think? Does it restrict?

**Mr. Joyce:** I am a little concerned about it, for two reasons. One is that it may be difficult to word the section in such a way as to allow the tribunal to perform even the immediate task contemplated, which is the determination of injury in cases where there are importations but no dumping.

However, more broadly I would suggest to you again, senators, that there may in fact not be as great a danger as you see in providing powers to this tribunal as broad as those provided in the Tariff Board Act. In both cases the reference has to be made by the Governor in Council. Leaving this clause stand would give the option to the Governor in Council to refer a broad question to this tribunal rather than possibly to the Tariff Board.

**Senator Connolly (Ottawa West):** Is it not more than that, Mr. Joyce? Are you not giving an importer who has perhaps been found to have imported goods that attract

dumping an opportunity to go to this particular tribunal, which is primarily charged with considering dumping matters?

**Mr. Joyce:** At present.

**Senator Connolly (Ottawa West):** At the present time, and allowing that tribunal to weigh this particular allegation of injury against a possible benefit in another area of trade and commerce?

**The Chairman:** Well now, senator, if you read section 16 of the act, which deals with dumping, and then the determination the Anti-dumping Tribunal must make as to whether there is an injury, the only manner in which a producer can benefit is by establishing injury.

You are suggesting that, have made that decision, the same question in substance could be referred under this authority. What kind of decision would you expect to be made by the Anti-dumping Tribunal on the wording we have here? They have already decided that there is or is not injury; would you have them make two different decisions?

**Senator Connolly (Ottawa West):** They may decide, for example, that there may be injury in respect of the equipment imported because it may be manufactured in Canada.

**The Chairman:** Then we must broaden the authority as to the basis upon which they can proceed. Guidelines would have to be established to say that even if they have made a finding of injury under section 16 there is this general reference that they are not bound by that finding. In my opinion that creates an impossible situation.

**The Chairman:** Those in favour of the amendment please indicate? Contrary?

Carried.

Now, Mr. Joyce, I think the other items in the bill are just tidying-up items, are they not? I notice you have changed "three months" to "90 days". That is simply to be uniform in your language, I presume.

**Mr. Joyce:** Yes, I think there is another small point there in that three months is not necessarily always the same because it can depend on the length of the months, and with this change, everybody will be treated on the same basis. "Ninety days" is a more appropriate term.

**The Chairman:** Then in clause 4 you provide that where there is a finding of no injury and that terminates the proceedings, if the importer has put any money up in the interim, he gets it back.

**Mr. Joyce:** He gets the money back if there is a no injury finding even at the present time, but he will get it back more quickly under section 4 because it will be automatic. Under present arrangements, National Revenue still has to make a finding and a final determination



which may take some time. In the meantime his money is tied up.

**The Chairman:** Then in section 7 you have only added the words "any enquiry under section 16," providing for the confidential nature. Was that not in the original bill?

**Mr. Joyce:** I think section 7 should be read in conjunction with section 6. I think taking the two together the problem essentially here is that the original bill does provide for confidentiality in respect of hearings before the tribunal. The problem is that there are provisions under which the chairman of the tribunal can designate a particular member of the tribunal to hold hearings or receive information, and there is a further provision that when that member of the tribunal has held such hearings or has received such information, that he shall not only report to the chairman but that he will give copies of his report to the interested parties.

The problem is that conceivably there could be confidential information in that report, and this is simply to provide that in these cases as in the case of hearings before the tribunal that confidentiality shall be respected. I am quite sure that in fact it has been respected, but this is intended to give a legal guarantee.

**The Chairman:** Then in section 8 you are making an amendment to the French version. What is the purpose of that?

**Mr. Joyce:** The problem there is, as you know, that in the English version dealing with the annual report, it is provided that it be tabled within 15 days, "or if Parliament is not sitting" etc. Unfortunately in the French version the expression used is "si le Parlement n'est pas alors en session". Now I pass on the question of whether or not that is a good translation, but I suggest it is misleading. It is proposed to change the French version to "si le Parlement ne siège pas à ce moment là". Using "siège" for a sitting seems to solve the problem.

**The Chairman:** Then your reference to section 9 is to accommodate the revision of the statutes.

**Mr. Joyce:** That's right, sir. I am sure you are far better informed on this than I am.

**The Chairman:** Yes. Now is there anything else in this bill that you should direct our attention to?

**Mr. Joyce:** I do not think so, sir. One of the sections you did not refer to is section 5. This is on the question of tabling or reporting the rules, and it is proposed to bring that reporting procedure or tabling procedure in line with the provisions for the annual report, namely that it be tabled within 15 days, or if Parliament is not sitting within 15 days of the next sitting. There we fell into the same trap on the English side as we previously fell into on the French side in the other section where it talked about 15 days after the commencement of the session next ensuing.

**Senator Molson:** Are they sitting days or calendar days?

**The Chairman:** Well it says "...on any of the first 15 days next thereafter that Parliament is sitting."

**Senator Molson:** But in another part it says "...within 15 days after the making thereof" and they do not agree.

**Mr. Joyce:** I am not a lawyer, senator.

**Senator Molson:** Neither am I, so perhaps we can talk about it.

**Mr. Joyce:** I would have thought this meant 15 calendar days if Parliament is sitting and if Parliament is not sitting within 15 days of the next sitting. On that last point I do not know whether or not it is calendar days.

**Senator Molson:** Perhaps we should ask our Law Clerk for his opinion at this stage.

**E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** I would say it means calendar days unless it specifies otherwise.

**The Chairman:** A day is a day.

**Senator Carter:** This also appears in other statutes. How is it interpreted in the other statutes?

**The Chairman:** What other statute?

**Senator Carter:** I cannot tell you any specific one, but I remember coming across this clause on numerous occasions.

**The Chairman:** Well, you have dealt with it in the alternative, that is to say you have dealt with the situation if Parliament is sitting and if it is not sitting. That is what this section does. It is a clarification.

**Senator Carter:** Did we not come across it in connection with the Hazardous Products Act? I know there are many cases where reports must be tabled within 15 days.

**Mr. Hopkins:** It would be so easy put in "sitting days", but that apparently is not what is meant.

**Mr. Joyce:** I think this is the normal practice.

**The Chairman:** The reason for the amendment, I think, is clear if I read to you what it says in the act. It says:

Copies of all rules made pursuant to subsection (1) shall be laid before Parliament within fifteen days after the commencement of the session next ensuing after the making thereof."

That could be a long period of time if it is the commencement of the session next ensuing. Now what would happen if you were to make the rules under the present act to read "...while Parliament was sitting". You would wait until the next session. The need for a change is obvious.

**Mr. Joyce:** It has been pointed out that it is calendar days under the Interpretations Act.



**Mr. Hopkins:** Unless the context otherwise requires, which would involve the wording "sitting" before the word "days".

**Hon. Senators:** Agreed.

**The Chairman:** We have no further business this morning. The meeting is ajourned.

**The Chairman:** Shall I report the bill as amended?

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970

# THE SENATE OF CANADA

PROCEEDINGS OF THE  
STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

1970. 1970. ★  
The Honourable **SALTER A. HAYDEN**, Chairman

No. 4

TUESDAY, NOVEMBER 17, 1970  
WEDNESDAY, NOVEMBER 18, 1970

Complete Proceedings on Bill S-5,  
intituled:

“An Act respecting weights and measures”

REPORT OF THE COMMITTEE

(For list of witnesses—see Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin  
(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, November 10, 1970:

"Pursuant to the Order of the Day, the Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill S-5, intituled: "An Act respecting weights and measures", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Tuesday, November 17, 1970.  
(4)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

Bill S-5, "An Act respecting Weights and Measures".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Burchill, Carter, Connolly (*Ottawa West*), Hollett, Isnor, Kinley and Welch. (11)

*Present but not of the Committee:* The Honourable Senators Lafond and Urquhart. (2)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

*Witnesses:*

*Department of Consumer and Corporate Affairs:*

The Honourable Ron Basford,  
Minister.  
G. E. Anderson,  
Assistant Director and Chief Engineer,  
Standards Branch.

*National Research Council:*

Dr. A. E. Douglas,  
Director,  
Division of Physics.

At 11.00 a.m. the Committee adjourned until later this day, and subsequently, until Wednesday, November 18, 1970, at 9.30 a.m.

Wednesday, November 18, 1970.  
(5)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to resume consideration of Bill S-5.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Flynn, Haig, Hollett, Isnor, Kinley, Molson and Welch. (14)

*Present but not of the Committee:* The Honourable Senator Lafond. (1).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Pierre Godbout, Director of Committees, Assistant Law Clerk and Parliamentary Counsel.

*Witnesses:*

*Department of Consumer and Corporate Affairs:*

G. E. Anderson,  
Assistant Director and Chief Engineer,  
Standards Branch.

*Department of Justice:*

Paul D. Beseau,  
Legislation Section.

Upon motion it was Resolved to amend clause 6 of the Bill.

*Note:* (The full text of the amendment appears by reference to the Report of the Committee immediately following these Minutes.)

Upon motion it was Resolved to report the said Bill as amended.

At 10.15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
Clerk of the Committee.

# Report of the Committee

Wednesday, November 18, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-5, intituled: "An Act respecting weights and measures", has in obedience to the order of reference of November 10, 1970, examined the said Bill and now reports the same with the following amendment:

Page 4: Strike out lines 8 to 12, inclusive, and substitute therefor the following:

"(2) Notwithstanding subsection (1), the Governor in Council may not amend Schedule II in such a manner that

(a) the ratio of any one unit of measurement to any other unit of measurement is altered; or

(b) Canadian units of measurement are not authorized for use in trade."

Respectfully submitted.

Salter A. Hayden,  
Chairman.





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Tuesday, November 17, 1970

[Text]

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-5, an act respecting weights and measures, met this day at 9.30 a.m. to give consideration to the bill.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, our witness is the Honourable Ron Basford, Minister of Consumer and Corporate Affairs. With him are Mr. R. W. MacLean, Director of the Standards Branch, Mr. G. E. Anderson, Assistant Director and Chief Engineer, Standards Branch, and Dr. A. E. Douglas, Director of the Division of Physics, National Research Council.

Mr. Minister, would you care to follow the usual practice of making an opening statement?

**The Honourable Ron Basford, Minister of Consumer and Corporate Affairs:** I have a very short opening statement, Mr. Chairman, which may serve to refresh honourable senators' minds on this bill. In respect of honourable Senator Lang's statement, it is impossible really to add very much to what he said in moving second reading of the bill, because he gave such a very complete and full statement at that time.

**Senator Connolly** (*Ottawa West*): We will tell him about that, Mr. Minister.

**Hon. Mr. Basford:** Thank you, Senator Connolly. I presume honourable senators have read that very full and complete statement and that, therefore, there is not really much that I need repeat this morning. If I may just recapitulate the real principles of the bill. The purpose of the bill here this morning is really to update the existing Weights and Measures and Units of Measurement Acts which have been in force since 1951. This updating is necessary for several reasons. First, it will permit the regulation of new types of devices and new practices in the weighing and measuring field that are not presently covered by existing legislation such as coin-operated liquid-dispensing machines which are something new since the last act, and machines such as dryers or machines that are selling things on the basis of time, again which were not covered by the existing legislation.

**The Chairman:** I suppose you are referring to such things as laundromats.

**Hon. Mr. Basford:** The situation where someone is buying something on time—for instance, where you put in a quarter for so much time; and it was that time of service which was not provided for in the old legislation.

Secondly, it will allow for the present inspections at fixed periods to be replaced by more efficient inspection programs based on sophisticated statistical sampling techniques. That is to say, Mr. Chairman, now under the legislation we have to go around every so many years and inspect every device. We feel on the advice of consultants and engineers that with the improvements in measuring devices and weighing devices, this can be done on a sampling basis and a statistical basis at a saving of expenses and costs and yet still give protection to the commercial community.

Thirdly, it will help to prevent fraudulent or undesirable practices connected with the delivery of fuel oil and odometers on automobiles. We will get into those sections later, section 28 and onwards.

Fourthly, it will streamline the enforcement with respect to short weight in prepackaged goods. That is to say, it will permit seizure and detention of goods at the factory level where there are contraventions of the act until corrective action can be taken rather than having to wait until the goods reach the retail level. The bill, as Senator Lang explained, is complementary to the consumer packaging and labelling bill which was introduced recently in the House of Commons. The provisions of the weights and measures bill will apply to all levels of trade, though it, like the companion bill, is intended above all to protect the interests of Canadian consumers. But I emphasize that the present bill is designed to ensure that in the market one gets true measure whenever one purchases by weight, by volume, by length, by area or by time.

While the packaging and labelling bill, which will come, of course, to the Senate when it has passed the House of Commons, is concerned principally with the consumer, the Weights and Measures Act and the Units of Measure Act which is combined with it are concerned with the measurement of commodities for all purposes of trade, so that no matter what someone is trading in, they can with safety rely on the fact that a pound is a pound or a yard is a yard. The bill before us makes it an offence to give short weight or measure and it provides for the proper use of scales and other measuring devices.

For example, before any type of scale or any measuring device can be used in Canada for trade, it must have been tested and approved by the Standards Branch of my Department in the laboratory we have here in Ottawa. It must be so constructed as to measure accurately and be likely to maintain its accuracy under normal use.

Finally, the bill sets forth the permissible units of measurement for trade use in Canada. It defines the basic

units in scientific and legal terms in accordance with the latest internationally accepted system, the so-called *Système International*. Honourable senators may wish to examine Doctor Douglas, Director, Division of Physics of the National Research Council on the implications of that part of the bill receive his somewhat technical explanation of those features of the bill.

Both the customary Canadian units and what are generally referred to as the metric units will continue to be valid for use in Canada, although the Governor in Council may add new units of measurement or redefine existing ones in accordance with the needs of changing times. The use in trade of customary Canadian units, that is the yard and the pound, can only be curtailed by specific reference back to Parliament, and honourable senators will see that provided for in the legislation.

By bringing the existing act up to date and incorporating certain new features required by contemporary trade practices, the bill will increase the protection given to the consumer and bring Canada's legislation into line with weights and measures control in other developed countries of the world.

That is all I have to say by way of an introductory statement, Mr. Chairman, but I would be happy to answer any questions that honourable senators may have or to refer any more detailed questions to the officials I have with me.

**The Chairman:** Now, honourable senators, we are open for questions.

**Senator Connolly (Ottawa West):** Mr. Chairman, I understand that the United Kingdom is moving towards the metric system, to conform in other words to the system in use on the continent. There is some resistance to this which I can understand. Do you expect that we in this country and perhaps even on this continent would move towards that system of measurement in time?

**Hon. Mr. Basford:** Yes, I do. As you know, Senator Connolly, my colleague, the Minister of Industry, Trade and Commerce, tabled last winter—January or February—a White Paper on the metric system in which the advantages of that system were pointed out, and in which the Government undertook to put in motion certain steps which would lead us gradually at least to a conversion. Parliament also passed in the last session the bill establishing a Standards Council of Canada. As you will recall, one of the objects of that Council is to examine the implications of conversion to the metric system. My own view is that we should not be debating whether to convert or not, but how to convert in order to minimize the cost and the disruption. It is also obvious that we are going to have to move and convert somewhat, if I may use the expression, hand in hand with the United States because of our trade position with that country.

**Senator Connolly (Ottawa West):** Do you think they might be as quick to move as we might want?

**The Chairman:** Are you asking if there is any indication of that?

**Hon. Mr. Basford:** There is a good deal of agitation in the United States and, as I understand it, the Secretary of Commerce, Mr. Stans, has established an advisory committee composed of all those in the private sector who might in any way be involved in the question of conversion. The United States Congress has appointed a committee to examine the question as to whether the United States should convert or not. There is, I know, in the area that I am involved with on a day-to-day basis, the consumer area, a good deal of agitation among American consumer groups for conversion. There is a great deal of interest in the question in the United States.

**Senator Connolly (Ottawa West):** There would be some considerable interest in it for a nation like Canada which relies upon and is so heavily involved in foreign trade.

**Hon. Mr. Basford:** I think there is. I mention the consumer interests because the metric system makes for ease of comparability and ease of measurement. I think the truly important aspect is trade, and, of course, when Britain converts and if it enters the European Common Market, which it is trying very hard to do,—and as you know Japan has gone metric—we in North America are going to end up, as I said in a speech, as an island in a metric sea, which can be very costly. It can be terribly costly if our manufacturers have to produce in one measurement for domestic consumption and the North American trade, and another measurement for our export trade.

**The Chairman:** I think the date in the United Kingdom is 1975. Is that the objective date?

**Mr. G. E. Anderson, Assistant Director and Chief Engineer, Standards Branch, Department of Consumer and Corporate Affairs:** I think 1980 is their final deadline for complete conversion.

**The Chairman:** Well, there are two aspects, and I suppose they are equally important; one is the domestic situation which you have detailed and the other is the international aspect, and we must not lose sight of the importance of the international aspect.

**Hon. Mr. Basford:** There are, of course, some areas in Canada that already have converted. The pharmaceutical industry conducts itself pretty well metrically and I think by now over the last few years most Canadian hospitals have converted. So there is some conversion going on.

**Senator Connolly (Ottawa West):** Yes, if you go to a hospital nowadays they talk about milligrams.

**Hon. Mr. Basford:** And I would hope that this is something that the Standards Council in a voluntary way could promote—that the various sectors convert on their own.

**Senator Connolly (Ottawa West):** The very fact that the Australians have adopted the dollar system for their currency...

**The Chairman:** You mean the decimal system.

**Senator Connolly (Ottawa West):** ... with great difficulty and with a lot of criticism of the government, is a



move that indicates that changes in the system of measurement certainly can be achieved.

**Hon. Mr. Basford:** We at least, senator, do not have to go through the conversion of our currency.

**The Chairman:** At the present time, of course, you have all kinds of equipment and gadgets and whatnot that measure time and service and project measurements. When this bill becomes law, how do you propose to deal with those machines and equipment that are presently in use? How will you apply your testing techniques? Will they be required to get certificates before they can continue to operate?

**Hon. Mr. Basford:** The regulation power in the act allows us to set up the inspection procedures that are deemed necessary to protect accurate measurement. We can do two things; inspect and licence the particular measuring device, or we can go on as is done with scales and inspect every scale each year to make sure it is accurate. There is a section, for example, on parking meters which, of course, are selling time. We obviously do not propose to go around and inspect every parking meter in Canada. But there are six or seven manufacturers of parking meters, and we would call upon the manufacturers to produce their prototype and we would examine it to make sure it is a good measuring device as defined in the act.

**The Chairman:** Well, they might of course like you to put a nickle or a dime in every parking metre.

**Hon. Mr. Basford:** They might, of course, but we do not intend to do that.

**The Chairman:** There are two steps there, one is the testing of any new equipment that is coming out, and you mentioned that they would have to send their equipment to your testing laboratories in Ottawa in order to qualify for a certificate. I am more concerned at the moment about those things that are in existence and are operating.

**Hon. Mr. Basford:** There is not attempt to make the act retroactive.

**The Chairman:** No.

**Hon. Mr. Basford:** But I think what you are really concerned about is something that is already in place. Section 8, which covers devices, would, of course, apply to devices going on the market now.

**Senator Connolly (Ottawa West):** You are doing it at the manufacturers' level, or you are contemplating it?

**Hon. Mr. Basford:** This is for new things that are covered. This is what we do with scales. If the big scales manufacturers develop a new kind of scale...

**Senator Connolly (Ottawa West):** Without the thumb!

**Hon. Mr. Basford:** Yes. I am trying to think of the name of a scales manufacturer. Say Toledo, for example, develop a new scale. Before they market that new scale they come to our Standards Branch and get that new

design approved as a measuring device for sale in Canada, and that allows them to sell it in Canada. Of course, if a butcher buys that new scale, he will have a weights and measures inspector come down every year to make sure that he has not been fiddling with the scale.

**Senator Connolly (Ottawa West):** Yes, "might"—if he is part of the sample.

**Hon. Mr. Basford:** Well, the new act will allow him to be part of the sample. Now we have to go and inspect at great cost.

**The Chairman:** I notice in section 8, Mr. Minister, in the "Use of Devices," the provision is that:

No trader

—and that might be the butcher or grocer—

...shall use, or have in his possession for use, in trade, any device unless that device

(a) is of a class, type or design that has been approved for use in trade pursuant to section 3;...

**Hon. Mr. Basford:** That is right.

**The Chairman:** I am still getting back to the machines and equipment that are presently being used. Does that contemplate, then, that it is the obligation of every trader to get in touch with the manufacturer of that machine to see if it is included in the class or type or design that has been approved by your department?

**Hon. Mr. Basford:** No. It is up to the manufacturer, before selling the devices, to have them approved pursuant to section 3.

**The Chairman:** No, I am talking about the ones that are out in the field now. Then this bill becomes law. Does he have to stop doing business until he can find out from the manufacturer of that machine whether it is in an approved class? Is there going to be some period of time, run-in time, after the act becomes law under which he can gather that information? As I read it, if it means literally what it says, then he had better stop doing business until he gets a clearance.

**Hon. Mr. Basford:** Of course, there is no problem when it comes to weight and measure, because these provisions have applied for years in Canada, for example, with scales. We are enlarging the act to provide protection for devices that measure time, and we will have a regulatory power to allow some lead-in time on most devices that are already on the market.

**The Chairman:** Is it the intention to allow lead-in time in the regulations?

**Hon. Mr. Basford:** Yes.

**The Chairman:** I would not expect that at this moment you have given too much thought to the length of the lead-in time.

**Hon. Mr. Basford:** No.



**The Chairman:** It may be different in different types of equipment, but I think lead-in time would be necessary for those presently operating.

**Hon. Mr. Basford:** Yes.

**The Chairman:** What is the difference, Mr. Minister, in relation to weights, between this bill and the present law? Have the standards been changed or altered or added to?

**Hon. Mr. Basford:** There are the technical features of measurement which, if you wish, I will have Dr. Douglas explain. This is really the amalgamation of two bills: one the Weights and Measures Act and the other the Units of Measurement Act, which repeals the Electrical and Photometric Units Act.

**Senator Connolly (Ottawa West):** That is a federal act?

**Hon. Mr. Basford:** Yes. This is a new feature of the measurement of standards. If senators will turn to the schedule of the act, our reference standards for measurement in Canada used to be as set out in Schedule IV, where we kept in the National Research Council a measurement that was a yard long, against which all other yards were measured. Now—and this is where Dr. Douglas comes in—all our measurements in Canada are referred to the International System of Units which is contained in Schedule I. It is against those measurements that every Canadian measurement is made. That is a new feature and a very technical one which Dr. Douglas will have to help me out on. Have I made a mistake yet, Dr. Douglas?

**Dr. A. E. Douglas, Director, division of Physics, National Research Council:** No.

**Hon. Mr. Basford:** The other features are the system for the sampling of inspections rather than across-the-board inspections, the indices of time and volume, the part dealing with fuel oil truck measuring devices, which we will come to later in the bill, the parts dealing with odometers—those are all new features.

**Senator Connolly (Ottawa West):** When we were talking about the yard, it seems to me there was at one time, and perhaps there still is, in a case in Paris, under very strict conditions of preservation, a unit of measurement kept at a constant temperature, pressure, and all the rest of it. What is that?

**Hon. Mr. Basford:** We have one here in the National Research Council also, but I will ask Dr. Douglas to explain what they have in Paris, because this system of measurement goes back to the system in Paris.

**Dr. Douglas:** The unit of mass is still maintained as a physical quantity in Paris, at the International Bureau, and all other units of mass are related to that.

**Senator Connolly (Ottawa West):** Do we conform?

**Dr. Douglas:** We conform and we measure ours against theirs as precisely as possible, and maintain a secondary standard, which is essentially Canada's primary standard, here. With regard to other units, the unit of length has

been changed and it is no longer a physical standard. It turns out to be the wave length of light which can be measured more precisely than any physical standard. This has been defined so that within the accuracy of measurement it conforms to the old physical standard, but the physical standard is no longer the primary standard.

**The Chairman:** Mr. Minister, was there any communication or discussion with those elements in the various industries, business and trade in relation to this bill, when it was in the course of preparation?

**Hon. Mr. Basford:** Not specifically during the course of preparation, although in terms of some of the technical features of the act we have had representations over the years from various groups. But it would be my intention, as it has been under all of these acts I have been introducing, that in the development of regulations under the acts—and it is, of course, in that area that people are generally basically concerned, particularly those who are in the business—that we would seek the advice of...

**The Chairman:** Manufacturers?

**Hon. Mr. Basford:** ...of those in the business on technical matters, such as tolerances. Where something has to be tested or measured as such and for certain purposes then trade tolerances are allowed either way from that.

**Senator Connolly (Ottawa West):** That arises because of shrinkages or increases in weight by reason...

**Hon. Mr. Basford:** Yes, changes in temperature will change the volume or weight of certain substances. We can add additional units of measurements under this bill, and this would be done on the basis of representations from those in the trade. There may be representations that some customary unit of measurement should be added.

Then, as to the specifications for measuring devices, we would consult with the trade, the manufacturers of measuring devices, on the development of regulations. I have already agreed in writing with the Association of Scale Manufacturers to consultation on the development of regulations. That is, we have agreed that when we sit down to write the regulations we will consult with those in the business.

**The Chairman:** What groups do you contemplate you will consult with, or invite to make representations?

**Hon. Mr. Basford:** It will be the people who are principally concerned with the approval of measuring devices and, therefore, they will be the manufacturers of measuring devices. Here I am referring essentially to the Association of Scale Manufacturers. I am not sure whether there is, for example, an association of parking meter manufacturers. If there is then that association will be welcome to come in on these discussions. I have not heard from them, but if there is such an organization they are welcome to come in and consult with my officials on the drafting of regulations in relation to their products.

**The Chairman:** That type of measuring is pretty well straightforward. It concerns the sale of time, and it is either ten minutes or it is not.

**Hon. Mr. Basford:** Yes, but we would be concerned with the design of the measuring devices, and with any tolerances that might be allowed. On the average, electricity meters are inspected every seven years, but there may be changes in design so that they probably do not have to be inspected every seven years.

**The Chairman:** What does this mean? For instance, in Ontario the Ontario Hydro issues certificates as to the quality of equipment including measuring equipment, I believe. Is there going to be any conflict or any duplication here?

**Mr. Anderson:** The standards for measurement by electricity meters are set by the Standards Branch of the Department of Consumer and Corporate Affairs, and Ontario Hydro will insist that any manufacturer must supply them with equipment that will meet our specifications.

**The Chairman:** Am I to understand that a manufacturer must first get the approval of your department before the provincial authority will look at his product?

**Mr. Anderson:** On the measurement side, that is correct, sir.

**Senator Burchill:** How often are they inspected or tested?

**Mr. Anderson:** Electricity meters?

**Senator Burchill:** Yes.

**Mr. Anderson:** Every six or eight years, and then we have a statistical sampling program which will allow a good quality of meter that has been well maintained to continue on by two-year extensions, so some meters have remained out for as long as twelve years at the present time, and may go on for a longer period. But, the proof of the pudding is in the eating, and they must prove to us that they continue to meet our requirements.

**Senator Hollett:** I take it that it is not the intention of Canada to go into the metric system overnight.

**Hon. Mr. Basford:** No.

**Senator Hollett:** How do you get there? Does this bill give you the authority to change over?

**Hon. Mr. Basford:** No, it certainly does not. In fact, when the bill was read the first time in the Senate there were some press reports that that was its effect, but that is not correct. The bill provides that two systems of measurement can be in use in trade in Canada, one being the metric system and the other being the system with which you are all familiar. That cannot be changed without further legislation. There is no power in this bill to outlaw for purposes of trade either one of those systems, and particularly the foot-pound-second system.

**Senator Connolly (Ottawa West):** Mr. Chairman, I should like to ask the minister a question I asked the

sponsor of the bill. In looking at Schedule II I notice that under "Measurement of Volume or Capacity" there are listed bushel, peck, gallon, quart, pint, and so on. The minister referred to the units that are in use in trade, business and commerce. What ran through my mind as Senator Lang was speaking in the House was the importance of the term "barrel", particularly in the oil industry. Very few people—and this includes myself—know exactly the volume of a barrel of oil, or whether a barrel of oil sold from the Canadian or American oil fields is the same size as a barrel of oil that comes from Venezuela or the Middle East. My point is that this is a unit that is very much in use in trade and commerce today—perhaps more so than some of the other units that are defined here—so why is it not included in the schedule?

**Hon. Mr. Basford:** I noted your question previously, senator. The Governor in Council under this legislation can define "barrel" as a unit of measurement. This is one of the changes in this bill. Previously a new unit of measurement could be added only by way of amendment to the act, but now we can define a new unit by order in council. So, Senator Connolly, we could define "barrel" as a unit of measurement for purposes of trade in Canada if we choose to do so, but I am advised that the situation is confused by the fact that there are many different kinds of barrels, the size of which depend upon the particular products with which one is dealing. You mentioned the oil industry which, as a matter of custom, has a certain size of barrel, but other industries use different sizes of barrel as a customary unit, and, therefore, we would have great difficulty in trying to regulate that.

Mr. Anderson, who is with me, is an expert on barrels, and he would be happy to give us a short discourse on the proliferation of barrel sizes.

**The Chairman:** I was wondering if Senator Connolly would limit the contents of the barrel about which you are going to speak to oil.

**Senator Connolly (Ottawa West):** I think the container for the other commodity which you have in mind is a keg.

**Senator Hollett:** Perhaps he was thinking of a barrel of fun. May I ask this question: Has Canada any representative on the General Conference on Weights and Measures?

**Mr. Douglas:** Yes.

**Hon. Mr. Basford:** Would you expand on that, Mr. Douglas?

**Mr. Douglas:** This is an international agreement to which Canada conforms, and we have representation on this General Conference, but all changes and amendments must go through the Department of External Affairs for the approval of the Canadian Government.

**Senator Blois:** I think I am correct in saying that although in the old days we bought oil by the barrel or by the gallon we now buy it by weight. The average barrel is equal to 45 gallons, but oil is also bought by weight rather than by the barrel or the gallon, is it not?



**Hon. Mr. Basford:** Perhaps that is the tendency, but I will ask Mr. Anderson to confirm it.

**Mr. Anderson:** When it comes in bulk cargoes, then it is by the ton.

**Hon. Mr. Basford:** In bulk cargoes oil is generally sold by the ton; in smaller quantities the gallon is still the conventional unit.

**Senator Blois:** I am not referring to fuel oil, but others, such as lubricating or wool oil. They are generally purchased in carloads but are sold by the pound rather than the gallon or barrel, by many manufacturers.

**Mr. Anderson:** This has not been our general experience.

**Senator Connolly (Ottawa West):** But you do hear of it being sold by the ton?

**Mr. Anderson:** Yes, in bulk.

**Senator Blois:** We bought a good many carloads, which were always by the pound. I know of many manufacturing industries in Canada selling special oils by the pound or ton.

**Mr. Anderson:** There is nothing in the act to prohibit that.

**Senator Blois:** It appears to be a more reliable method.

**Mr. Anderson:** You know exactly where you stand.

**Senator Connolly (Ottawa West):** It is measured at the time of delivery.

**Senator Blois:** It is weighed to check the weight, because there is variation.

**Senator Burchill:** What containers are used?

**Senator Blois:** The wooden barrel and the metal barrel are used; it depends on the firm it is purchased from. Sometimes the type of barrel can be specified.

**Senator Connolly (Ottawa West):** We were going to hear something about barrels. Will you include the barrels used by the apple growers in the Annapolis Valley?

**Mr. Anderson:** This is one of the difficulties. At the present time there exists legally in Canada only the excise barrel, which is 25 gallons, for the purpose of assessing excise. However, within the petroleum industry we have more or less permitted the use in trade of the petroleum barrel, which is exactly 42 U.S. gallons. This converts to 34.97 Canadian gallons, so that within the petroleum trade one barrel is 34.97 gallons, which is a defined unit and perfectly satisfactory.

However, in the United States the situation has developed that there are no less than seven different barrels: 31 gallons, used for excise tax on beer; 31½ gallons, used for most liquids; 36 gallons, used for rain barrels in estimating the volume of cisterns; and 40 gallons for the purpose of their proof liquors. There is a 42-gallon petroleum barrel, which is exactly 42 U.S. gallons. This

as the apple barrel, which is equivalent to approximately 27 gallons. For some unknown reason they also have a barrel for cranberries, which is about 22 gallons.

We wish to avoid such a situation in Canada. We might permit one or two barrels, but they would have to be specified in terms of the Canadian gallon to make it perfectly definite to all.

**Senator Connolly (Ottawa West):** Does it really mean that commerce and its various branches will be permitted to use the word barrel but will be compelled to state the content?

**Mr. Anderson:** I think that would be appropriate.

**Senator Connolly (Ottawa West):** And the regulation would so provide.

**Mr. Anderson:** Yes.

**Senator Connolly (Ottawa West):** It appears to be the only sensible way of proceeding.

**The Chairman:** It could either be by gallon or pound measurement.

**Mr. Anderson:** Yes.

**Senator Carter:** My understanding was that the ordinary standard steel drum in which the fisherman buys his gas and diesel oil contains 45 gallons. I did not hear mention of that.

**Mr. Anderson:** There may be a 45-gallon barrel, but I have found seven different sizes.

**Senator Connolly (Ottawa West):** Believe me, there are 45-gallon barrels; I have to handle them across a lake.

**Senator Carter:** The fisherman buys a 45-gallon drum and receives 40 gallons of gas and 5 gallons of water.

**Hon. Mr. Basford:** Then he should report that to our regional office in Newfoundland. If it is sold as 45 gallons of gasoline and contains only 40 gallons, that is an offence.

**Senator Connolly (Ottawa West):** In addition, if the barrel contains five gallons of water, the gas is not very much good.

**Senator Carter:** Oh, yes; he gets down to the water eventually as he pumps it from the bottom up. He does not know how much water he receives until it is just about empty. It is too late then to prove a case.

**The Chairman:** He could stop pumping when the water arrives. I understand you to say that on the basis on which he operates the water would be the last to be pumped out.

**Senator Blois:** That is not correct, because pumping from the bottom the water might come out first, or mixed with the gasoline.

**Senator Carter:** Clause 13(1) reads:

The Minister may designate as a local standard any standard that has been calibrated and certified in



relation to a reference standard as accurate within prescribed tolerances.

One of the witnesses referred to bulk cargoes. It is very often more convenient for the fisherman to buy salt by volume rather than by weight. The same is true of bulk cargoes of coal over the side of a ship, which is very difficult to measure. Therefore a standard-size barrel is used, of which 10 equal one ton.

What would happen to these measurements under this clause?

**Hon. Mr. Basford:** They are not units of measurement under this clause.

**Senator Carter:** They are convenient for purposes of selling; it is not convenient to use the weight measure.

**Hon. Mr. Basford:** That is a custom of the trade that has developed. It is not a unit of measurement under this bill.

**Senator Carter:** Then that is prohibited under this bill?

**Senator Hollett:** No; subclause (2) reads:

Every local standard shall be calibrated within such periods of time as many be prescribed.

**Hon. Mr. Basford:** I should explain the meaning of the local standard referred to in clause 13. We have certain reference standards in our laboratory and in the National Research Council in Ottawa. We also have inspectors throughout Canada who carry what are known as local standards. When inspecting a scale they have a little kit containing weights. They place a 1-pound or 25-pound weight on the scale to test its accuracy. The weights are returned periodically to Ottawa to be tested for loss of weight, which does occur.

**Senator Carter:** We are now back to Senator Connolly's point though.

**The Chairman:** Senator Carter, when you referred to the fisherman getting a ton of coal, he must have a method of determining what is a ton when shovelling it over the side.

**Senator Carter:** That is right. They have to sell it by volume, they have to measure the tubs or barrels that they know the weight of, the average weight.

**The Chairman:** But they agree that ten of those will be a ton.

**Senator Carter:** They agree that ten barrels of coal will be a ton of coal.

**The Chairman:** The only question then is whether that measuring device multiplied by ten does produce a ton, but they have agreed that it does.

**Senator Carter:** But it does not prohibit them from using that type of measure.

**The Chairman:** I would not think so, no. I do not think these provisions come into that at all. They have agreed that this is a measuring device.

**Senator Connolly (Ottawa West):** If it were feasible they could put it in a paper bag, as long as they get the weight.

**Senator Carter:** As long as they agree they are getting the weight, yes. There is no standardization here for television tubes. An American 17-inch television tube is a different animal from a Canadian 17-inch television tube. Is there any way of regulating that? One store may sell a 17-inch tube which is quite different from the 17-inch tube sold by another store.

**Hon. Mr. Basford:** There is no way of dealing with that under this bill. The inches are the same, but one set is measured corner to corner and the other is measured horizontally across. The inches they are measuring it with are all the same inches, and those inches are provided in the bill. The description given to the television tube would not be dealt with in the bill; that is a custom of the trade, in which American sets are measured horizontally and Canadian sets are measured diagonally from corner to corner. Therefore, Canadian sets are smaller.

**Senator Carter:** Does it come in somewhere? Does it not even come in under fraudulent advertising? I mean, two people are advertising two different things and saying they are the same.

**Hon. Mr. Basford:** Maybe if you were to ask that question when the packaging and labelling bill is before you I might be able to give an answer, because under that bill we may be able to say—I am not sure, I would like to examine the question—that television tubes will be measured horizontally. I am not sure and I would like to examine it. Certainly we would not and could not do it under this bill, and that is not the purpose of this bill.

**Senator Carter:** I notice that Schedule I contains all these scientific definitions. I suppose you have not yet arrived at the point where there can be a definition of the quality of cable television?

**Hon. Mr. Basford:** No.

**Senator Carter:** So that with cable television you buy a picture and they must provide a minimum standard of quality?

**Hon. Mr. Basford:** I suppose you could do that, but not under this bill, because that would not be a unit of measurement.

**Senator Carter:** There would have to be some sort of standard included in Schedule I related to the clarity or intensity of the image received by cable television.

**Hon. Mr. Basford:** I think we are confusing somewhat the purposes of this bill. For instance, the light bulbs here have a certain lightness, and I think, Dr. Douglas, that is determined by a unit of measurement provided for under this bill. Is that right?

**Dr. Douglas:** Yes.

**Hon. Mr. Basford:** The lumen. They are measured in accordance with that standard, No. 12. There is nothing

in this bill which says that light bulbs must be of so many lumens. We should need another bill to do that, a bill governing the quality of light bulbs.

**Senator Aird:** You do not consider that your inspectors have a power under clause 16?

**Hon. Mr. Basford:** No. This relates to a measuring device. It is to allow the inspector to make, pursuant to regulations that we pass, very minor adjustments, particularly in remote areas. Rather than having to send the measuring device to, say, Vancouver, Toronto or back to Ottawa, to correct it, the inspector can make minor adjustments to ensure that it is accurate.

**Senator Aird:** What concerned me about that clause was the use of the phrase "may be prescribed".

**The Chairman:** By regulation.

**Hon. Mr. Basford:** The key word is "device", which is defined in the bill in the definition clause as:

any weight, weighing machine, static measure or measuring machine.

That is, a device is something that measures, and that is what it is limited to, so the inspector can make minor adjustments in that measuring device or measuring machine.

**Senator Carter:** I am a little intrigued by the wording of subsection (2) of clause 6:

... the Governor in Council may not amend Schedule II in such a manner that Canadian units of measurement are not authorized for use in trade.

Why would you want to do that anyway?

**Hon. Mr. Basford:** That relates to the questions asked here this morning on whether this bill allowed for conversion to the metric system. The bill provides for the two systems of measurement. You will notice that Schedule II sets out the customary Canadian units of measurement—a mile, an inch, and so on. Subsection (2) of clause 6 specifically prohibits the Governor in Council from doing away with those customary units, so we cannot convert to the metric system and cannot outlaw these customary units without coming back to Parliament.

**The Chairman:** You may end up, if you did not go to Parliament, with two systems, both of which would be valid.

**Hon. Mr. Basford:** We have two systems now.

**The Chairman:** That is right.

**Hon. Mr. Basford:** Both of which are valid. You can sell something by the metric measure or by the customary measure that we are used to, and both are legal. Neither can be made illegal without coming back to Parliament and Parliament so declaring.

**Senator Aird:** I should like to ask the minister about clause 36, and go back to the original questioning, wherein you indicated that there would be a time-lag. It seems

to me that this clause answers the question in part, because it relates to the not marking business. It would seem to me that if one wished to have a device to be used in the trade, he would have to come to your department in any event to establish the validity of his product. Is that your interpretation?

**Hon. Mr. Basford:** This bill applies to measuring machines that are for use in trade. We have regulations that provide for what happens to measuring machines not used for trade. I am thinking of the bathroom scale, which must be marked as not for use in trade. If someone has a bathroom scale that is not so marked, the onus is on him to prove that it is not being used for trade.

**Senator Aird:** He has to come to you for that evidence, is that correct?

**Hon. Mr. Basford:** What he should do is mark it "not for use in trade". If he has not marked it, it is a presumption that it is for use in trade and therefore it has to be inspected, licensed and approved by the department.

**Senator Aird:** What you are saying is that the marking is in the manufacturers' discretion in the first instance.

**Hon. Mr. Basford:** Yes, but if he does not mark it he has to get it approved.

**The Chairman:** Senator, I should think that if you took bathroom scales that were not marked "not for use in trade", and were physically located in the bathroom, the onus could quite easily be shifted which might otherwise be on the owner of the scale. I am not suggesting that he was carrying on trade in the bathroom.

**Hon. Mr. Basford:** Funny things go on sometimes.

**Senator Blois:** In the last few days I have had several inquiries in retail stores with reference to devices for measuring yard goods. Can they continue to use the same ones or must they have them checked? Nearly every yard goods store uses them for measuring. I understand these devices are not inspected at the present time.

**Hon. Mr. Basford:** I am afraid I do not know in this instance.

**Senator Blois:** I think you must know. There are thousands of these used for measuring cloth by the yard.

**Mr. Anderson:** Are you thinking of the kind you run the cloth through and get a recording?

**Senator Blois:** That is right.

**Mr. Anderson:** Those are supposed to be approved devices and not to be used unless they are approved.

**Senator Blois:** They have been in stores for years. What do they have to do? It is worrying many of these people. I have had five inquiries within the last few days. Are they liable if they do not do something about it? There seems to be a lot of fear in the minds of some of these merchants.

**Mr. Anderson:** They should be approved devices. If not, they are illegal.



**Senator Blois:** One merchant contacted me and said that they had been using theirs for approximately 15 years and he does not know if they are accurate or not. They went to the trouble of putting in the device and then using a yard stick to check on it and the measurement was not the same, although there was not much variation.

**Mr. Anderson:** They could be violating the law.

**Senator Blois:** What should a merchant do in a case of this kind? Is there some action he himself should take?

**Mr. Anderson:** The inspectors visit all establishments when they believe there is any form of measuring device.

**Senator Blois:** One of these firms told me that to their knowledge there had not been any inspector visit their establishment to look at the machine.

**Mr. Anderson:** The onus is on the traders to draw it to the attention of the inspector. The inspector goes into a store probably to inspect the scales and will ask if that is all the measuring devices there are.

**Senator Blois:** Dry goods stores do not have scales.

**Mr. Anderson:** Then probably our inspector would not go into the store.

**Senator Blois:** This particular person was wondering if he would be held responsible if it was brought to the attention...

**Mr. Anderson:** If he gave short measure.

**Senator Blois:** What should he do? I don't think that the bill gives this information.

**Hon. Mr. Basford:** He should write to the Standards Branch of the Department of Consumer and Corporate Affairs in Ottawa, giving his name and address and giving the details about the device. He should inquire whether it is an approved device and request that an inspector visit his store to check it.

**Senator Blois:** Are you suggesting that the many thousands of stores would have to write to your department about every device in their shops?

**Hon. Mr. Basford:** If they have something that it is being used as a measuring device.

**Senator Blois:** I think that practically every dry goods store has these measuring devices. Surely you do not expect every store across Canada...

**The Chairman:** There is a simple alternative we discussed a while ago. The manufacturer of that device should be the one to clear it. If this device is of the particular kind or class which has received clearance by the manufacturer, then the retailer should be home free as far as any prosecution is concerned.

**Hon. Mr. Basford:** I am referring to section 8 of the act which says:

No trader shall use, or have in his possession for use, in trade, any device unless that device (a) is of a class, type...

et cetera. This is why he should write to the department to find out if his measuring device is of a type already approved.

**Senator Blois:** Will there be any notice going out to these stores advising them that they must do this? These people are worried. I would like to advise them, but I do not know how to do it.

**Hon. Mr. Basford:** No, there would not. This act is not changing that situation. I am talking about the existing situation before this act was passed. If they are using a measuring device it must be of an approved type. This has been the law for the last 30, 50 or 100 years.

**The Chairman:** Mr. Minister, I think there might be appropriate advertising in the form of notices in regard to some of these points at the appropriate time. Maybe the regulations would provide for that.

**Hon. Mr. Basford:** Yes, although I think the manufacturers of measuring devices know the law. I think merchants surely know that they have to give correct measure.

**The Chairman:** They certainly should know that it is the law.

**Senator Blois:** Merchants are trying to protect themselves for the future.

**Hon. Mr. Basford:** This law is not changing anything relative to those dry goods stores.

**Senator Blois:** I realize that.

**Hon. Mr. Basford:** If they have a device that measures length it should be accurate, and that has been the case under the existing law even before this bill is approved.

**The Chairman:** Mr. Minister, there is a question I would like to raise with respect to section 35, which provides for punishment, et cetera, on summary conviction or on conviction upon indictment where the Crown elects to proceed by way of indictment. For years we have had a provision in the Income Tax Act similar to the proposed section where the Crown may proceed summarily in respect to charges involving false statements or evasion of taxes or elect to proceed by way of indictment. This provision is also in the Narcotics and Drugs Act, and it may be in a lot of other legislation. My concern now stems from the fact that it would appear that for the first time this right of election to proceed by way of indictment has been challenged in the courts. A county court judge has held that such a right of election by the Crown in the terms of this provision in the Income Tax Act is a violation of the Bill of Rights.

Now, undoubtedly the Crown is going to appeal that decision if it has not already done so. The Crown has a right to appeal to a single judge in Ontario and if not satisfied there, to proceed to the Appeal Court of Ontario. If it is not satisfied there it may go to the Supreme Court



of Canada, which is the end of the road. That envisages a fair lapse of time. All our troubles rose, as you know, from the *Drybones* case in the Supreme Court of Canada which ruled that in respect of intoxication the fine should not be greater for an Indian as such a provision was in violation of the Bill of Rights. The purpose of this section I think is to provide a greater penalty, depending upon the gravity of the offence, and method is encompassed in the right of election to the Crown to proceed by way of indictment. I think that is the hard core of the problem. It seems to me—and this is what I would like you to give some thought to—that if, instead of drawing this distinction between summary procedure and proceeding by indictment, you provided in the regular way for prosecution of an offender and the accused person would go into court and he could elect to be tried summarily or he could elect for trial by judge and jury, which he could afterwards change to a speedy trial before a county judge, you could accomplish all this if you just had the offence stated with your penalties reading a little differently, that is, that if the fine, in these circumstances that I have related, were made up to \$5,000, instead of dividing it between \$1,000 on summary conviction and \$5,000 when there is a conviction when the election is to proceed by way of indictment and there is a conviction. The term of imprisonment could be made up to two years or both. Then you are putting the question of what is the proper penalty in the discretion of the judge and avoiding any question of conflict with the Bill of Rights.

I had intended to speak to you about this beforehand, but I did not have an opportunity. It is bothering me. All legislation that involves this sort of procedure is going to raise the same issue, until the question is finally decided. Whether we should go along, if we can do something that is just as good, from your point of view, is the question.

**Hon. Mr. Basford:** We are getting into something that is really out of my hands and in the hands of the Department of Justice. My advice is, of course, that we should continue. This is the advice we get from the Department of Justice, to continue writing legislation in this way. Should the case that you refer to, in which the Crown has taken further proceedings, not turn out the way that the Crown is arguing, then presumably some general corrective measure would have to be taken, relative to all legislation that has this in it—and this is a very common provision. I do not think the advice from the Department of Justice is that, half way, while this other matter is still before the courts, we start adjusting one specific piece of legislation.

**The Chairman:** No, but the point is, do we go ahead in the face of a legal decision which is the law at present time, until it is reversed and we enact something that has been declared invalid. Would you look at it from that point of view.

**Hon. Mr. Basford:** I wish, Mr. Chairman, you had spoken to me, because of course this is a matter on which I have to take the advice of the law officers. I do not have that advice at the present time, specifically.

**The Chairman:** I think we would have time today. I do not think we are going to be sitting very long in the

Senate this afternoon. If we do not finish here with this bill this morning, we would simply adjourn until later in the day. As I understand it, our idea is to move this bill along as quickly as we can. It is that kind of legislation, that should be moved. I would like to get some expression of opinion from the Department of Justice. I do not want them to commit themselves on pending cases which they may be intending to appeal. But we have to look at it from our point of view, if we are asked to go ahead and enact something that, in the present state of the law, is invalid.

**Hon. Mr. Basford:** I would be happy to try to arrange for a representative of the Department of Justice to appear before the committee. I could not appear myself this afternoon.

**The Chairman:** It is only twenty minutes to eleven now. I wonder if it would be possible to get in touch with somebody there to see if he is available to come over at this time.

**Hon. Mr. Basford:** Yes. Mr. MacLean, would you ask if Mr. Thorson or someone near him can come over.

**The Chairman:** Shall we let that matter stand for the moment, until we get a viewpoint from the Justice Department? This is a thing that bothers me. I am not arguing the merits.

**Hon. Mr. Basford:** I appreciate that.

**The Chairman:** I am concerned because if we approved of this we would be approving something that has been declared by the court at the present time to be invalid.

I have another question I would like to ask you. It is in relation to the bottom of page 3, clause 6, about amending certain schedules. As you will note, Mr. Minister, I still say "schedules" (using sk-), although I may be part of the minority.

**Hon. Mr. Basford:** I do not know which is correct.

**The Chairman:** Here you have provided for the Governor in Council by order to amend Schedule 1 by adding to or deleting from Part I, Part II, Part III, Part IV or Part V thereof, as the case may be, any basic, supplementary, derived or customary unit of measurement. Exactly how would that be interpreted? Let us see—a derived or customary unit of measure, is that defined?

**Hon. Mr. Basford:** If one looks at the schedules, you will see that the courts...

**The Chairman:** Page 25.

**Hon. Mr. Basford:** Yes. Dr. Douglas may want to expand on what I say, but as you can see, this is a very technical matter. First, there is Part I, the basic units of measurement—six basic measurements. Then there are two supplementary ones. Then there are 13 derived ones. As I understand the state of physics, the quality or the state of definition of measurement and the kinds of measurement can change and advances can be made. This would allow the Governor in Council to take account of those advances. Can you add something to that, Dr. Douglas?

**Dr. Douglas:** I cannot add anything further, except to say that, without doubt, the international system of units will change. For example, I can say that within perhaps ten years the definition of the metre will not be precisely the same as it is now, it will be a more precise definition—which will not change it within normal trade practices.

**Hon. Mr. Basford:** There is the definition there.

**The Chairman:** Yes, I see that.

**Hon. Mr. Basford:** What Dr. Douglas is saying is that, over the years, with advances in physics and the ability to measure, that definition will change and improve.

**The Chairman:** I am trying to get to the position, in understanding this, where it may be said that, in making a change of this kind, whether in some fashion by alteration or by adding other words, you are not doing a legislative act. That is what I am trying to get at. We were all through that problem on another occasion.

**Hon. Mr. Basford:** Yes, I know we were, and I knew that that was what you were trying to get to, and of course I was not falling into that trap.

**The Chairman:** I can tell you frankly that I was not setting a trap. As a matter of fact, in the way in which I presented it, I thought I was looking to find a way in which this would be justified, but not as legislation.

**Hon. Mr. Basford:** It is not, of course, because what is proposed there, as Dr. Douglas says, is to change the scientific definition of metre—not to change the metre as a unit of measurement, but to change the definition of metre to take into account improvements in science, as might be agreed, for example, in the Conference on Weights and Measures. I must admit I do not understand what that definition of metre means, because we are into higher physics here.

**Senator Burchill:** In my ignorance, may I ask whether a wave length is always the same length?

**Dr. Douglas:** In accuracy as we know it today it is the most precise thing we have that a physicist can tie length to, and, therefore, this has been selected specifically because it is the same.

**The Chairman:** Mr. Minister, what I am getting at, really, is whether the descriptive words that you have used by adding or deleting are really the language that best describes the authority you are looking for. Or is that accomplished by changing? You do have the authority under regulations to make definitions.

**Hon. Mr. Basford:** But you may well want to add basic units of measurement, although for the moment I cannot think of one. But I would have to consult Dr. Douglas on that. But for example, the last one there, No. 6, as I recall it, the candela as a measurement of luminous intensity, it is a relatively new measurement. Is that not right, Dr. Douglas?

**Dr. Douglas:** Yes.

**Hon. Mr. Basford:** And there may well be new units of measurement developed.

**Dr. Douglas:** One could assume that perhaps some day a unit of sound measurement, a measurement of sound intensity, could be added to this list.

**The Chairman:** You are not helping me very much. You know the basic thing that is bothering me. If this is not an exercise in legislative authority, then it is perfectly all right. That is what I am looking for some help on.

**Hon. Mr. Basford:** I do not see that it is an exercise in legislative authority. It seems to me that it is a valid regulatory function in an extremely scientific area—determining units of measurement in accordance with the international system of units—in order to provide the executive with the power to take into account changes in definition and the establishment of new units of measurement and to put into the act by way of regulation those new units or those new definitions. One surely does not want to have to come back to Parliament merely to change a definition. For example, if one looks at the definition of “second”, the unit for measurement of time, it is the duration of 9 192 631 770 periods of the radiation corresponding to the transition between the two hyperfine levels of the ground state of the caesium 133 atom. Now, I don’t think if physics develops a better definition for “second” that Parliament wants to enact that new definition. It is properly a regulatory function rather than a legislative function.

**The Chairman:** It occurred to me that perhaps the proper place for this right to extend or change or vary should be right in the schedule itself.

**Hon. Mr. Basford:** I am sorry, but I do not follow you.

**The Chairman:** Instead of in the statute.

**Hon. Mr. Basford:** But surely, if you are going to change a schedule, the right to do so must be in the statute; not in the schedule.

**The Chairman:** Not if the statute provides the authority and approves the schedule in the form in which it is, and if the form provides for such variations as science may develop or make necessary.

**Senator Pearson:** Mr. Chairman, if you turn to page 28 of the bill, you will find that if you pass this act you are giving the Governor in Council the right to change a mile to 1,800 yards instead of 1,760 and so on down the line. I know it is not intended to do that, but I think it is rather stupid to say that under this subsection (b), page 4, the Governor in Council may amend schedule II by adding thereto or deleting therefrom any Canadian unit of measurement, together with its symbol or abbreviation and its definition.

**Hon. Mr. Basford:** What that refers to, Senator, is that we could, for example, going along with Senator Connolly’s (Ottawa West) line of questioning, add “bar-



rel" as a unit of measurement and define that. And in respect of that, I have explained that there are so many different barrels in use...

**Senator Pearson:** But there is no barrel mentioned here. There are thousands of barrels, but they are not standardized.

**Hon. Mr. Basford:** We could make the barrel a standard unit of Canadian measurement, and, to the list of measurements by volume from A to L, we could add M, "barrel", and its abbreviation, and then define what the barrel is.

**Senator Pearson:** That is quite in order, but, if you read section (b), page 4, it says:

(b) amend Schedule II by adding thereto or deleting therefrom any Canadian unit of measurement, together with its symbol or abbreviation and its definition.

Why should we give the Governor in Council the right to change, for example, the definition of mile or furlong or yard or inch, et cetera? Do you need that power? What do you want it for?

**Mr. Anderson:** Well, sir, I can see the difficulty which you raise. However, it was difficult for the Department of Justice to come up with a set of words which would accomplish what we required. The idea was that some unit may become obsolete in time. For example, the furlong is probably only used in horse racing. I do not think it is used in ordinary measuring by surveyors at the present time. It might be that we would decide to do away with some of these units. The rod, for example, being five and a half yards, is not a common unit today in surveying. It might be that in time we would decide to scrap that.

On the other hand, we might decide to add a new unit of length. For example, we might add a mill, which would be defined as 1/1000th of an inch, and we would make that a legal measurement for the benefit of some trade.

That was the idea, but I can see the difficulty that you raise that some fine day the Governor in Council might decide that from now on a foot will only be ten inches, or something like that. I can see that such a possibility exists.

**Senator Pearson:** Not that I think it is at all probable, but it still is there as a possibility, as you admit.

**Mr. Anderson:** Nevertheless I thought we had that covered by subsection (2) which says that:

Notwithstanding subsection (1), the Governor in Council may not amend Schedule II in such a manner that Canadian units of measurement are not authorized for use in trade.

In other words, we could see that Parliament did not wish to surrender the power to some official who could perhaps ultimately say, "All right, we are scrapping the customary imperial system of measurement and from

now on we are going to use meters, litres and kilograms, and they will be the only measurements we will recognize."

We thought we were preserving the right of Parliament, but perhaps we have rendered it somewhat weaker by this earlier subsection (b).

As I say, I can see the difficulty, but again this is something that the Department of Justice should speak to, if you feel this is a serious matter.

**Senator Pearson:** I am thinking of public opinion. People may well ask what kind of stupid committee we have up here in Parliament when we recommend that an official can have power to change the definition of, for example, one mile from 1,760 yards to 1,800 yards or to 2,000 yards. Slightly different wording would be in order to solve the problem, perhaps.

**Senator Burchill:** Could that not be redrafted to meet that point?

**Mr. Anderson:** Yes, I think it might.

**The Chairman:** Honourable senators, the suggestion I make in relation to both section 6 and section 35 is that we stand them at the moment and then hear from somebody from the Department of Justice some time later today. This bill is too important to be hung up for any length of time. We should if possible try to clear it today if we get proper explanations on these points that give us some concern.

**Senator Burchill:** Why not adjourn until this afternoon?

**The Chairman:** First of all I want to know if there are any other questions in relation to any other matters in the bill on which senators would like information. The minister has to leave shortly. If there are any such questions, he would like to give the explanations.

**Senator Hollett:** I move the adjournment.

**The Chairman:** I suggest then that we adjourn, not to go back over all the things that we have dealt with but simply to hear further information in relation to clause 6 and clause 35. For that purpose we will adjourn until later this day. May I suggest that we resume when the Senate rises which could possibly be around 3 o'clock. We sit at 2 and I understand there is very little on the order paper.

**Senator Blois:** I understood that somebody was phoning to ask somebody from the Department of Justice to be here. If he comes and we are not here, that will be too bad.

**The Chairman:** So far as these particular clauses are concerned, it would be more convenient for us to deal with them when the Senate rises this afternoon. Furthermore there is another committee just starting now, the Legal and Constitutional Affairs Committee, to deal with the Federal Court Bill which is an important bill too. So, it will be possible to deal with that bill in the



other committee without delaying this one. Somehow or other we will continue with this one today.

**Hon. Mr. Basford:** I shall not be able to be back this afternoon.

**The Chairman:** Well, if any problems should develop, we will get in touch with you.

The committee adjourned until later this day.

Upon resuming at 4 p.m.

**The Chairman:** Honourable senators, we are without the witnesses that we expected. Even in the Minister's office they do not know at this time where the witnesses are; they could be in any one of three or four places.

I therefore suggest that we adjourn until 9.30 in the morning and we will see that they are given due notice as to the hour and the place, and if necessary we will even send a messenger to bring them over by the hand.

Is it agreed, honourable senators that we now adjourn?

**Hon. Senators:** Agreed.

The committee adjourned.

Ottawa, Wednesday, November 18, 1970

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-5, respecting weights and measures, met this day at 9.30 a.m. to give further consideration to the bill.

**Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** We adjourned our consideration of Bill S-5 yesterday leaving two sections on which we requested further information, section 6 and section 35. Now this morning we have here, as we had yesterday and it is much appreciated, Mr. Anderson, and in addition we have Mr. Scollin and Mr. Beseau from the Department of Justice.

I would suggest that we proceed first with section 6. Our difficulty in that section was, I think, primarily to find out what it meant, because if you do not know what it means, it is hard to make any decisions. That is no reflection on Mr. Anderson. Would you care to have another go at it, Mr. Anderson, or is Mr. Beseau here to reinforce the situation?

**Mr. G. E. Anderson, Assistant Director and Chief Engineer, Standards Branch, Department of Consumer and Corporate Affairs:** Mr. Beseau, I think, has come up with a suggestion as to what wording might be altered. Would you like me to try to give you an explanation?

**The Chairman:** Yes, if you would, please.

**Mr. Anderson:** Honourable senators, the intention of the schedule in this act is to try to ensure that those units which we use in Canada have known relationships to the internationally accepted units. Now if those internationally accepted units should become larger or smaller, the Canadian units would become larger or smaller in always the same proportion. That is to say that we have defined the yard as 9,144/10,000ths of the metre, which is

defined in terms of wave-lengths of light. If they should decide that they want to add a third decimal place in addition to the second decimal place, this would make the yard that much larger. It would then become 9,144/10,000ths of the third place of decimals, which you can see is an insignificant fraction for all practical purposes, but from the scientific point of view it always keeps us in step.

The same is true with our pound. We have defined the pound as an exact mathematical relationship to the international kilogram. If the international kilogram should by any mischance be destroyed, they would attempt to reconstitute the international kilogram by getting the kilograms which have been distributed around the world to all the signatories of the general conference on weights and measures—there are some 40 or 50 kilograms throughout the world—and they would bring them back to Paris and get an average kilogram. Now that average kilogram might not be exactly the same as the original kilogram; it might differ by one part in a million, or one part in ten million or one part in 100 million, but our pound would have that same relationship to the new kilogram as it had to the old. This might mean adding one or two specks of platinum to bring it into line, but it would then have the same relationship as it had before. So this is what we mean when we say that the Canadian units shall be based on the international units.

**The Chairman:** That is in section 4?

**Mr. Anderson:** Yes. Now we say then in section 6 that he can add to or delete from Part I and if the definitions require changing, they will be changed. Similarly in section 2 which deals with the Canadian units, as I mentioned yesterday, it might for some reason or other be decided that we should drop the rod or that we should drop the furlong or it may be that we should add something like the barrel and define it once and for all, and this was to give us flexibility in making these additions or deletions.

Yesterday one of the senators raised the point that it would be possible theoretically for the Governor in Council to decide that there shall only be ten inches to the foot. I believe that was the essence of the point raised. Now I have spoken very briefly to Mr. Beseau on this subject, and whether he has had an opportunity to come up with a set of words which might overcome this difficulty, I am not sure.

**The Chairman:** Mr. Beseau, would you care to take over?

**Mr. P. D. Beseau, Legislation Section, Department of Justice:** Mr. Chairman, as Mr. Anderson mentioned a few moments ago, I have been trying to work out some kind of formulation of words where by changing a definition in either Schedule I or Schedule II the Governor in Council would not be authorized to vary the ratio of one unit to another unit in the same schedule, so that he would always have the same ratio between any two units of measurement that are set out in the schedules.

If I had a little more time I might be able to come up with suitable wording, but I would like to discuss it with

Mr. Anderson and make sure it fits into the wording for the department.

**The Chairman:** Since we are dealing in terms of measurement, maybe we could relate that to the amount of additional time that you feel you might need. Would it be later today or next week?

**Mr. Beseau:** I would hope that maybe within 15 or 20 minutes I could come up with some suitable wording.

**The Chairman:** All right. Then we will go on with the other section. Neither you nor Mr. Anderson is taking part in the discussion on that, so that we can excuse you and maybe by the time we are through with that you will be ready with some wording.

**Mr. Beseau:** Right.

**The Chairman:** Is that agreeable?

**Hon. Senators:** Agreed.

**The Chairman:** Mr. Scollin, we now have for consideration section 35.

May I just recall for you that in our discussion yesterday we were concerned about section 35 and the provision whereby the Crown, in prosecuting some person who has committed an offence under certain sections of this proposed act, may proceed by way of the summary conviction procedure or elect to proceed by way of indictment, in which event the penalties are increased under this section.

However, I should call your attention to the fact that what the section does, in those circumstances, is to establish maximum penalties, and there is a substantial difference between this provision and the provision in the Income Tax Act, because in the Income Tax Act, in addition to the penalties by way of fine and imprisonment being more substantial if the Crown proceeds by way of indictment, there is a minimum sentence of imprisonment, if you are convicted, which applies in any event, and if you are convicted there is no way around that and you have to serve the time.

We were considering yesterday the effect of the recent judgment which was based on a corresponding section, with that variation, in the Income Tax Act, which declared that provision invalid by reason of the Bill of Rights. We were considering whether we were in a position in which we should, in the face of that decision, approve a section of this kind or evolve some variation of it, because, as I pointed out yesterday, variations are very simple to effect, except I would suspect that since this section in this form, or some variation of it, exists in many federal statutes, the desire of the Crown may be to keep the provisions reasonably uniform.

That is the background as a result of which the minister said, well, he acted on the advice of the Department of Justice, which he is required to do as the minister, and he was not in a position to enter into discussion. So we said we would adjourn the matter and have someone appear from the Justice Department. Now Mr. Scollin is here to take on that responsibility. Would you proceed, Mr. Scollin?

**Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice:** Mr. Chairman and honourable senators, assuming—as I am respectfully not prepared to assume—that His Honour Judge Kelly's decision was right in the Conn Stafford Smythe matter . . .

**The Chairman:** We are not assuming that either. All we are saying is that it is there.

**Mr. Scollin:** It is under appeal. One of the factors indeed,—as Senator Hayden has pointed out—that did motivate the court was this matter of the minimum two-month penalty of imprisonment which is imposed under section 132(2) of the Income Tax Act.

Indeed, Judge Kelly, in reciting the factors that affected him, pointed out that:

The effect of Subsection 2 is that before trial, when there is only a prima facie case in the hands of the Attorney-General he can, by acting under Subsection 2, deprive the Court of its sentencing power, because there is a provision for a mandatory term of not less than two months.

So this was obviously one of the factors, and it is a distinction between that situation and the situation under section 35.

Really, honourable senators, I think Senator Hayden has already said anything else I could say. I do not think there is anything I can add to that. I think it is a valid distinction in so far as the reasoning of Judge Kelly is concerned in relation to the Income Tax Act. I do not myself think that the fact that there is an election is a valid reason for saying it is an infringement of the Bill of Rights, but that matter is before the courts, on a mandamus, and the judgment has not, as far as I know, yet been given.

**The Chairman:** The basis of Judge Kelly's decision was he was looking at the provisions in the Bill of Rights, and he decided, in the reference to his judgment which you made, that this sentence—which proceeded in any event, if there had been an election to proceed by way of indictment and there was a conviction—deprived the accused person of equality under the law. That is, the sentencing is in the discretion of the presiding judge, after conviction; but if the statute, as it does in the Income Tax Act, requires a minimum sentence, it is the statute that sentences the person who has been convicted and there is no exercise of discretion permissible.

If you committed the same kind of offence and the Crown does not elect to proceed by way of indictment, then there is not equality under the law. I am not expressing my opinion now; I am trying to interpret the judgment. I think this is the basis upon which Judge Kelly's Reasons for Judgment proceeded, that there was not equality under the law in those circumstances, because everybody is not subject to the same kind of penalty within the discretion of the judge. The committee may have a different view. I do not think it is part of our task here to analyze judgments. We simply look at the judgment, and if it is in point, whether there is an appeal pending or not, we then have to make whatever decisions we feel we should make in the circumstances. If it is not



in point then I do not conceive it to be part of our job to say: "Well, if this section 35 were in issue we think on the basis of Judge Kelly's judgment the conclusion inevitably would have to be the same." We are not a court of appeal.

This is only a personal view, but the furthest I feel could go would be to say that we are not going to pass a provision in respect of which there is a judgment outstanding declaring it to be invalid, regardless of the stage of the proceedings at which the judgment may rest. That was the position I took yesterday, but it appears to me that the difference in wording—that is, this minimum of two months in any event under the Income Tax Act—is a material difference. It is very material certainly to the person who is convicted in a case where the Crown has elected to proceed by way of indictment. It is very material because he does not have a right to make a presentation before sentence, which is a right of a convicted person, or his counsel on his behalf, to say why the penalty of the law should be tempered in such and such a way. He cannot. The Crown has precluded him from doing that by electing to proceed by way of indictment, but you do not have that situation under section 35.

**Senator Flynn:** Very frequently we find in our statutes a difference in the maximum penalties when the Crown proceeds either by way of summary conviction or by indictment. I do not think there has ever been a judgment saying that this is contrary to the Bill of Rights for the simple reason that there are two unequal penalties, one stiffer than the other if you proceed by way of indictment. I agree with the witness in this particular case. The fact that there was a minimum penalty if you proceed by way of indictment might have created an inequality under the law.

**The Chairman:** Senator Flynn, the ideal way of wording this section—but the Crown is not restricted to taking the ideal way—would be to provide for the offence and then provide on conviction for a maximum penalty.

**Senator Flynn:** I am not a specialist in criminal law, but I have never understood why they had this kind of provision which gives discretion to proceed by way of summary conviction or indictment, and providing a stiffer penalty if they proceed by way of indictment. I have never understood that. Perhaps the witness or Mr. Hopkins can help us in that regard.

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** This is just a guess, but it seems to me that it would leave an option to the Crown in certain circumstances that seem to be more serious than others. The Crown can proceed in a serious way or a less serious way.

**Senator Connolly (Ottawa West):** It is a discretionary matter on the part of the Crown.

**The Chairman:** But there is a weakness in that kind of argument to support the distinction between proceeding by way of summary conviction or by way of indictment.

The weakness is that the section only establishes a maximum penalty. The Crown might proceed by way of indictment but the judge may not take the same view as to the gravity of the offence, and the penalty he would impose might be the penalty provided for in relation to a summary conviction.

**Senator Flynn:** You might have a lesser penalty if you proceed by way of indictment than if you proceed by way of summary conviction.

**The Chairman:** Yes, that is right, it could end up in that way. So, where you have that possibility it is difficult to say that there is any basic unfairness to the accused person, although frankly I think the whole thing could be accomplished without this artificial structure. There could be simply an offence and a penalty which would be a maximum penalty, and the accused person could be allowed to go into court and elect summary trial, or trial by judge and jury.

**Senator Carter:** Is there not a principle here that under this section now the punishment fits the procedure rather than the crime?

**The Chairman:** Yes, that is right. I hope that Mr. Scollin is taking notice and notes of all the comments that are being made here this morning, because at some later date this may well be reflected in something that will be before us.

**Senator Molson:** Mr. Chairman, as a matter of academic interest, is not the whole of military law based on this same principle? I am thinking of the fact that the powers of the junior officer are limited, and if the matter proceeds to court martial then the whole scale of punishment is upgraded. Is this not for the purpose of limiting the powers of the junior or less sophisticated procedures, rather than the reverse which is what we seem to be discussing here? Am I not correct in my thinking?

**The Chairman:** I remember when we were examining the new National Defence Act and all those procedures some years ago that there was quite a discussion on this point. I think the basis of the discussion was that as the accused person went up the line of the various means of trial there were more benefits or protections afforded him.

**Senator Molson:** Yes, and heavier penalties.

**The Chairman:** Yes, but in order to get that result we defined the procedures much more carefully.

Are there any other questions?

**Senator Carter:** Just following along with Senator Molson's analysis on the military side, I would point out that there would be a court of inquiry before a decision was made as to whether they would proceed by way of court martial. So, there is that protection there which you do not have here.

**Senator Molson:** Yes.

**The Chairman:** Wait a minute. If the Crown elects to proceed by way of indictment the accused has to appear



before a magistrate. The only decision that a magistrate can make is as to whether there is a case to send on for trial.

**Senator Molson:** That would be the same as a court of inquiry.

**The Chairman:** Except with this big difference, that the magistrate in those circumstances cannot weigh evidence. That is correct, is it not, Mr. Scollin? He cannot weigh evidence. He has to decide whether there is a *prima facie* case, and that is why almost inevitably the accused at the stage of the preliminary hearing before the magistrate, where there is an indictment, does not offer any evidence. It is so difficult to refute the *prima facie* case.

**Mr. Scollin:** The onus is entirely different. In a preliminary hearing the doubt is resolved in favour of the Crown.

**The Chairman:** That is right. Are there any other questions? Is it the opinion of the committee that we should approve section 35 in the form in which it is?

**Hon. Senators:** Agreed.

**The Chairman:** Then that leaves just section 6. I see that our witnesses have been very diligent. Are you going to deal with this Mr. Beseau?

**Mr. Beseau:** Yes, Mr. Chairman.

**The Chairman:** We are now back to section 6.

**Mr. Beseau:** In relation to subsection (2) of section 6 we are going to propose for your consideration that it be rewritten as follows:

Notwithstanding subsection (1), the Governor in Council may not amend Schedule II in such a manner that

- (a) the ratio of any one unit of measurement to any other unit of measurement is altered; or
- (b) Canadian units of measurement are not authorized for use in trade.

That would accomplish the dual purpose of preventing the complete change-over from Canadian system to metric system by order in council. It would also prevent the changing of a unit of measurement to alter the ratio between one unit as opposed to another unit, so that we would also have a balance between the different units of measurement.

**The Chairman:** I believe this was your concern yesterday, Senator Hollett?

**Senator Hollett:** Yes.

**The Chairman:** We suddenly might discover that there was a foot 10 inches long.

**Senator Hollett:** I think the witness is perfectly in order; I agree with it anyway.

**The Chairman:** I put a question to the minister yesterday, which he left as one of the items which his experts,

as he referred to them, from the Department of Justice might deal with.

I asked him whether conceivably clause 6, the power to amend by adding or deleting from the schedule, is regulatory and not legislative in its effect.

**Mr. Beseau:** This is much more inflexible than it would be if it were in regulations. The units of measurement are set out in the act.

It became necessary to give a power to add to the schedules in the event that new units of measurement are derived as a result of scientific progress. With respect to the power to delete, the capacity in the area of science for determining accuracy seems to be increasing constantly. As a result it is found from time to time that, for example, the last decimal in one of the figures in the schedule is no longer accurate. It was decided that rather than go back to Parliament and ask that the figure .00789 be changed to the figure .00788, they be given this power to delete and replace the definition making the minor correction.

**The Chairman:** Everything that you have said, Mr. Beseau, seems to me to affirm the principle that this is conferring some form of legislative power upon the Governor in Council. The question to decide then is whether this is the kind of delegation that we should approve.

**Mr. Beseau:** I would say that is correct, senator.

**The Chairman:** Would it accomplish it if clause 6 were made subject to clause 4? In other words, that this power could only operate within the limits of clause 4.

**Mr. Beseau:** I would interpret clause 6 as being subject to clause 4 because this is the power to amend the schedules. Notwithstanding that, clause 4 is the overriding clause, that all units of measurement must be based on the international system.

I understand that where some of these definitions do require amendment is as a result of international conventions or conferences whereby it is agreed that the present definition is somewhat out of date.

**The Chairman:** We have searched out instances in all the legislation that has come before us where the administrative officials are really being given the power to legislate. In many cases we have taken serious objection to it. In some cases we have applied time limits in which their action can evolve and at whatever stage it is at a certain time is the law and only action of Parliament could change it.

We did that in the bank legislation in relation to the guarantee of deposits up to a certain amount. They were taking a provision in the act that the definition of a deposit would be established by by-law. They seemed to feel that they could not arrive at a satisfactory definition as quickly as required to include it in the bill before us. We informed them we would give them two years and whatever it was at that time would be the end of their exercise of this authority. That is the law and only Parliament can change it.

It appears to me that this is not the same type of situation. Maybe this is an area of legislative action in which we would be justified in approving some delegation.

**Senator Flynn:** The witness is of the opinion that clause 6 is subject to clause 4. It is implied.

**Mr. Beseau:** It is already subject to clause 4.

**Senator Cook:** Is an order in council under clause 6 tabled?

**Mr. Beseau:** This would be the type of order that would be a regulation within the meaning of the Regulations Act. It would be reviewed by the Department of Justice, enacted and tabled in the house in the same manner as other regulations.

**Senator Carter:** In schedule III a French foot is defined as 12.789 inches, whereas in schedule II an English foot is defined as 1/3 yard. How are they distinguished? They are not the same animal, but they have the same symbol. Is it taken for granted that in Quebec the French foot and no other is used?

**Senator Flynn:** No, only under the interpretation of some articles of the Civil Code would the French measure be used. It would be used, for instance, in cases involving boundaries of land. When reading the Civil Code this is the interpretation; otherwise the foot in Quebec is the English foot. When measuring land originally granted under seigniorial tenure you use it. It could only be used in that case.

This is exactly the question.

**The Chairman:** Clause 5 correlates to Schedule III to which Senator Carter is referring.

**Senator Carter:** It could only be used with the old grant.

**The Chairman:** That is right.

**Senator Carter:** My question concerned having the same symbols. Do you just put it down in exactly the same way?

**The Chairman:** You want to know whether when writing a foot under Schedule III it is the same as when writing it under one of the other schedules?

**Senator Carter:** Yes.

**Mr. Anderson:** I suppose it would be called pieds français.

**Senator Carter:** That is what I say. If that is what is really meant, I think we should just have the French name for it.

**The Chairman:** We do.

**Mr. Anderson:** We do.

**The Chairman:** On the right-hand side there is the French version.

**Senator Carter:** But it has no English use at all.

**The Chairman:** There are both the English and French versions.

**Senator Carter:** But the word "foot" in English does not mean the same as "pied" in French.

**The Chairman:** It does not have to. The heading of Schedule III is "Units of Measurement to Describe Certain Land in Quebec", and that is the provision in clause 5 of the bill.

**Senator Carter:** But that is written in French and not in English at all. I do not see the point of the English part of Schedule III.

**The Chairman:** Honourable senators, I have referred this proposed amendment to Mr. Hopkins. There is only one problem that seems a little bothersome. The proposed amendment to subsection (2), which continues part of subsection (2) refers to "Canadian units of measurement". The real question is what that encompasses. If I look at Schedule II I see that the heading is "Canadian Units of Measurement". If this is what is made inviolate, that cannot be changed, it means that you cannot change anything in the schedule, because anything in the schedule is part of the Canadian units of measurement. By using that descriptive title, have you not shut the door on yourself, and is that intended, that you cannot disturb any of the individual units of measurement that appear under the heading of "Canadian Units of Measurement"?

**Mr. Beseau:** I would say that you can change any of the units in there to change the definition of them or the symbol, but in doing so you cannot alter the ratio of any one to the other, so that if as a result of changing one you would be changing the ratio of another unit, you would also be required to amend that second unit to keep the same ratio between the units in there.

**The Chairman:** I was not addressing myself to that. I was addressing myself to the point that in your paragraph (b), as you carry it through from subsection (2) of clause 6, that is your description. The thing in respect of which the Governor in Council cannot authorize any change is "Canadian Units of Measurement". Is that a generic term? If I go to the schedule I find it is entitled "Canadian Units of Measurement". Is that the thing in respect of which they cannot make any change?

**Mr. Beseau:** They cannot make a change that would amount to nothing but a straight deletion. If they are going to delete, I would suggest that they will have to delete and replace, otherwise they would be deleting a Canadian unit of measurement and replacing it with nothing.

**Senator Hollett:** Why does the Governor in Council need that authority?

**The Chairman:** The explanation we got yesterday was that under this bill there are both standards of measurement, the metric system as well as whatever you call the other, the Imperial or whatever it is, and both are equal-

ly valid. But if Canada at some future date wanted to swing to the metric system only, you would have to come back to Parliament by virtue of this clause.

**Senator Hollett:** Why?

**The Chairman:** This clause makes it necessary that you must.

**Senator Hollett:** No, this clause makes it necessary that you do not have to.

**The Chairman:** No.

**Senator Hollett:** I say we should delete clause 6 completely and then we would have no trouble.

**The Chairman:** This clause says that the Governor in Council cannot propose any amendment to Canadian units of measurement as a result of which these Canadian units of measurement are not authorized for use in trade.

**Senator Hollett:** That is the suggested amendment.

**The Chairman:** That is right.

Is there any other discussion on this? Is the amendment acceptable to the committee and is it approved?

**Hon. Senators:** Agreed.

**The Chairman:** Shall I report the bill as amended?

**Senator Connolly (Ottawa West):** I should like to ask one question, which is really a technical one. In the last line of clause 5 they refer to "seigniorial tenure". It is spelt "seigniorial". I was wondering whether that should not be spelt "seigneurial". Maybe the dictionary anglicizes the word, which is a French word.

**Senator Flynn:** I do not know the translation. I know that it is correct in French, but I do not know the translation.

**Senator Connolly (Ottawa West):** I think in the Civil Code when they talk about seigneurial tenure they spell

it with eur. I certainly would not propose any amendment here.

**Senator Flynn:** It may not be necessary to have an amendment. It may be sufficient if the departmental officials check on it, and if there is an error it can be corrected.

**The Chairman:** Have you any comment, Mr. Anderson?

**Mr. Anderson:** The existing act uses the same spelling in English as the present bill. Of course, it may be perpetuating an error.

**Senator Connolly (Ottawa West):** It could be. Perhaps you would have a look at it.

**The Chairman:** Our Law Clerk tells us that for any change in the spelling of a word we do not need to make an amendment.

**Senator Flynn:** That is what I was suggesting.

**The Chairman:** This would be a typographical error which would be corrected. What I suggest is that sometime later this morning Mr. Anderson could confirm with Mr. Hopkins whether it is desired to go with the spelling in the bill or whether Senator Connolly's idea is to be accepted.

**Senator Connolly (Ottawa West):** Check it with the Civil Code.

**The Chairman:** Perhaps, Mr. Anderson, you would let him know. If you do not let him know it will appear in the bill as reported, as it is spelt in the bill now.

Shall I report the bill with the amendment?

**Hon. Senators:** Agreed.

**The Chairman:** That completes our work for this morning. Thank you very much, Mr. Beseau and Mr. Anderson.

Bill reported with amendment.

The committee adjourned.





THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

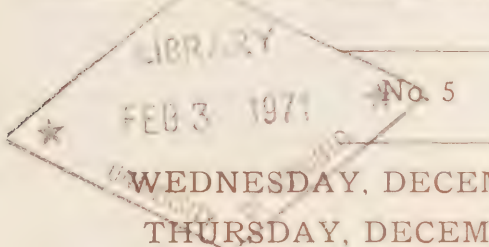
1970

# THE SENATE OF CANADA

PROCEEDINGS OF THE  
STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

The Honourable DANIEL A. LANG, *Acting Chairman*



WEDNESDAY, DECEMBER 16, 1970

THURSDAY, DECEMBER 17, 1970

FRIDAY, DECEMBER 18, 1970

### Complete Proceedings on the following Bills:

- Bill C-177: "An Act respecting cooperative associations";
- Bill C-174: "An Act to establish the Tax Review Board and to make certain amendments to other Acts in relation thereto";
- Bill C-175: "An Act respecting grain";
- Bill C-179: "An Act respecting the Buffalo and Fort Erie Public Bridge Company".

### REPORTS OF THE COMMITTEE

(For appendix and list of witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin  
(Quorum 7)

# Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, December 10, 1970:

The Order of the Day being read,  
With leave of the Senate,

The Honourable Senator McDonald resumed the debate on the motion of the Honourable Senator Robinson, P.C., seconded by the Honourable Senator Bourque, for the second reading of the Bill C-177, intituled: "An Act respecting cooperative associations".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, December 15th, 1970:

"A Message was brought from the House of Commons by their Clerk with a Bill C-174, intituled: "An Act to establish the Tax Review Board and to make certain amendments to other Acts in relation thereto", to which they desire the concurrence of the Senate.

The Bill was read the first time.  
With leave of the Senate,

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Lefrançois, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Lefrançois, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, December 16th, 1970:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Argue, seconded by the Honourable Senator McNamara, for the second reading of the Bill C-175, intituled: "An Act respecting grain".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Argue moved, seconded by the Honourable Senator McNamara, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Thursday, December 17, 1970:

A Message was brought from the House of Commons by their Clerk with a Bill C-179, intituled: "An Act respecting the Buffalo and Fort Erie Public Bridge Company", to which they desire the concurrence of the Senate.

The Bill was read the first time.  
With leave of the Senate,

The Honourable Senator Kinnear moved, seconded by the Honourable Senator Cameron, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Kinnear moved, seconded by the Honourable Senator Cameron, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, December 16, 1970

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m.

*Present:* The Honourable Senators: Lang (*Acting Chairman*), Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Haig, Hollett, Kinley, Macnaughton and Welch. (11)

*Present but not of the Committee:* The Honourable Senator Argue.

*In attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Blois, the Honourable Senator Lang was elected Acting Chairman.

The Committee proceeded to the consideration of Bill C-177, intituled: "An Act respecting cooperative associations".

The following witnesses were heard in explanation of the Bill:

*Department of Consumer and Corporate Affairs:*

Hon. Ron Basford, Minister;

Mr. Louis Lesage, Q.C., Director, Corporations Branch;

Mr. Roger Tassé, Assistant Deputy Minister (Corporate Affairs).

*Cooperative Union of Canada:*

Mr. Joe Dierker, Solicitor, Saskatoon, Sask.;

Mr. W. Breen Melvin, President, Regina, Sask.;

Mr. J. Terry Phalen, Manager, Ottawa, Ont.

On Motion of the Honourable Senator Burchill it was Resolved to report the said Bill without amendment.

At 10:50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,  
Clerk of the Committee.

Thursday, December 17, 1970.

(7)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10:00 a.m. to consider Bill C-174, intituled: "An Act to establish the Tax Review Board and to make certain amendments to other Acts in relation thereto".

*Present:* The Honourable Senators Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Flynn, Haig, Hays, Kinley, Lang, Welch. (14)

*Present but not of the Committee:* The Honourable Senators Argue, Lafond and McNamara.

*In Attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion duly put, the Honourable Senator Lang was elected Acting Chairman.

The following witness was heard:

Mr. G. W. Ainslie, Assistant Deputy Attorney General of Canada.

At 10:55 a.m. on Motion of the Honourable Senator Connolly (*Ottawa West*), it was resolved to report the said Bill without amendment.

At 11:00 a.m. the Committee proceeded to the consideration of Bill C-175, intituled: "An Act respecting grain".

The following witnesses from the Department of Agriculture were heard:

The Honourable H. A. Olson;

Mr. C. R. Phillips, Director General, Production and Marketing Branch.

*Also present but not heard:* Miss E. I. MacDonald, Legislation Section, Department of Justice.

It was resolved to print as an Appendix to these proceedings a "Summary Information related to Grain handling in Canada."

Upon Motion, it was resolved to report the said Bill without amendment.

At 12:10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard,  
Clerk of the Committee.

Friday, December 18, 1970  
(8)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10:20 a.m.

*Present:* The Honourable Senators: Lang (*Acting Chairman*), Beaubien, Benidickson, Carter, Connolly (*Ottawa West*), Flynn and Martin. (7).

The following Senators, not members of the Committee, were also present: The Honourable Senators: Bourget, Kinnear Méthot and Smith.

*In attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Flynn the Honourable Senator Lang was elected Acting Chairman.

The Committee proceeded to the consideration of Bill C-179, intituled: "An Act respecting the Buffalo and Fort Erie Public Bridge Company".

The following witness was heard in explanation of the Bill:

Mr. B. Pomerlan, Financial Operations Branch,  
Department of Finance.

On Motion of the Honourable Senator Beaubien it was Resolved to report the said Bill without amendment.

At 10:45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,  
*Clerk of the Committee.*

# Reports of the Committee

Wednesday, December 16, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-177, intituled: "An Act respecting cooperative associations", has in obedience to the order of reference of December 10, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

D. A. Lang,  
*Acting Chairman.*

Thursday, December 17, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-174, intituled: "An Act to establish the Tax Review Board and to make certain amendments to other Acts in relation thereto", has in obedience to the order of reference of December 15, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

D. A. Lang,  
*Acting Chairman.*

Thursday, December 17, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-175, intituled: "An Act respecting grain", has in obedience to the order of reference of December 16, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

D. A. Lang,  
*Acting Chairman.*

Friday, December 18, 1970.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-179, intituled: "An Act respecting the Buffalo and Fort Erie Public Bridge Company", has in obedience to the order of reference of December 17, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

D. A. Lang,  
*Acting Chairman.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, December 16, 1970

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-177 respecting cooperative associations, met this day at 9.30 a.m. to give consideration to the bill.

**Hon. Daniel A. Lang** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, our witnesses this morning are the Honourable Ronald Basford, Minister of Consumer and Corporate Affairs, Mr. Louis Lesage, Director, Corporations Branch, and Mr. Roger Tassé, Assistant Deputy Minister (Corporate Affairs) of the Department of Consumer and Corporate Affairs.

We will ask the minister to explain the nature and extent of this bill and some of the history which led up to it.

**The Honourable Ronald Basford, Minister of Consumer and Corporate Affairs:** Mr. Chairman, I am grateful to the committee for meeting this morning. I wish to express my thanks to honourable Senator Robichaud, the sponsor of the bill, for his thorough explanation on second reading. I also thank Senator Phillips for his comments with respect to the cooperative movement and the bill.

Mr. Chairman, I have a somewhat lengthy statement which I could present to the committee. I am really not quite sure if the senators have read Senator Robichaud's statement on second reading and that my statement would be a repeat in different words of what was said on the floor of the Senate.

I do wish to explain, however, the consultation that has taken place with regard to this bill over a number of years following the decision by the Government to introduce a cooperative associations bill. My officials met on a considerable number of occasions with representatives, particularly legal representatives of the Co-operative Union of Canada, and those interested in the cooperative movement throughout Canada regarding the provisions of the bill. It has gone through three or four draftings to ensure that it is the kind of bill suitable for the occasion.

My officials also held three or four meetings with provincial officials and officers of those branches within provincial governments responsible for the cooperative branches within provincial governments to ensure, first, that the provisions of our bill were generally in line with what were regarded as the better written and more modern provincial cooperatives acts, and also in meetings

with the provincial officials to gain the benefit of their knowledge and advice in the administration of cooperative legislation.

It is because of the very thorough consultation that went on, both with the cooperative movement and with the provincial officials, that in the other place the bill received the support of the cooperative movement, and, after consultation with their solicitors, is the kind of bill the cooperative unions wanted. Therefore, because the consultative process has been so thorough I commended the bill to the other place, and I commend it to the Senate.

I think that rather than read a long statement I would prefer to answer questions honourable senators have, and have my officials here answer any technical questions. However, if it is your wish, I will make a much longer statement.

**The Acting Chairman:** Is it your wish, honourable senators, that the minister now respond to questions from the committee?

**Hon. Senators:** Agreed.

**Senator Carter:** I was not able to follow all that Senator Robichaud said, and I have not had the opportunity to read his speech. What comes to my mind is what is the main purpose of the bill, since we have cooperative acts in various provinces. What is the relationship between this bill and the provincial acts?

**Hon. Mr. Basford:** The relationship is none. Until this legislation is passed there will have been no federal cooperative act. Therefore, those in the cooperative movement have had to do two things: either form themselves into a cooperative association under some provincial law, provincial charter and statutes, or, if they were seeking some form of federal charter or federal organization, proceed by way of one of two methods. They could incorporate themselves under the Canada Corporations Act, which is quite inappropriate but was done in years gone by. There are a number of what are really cooperatives, which are incorporated under the Canada Corporations Act, which of course is an act designed for the incorporation of joint stock companies and is quite unsuitable for a cooperative type of organization. However, in times past, because there was no federal cooperatives act, and because some cooperatives wanted to organize on a national or federal basis, they formed themselves under the Canada Corporations Act. Latterly we have not done that, because the Canada Corporations Act is unsuitable for the purpose. The other way they

have had to proceed is by way of special act of Parliament. A number of cooperatives have been organized by special act.

We are introducing a federal cooperatives act which would allow those cooperatives that are carrying on business in more than one province and want to be chartered for federal purposes, within federal purposes, to come to us under their own act, the federal cooperative associations act, and to be chartered. Secondly, the act would allow those cooperatives that are incorporated under the Canada Corporations Act to come under this bill by way of a certificate of continuation, or those that are incorporated by special act of the Canadian Parliament to come under this bill by way of certificate of continuation.

That is really the purpose. It has no relation with provincial laws. What we are trying to do is to provide a vehicle for possibly some 40 cooperatives that are organized on a federal basis, and those that are operating in more than one province and want to avail themselves of the provisions of a federal charter.

**Senator Carter:** Does this bill apply to any one type of cooperative, say marketing cooperative more than consumer cooperatives, or does it apply to every cooperative?

**Hon. Mr. Basford:** It applies to cooperatives that would fall within clause 5, which spells out the kinds that could come under it. I would think generally—your question is general and my answer will be—the people who would take advantage of it are generally more the marketing cooperatives, because the consumer cooperatives are usually quite small, organized very locally, most of them, and not operating in more than one province, so they would not come within the bill. That is a very general answer. If there is a consumer co-op operating in more than one province that wanted to avail itself of the bill, of course it could.

**Senator Carter:** It will not apply to credit unions?

**Hon. Mr. Basford:** No.

**Senator Carter:** That comes under another act?

**Hon. Mr. Basford:** Yes.

**Senator Connolly (Ottawa West):** It comes under this bill, clause 8.

**Senator Welch:** Does this bill mean that all the cooperatives in a province must join, or is it simply that if a certain cooperative wishes to come under this law it can, but otherwise they can stay out? Will this be compulsory right across the board?

**Hon. Mr. Basford:** It certainly would not apply to every cooperative within a province. In effect, it would apply to very few, and it would apply only to those who wanted it to apply and wanted a charter. The people to whom it could apply, if they so wish, are spelled out in clause 5, being:

Any seven or more persons . . . . who desire to associate themselves together on a cooperative basis for

any of the objects to which the legislative authority of the Parliament of Canada extends.

There is a whole list of people, in paragraphs (a) to (h), who cannot have a federal cooperative arrangement under this bill. The answer is that it would not apply to existing cooperatives unless they wanted it.

**Senator Welch:** Can they opt out if they wish?

**Hon. Mr. Basford:** Very much so. The decision is really theirs whether they opt in or not.

**The Acting Chairman:** They must intend to carry on business in more than one province?

**Hon. Mr. Basford:** That is right. It will apply to an existing cooperative only if it wants it to apply, only if it wants to avail itself of these provisions, and only if it meets the conditions of the bill: that they are operating in more than one province; that they are operating for purposes to which the legislative authority of Canada applies; that they are not wanting to run a railroad, a credit union, or something like that.

**Senator Welch:** In just a few words, not in a long story, what would be the advantages of opting in or opting out? What would be the advantages to any group of merchandisers or growers?

**Hon. Mr. Basford:** I think you are going to have some witnesses from the Co-operative Union. They might spell that out more fully than I. Really, the reason would be that there are a number of cooperatives, as I explained, which have wanted to charter nationally or federally and which have done so, for example, under the Canada Corporations Act, which is really quite an unsuitable vehicle for that purpose. Of course, under our Corporations Act which is designed to govern joint stock companies, you have the number of votes, for example, that you have shares. The principle of the cooperative movement is that a member has one vote regardless of his share holding. The concept or the theory is quite different from that which applies to other joint stock companies. So these cooperative organizations that, wanting to have a federal charter and having no special vehicle to do so, have been forced to incorporate under the Canada Corporations Act, have done so under quite an inappropriate vehicle. They will find it quite advantageous and useful to transfer, if I can put it that way, from being incorporated under the Canada Corporations Act to being chartered under this act, which is specifically designed to deal with cooperative organizations.

**Senator Welch:** Is there any part in this bill that gives you a floor or a ceiling on prices?

**Hon. Mr. Basford:** Under this act?

**Senator Welch:** Yes.

**Hon. Mr. Basford:** No, except that the definition of "cooperative basis" is one that operates as nearly as possible at cost. If you will look at page 2 of the bill,



senator, under the definition section, you will see that it says under clause 3 (1)(d)(iv):

(iv) the enterprise is operated as nearly as possible at cost after providing for reasonable reserves...

That is just a part of the definition of "cooperative basis"; it is not a system of price control or price regulation, but it is part of the theory of cooperative organizations.

**Senator Burchill:** There is no special reason why a provincially incorporated cooperative would transfer to this, is there? That is, if it did not want to operate outside its own province. There are no features that are in this bill that are not in the provincial legislation.

**Hon. Mr. Basford:** No. There would be no particular reason for them to do that. But there is provided in the legislation provisions which are rather interesting, allowing for transjurisdictional transfers for federal cooperatives to become provincial cooperatives and provincial cooperatives to become federal cooperatives, with the consent of the administrations in both the province to which it is being transferred and the province from which it is being transferred. So that a provincial cooperative, if it fell within the provisions of this act, could transfer and become a federal cooperative with the approval of the provincial administration and with the approval of the federal administration. However, if it were just a cooperative organized and operating within one province there would be no particular reason for that cooperative to wish to come under this legislation, as I see it.

**Senator Carter:** What is the situation with respect to cooperatives that are not in existence at the present time? Do they have to be incorporated under the provincial act before they can come to be incorporated under the federal act?

**Hon. Mr. Basford:** No. But they have to fall within section 5, for example, and they have to show that they will be operating or that they intend to be operating in more than one province.

**Senator Hollett:** Under this legislation what is the tax situation with respect to a cooperative as compared to a company that is comprised of just seven people, for example?

**Hon. Mr. Basford:** There are no particular tax privileges or concessions provided for under this legislation, Senator. I have tried to make it clear that the question of the taxation of cooperatives, which is a very lively issue and one which I know this committee has devoted considerable attention to, is quite a separate issue and a separate question from whether we should have this legislation or not. Whether the cooperative is organized federally or provincially makes no difference to the incidence of taxation or to the rights or tax concessions it may have.

Similarly, senator, as I am sure you know, whether a company is incorporated under the Canada Corporations Act or under the Ontario Companies Act makes no differ-

ence to the level in rates of taxes it pays. The tax is levied irrespective of the form of its incorporation or the situs of its incorporation. Similarly with cooperatives, the tax is levied or not irrespective of where the cooperative is or under which legislation the cooperative is formed. So the question of taxation is a lively issue but it is not one that is dealt with under this act. It will be dealt with when the Government introduces amendments to the Income Tax Act.

**Senator Welch:** In the past there has been a different rating for taxation for cooperatives.

**Hon. Mr. Basford:** Yes, there has. I had better be careful because I am not an authority on taxation, and I suspect that the members of this committee know far more about it than I do.

**Senator Connolly (Ottawa West):** Flattery will get you nowhere, Mr. Minister.

**Hon. Mr. Basford:** But there are different rates that are established, or there may be a different system of taxation that applies; although I think the Cooperative Union might even dispute that statement. Whether it applies or not however, is not determined by this legislation or by the provincial cooperatives acts.

**Senator Welch:** It seems to me that I saw some place in the White Paper that they were going to tax cooperatives in the same way as they tax any other corporation. Perhaps I am wrong on that.

**Hon. Mr. Basford:** There were statements in the White Paper on the tax situation of cooperatives, and statements have been made in this committee's report on the White Paper relative to cooperatives. Therefore, because we are paying such heed to the report of this committee, I would not want to comment on the White Paper.

**Senator Welch:** We are not too sure of our ground yet.

**Senator Argue:** I was interested in the minister's statement awhile ago when he said that he suspected that under this legislation there would be greater use of it by marketing cooperatives than by consumer cooperatives. I have no reason to think that that is incorrect, but it seemed to me that there would be a large use of this legislation made by the consumer cooperatives. That is only my opinion. I have no special knowledge. Nevertheless, it seems to me that consumer cooperatives have great need of having the kind of interprovincial or national arrangement that could flow from this bill, and I would be highly surprised if they were not going to make a very large use of this legislation. Perhaps they are not. I was just wondering if I could get some information on that.

**Hon. Mr. Basford:** Mine was really an off-the-cuff answer. My impression of most of the consumer cooperatives is that they are organized on quite a small basis—on a local basis and even on a municipal basis. Therefore, they would not fall under this act now. But if what you say, senator, is true, that there is a need for them to become bigger and to organize across provincial boundaries, then this act is there for them to take advantage of.



**Senator Argue:** My own quick opinion would be that the smaller consumer cooperatives will have to get organized on a larger basis or they will go under. There is a great danger of them disappearing. Authorities will tell us later whether I am completely off base or not, but it would seem to me that cooperatives are facing the same kind of situation as any other business organization in the country, namely, the need to enlarge and improve technology and efficiency, and this does come, so we all think, with size. I would think that this is one of the major things that will come from this legislation.

**Senator Carter:** I think I would apply what Senator Argue has said to wholesale co-ops.

**Senator Argue:** Yes, they are part of the consumer field.

**The Acting Chairman:** I wonder if I might interject, Mr. Minister, and say that I was interested to learn from Senator Robichaud's speech on second reading that legislation of this nature had been envisaged as far back as 1910. While I should like to congratulate you and your officials upon bringing forward this very significant piece of legislation, I was wondering why your predecessors may have been so dilatory.

**Hon. Mr. Basford:** At the risk of annoying the Senate I would say that the bill was passed by the House of Commons in 1907, but was defeated in the Senate. I do not know why it was never brought forward again. I made a speech a week ago last Friday in Vancouver in which I said the Senate was being given a chance to redeem itself, and to correct its past error.

**Senator Argue:** It took you 60 years to gather enough courage.

**Hon. Mr. Basford:** Yes, to confront the Senate again.

**Senator Connolly (Ottawa West):** That was another Senate, though. This is a very progressive and forward-looking Senate.

**Hon. Mr. Basford:** Then here is an opportunity to indicate that.

**Senator Hollett:** What is the advantage to a co-op in organizing under this bill rather than under provincial legislation?

**Hon. Mr. Basford:** If it is carrying on business within a province then there is no advantage at all. If it is incorporated, as some of the federal co-ops now are, under the Canada Corporations Act then there are great advantages to transferring under this act, which is specifically designed to deal with cooperatives. If it is a federal co-op that is organized under a special Act of Parliament then I would think there would be advantages to transferring and coming under this act. Of course, changing the objects and the by-laws of a special act co-op or company is, as you know, senator, very difficult. So, if a co-op is presently organized under one of the two methods of federal organization then there will be great advantages

to its being incorporated under this bill, but there would be no particular advantage to a little co-op in the Maritimes in its coming under this act.

**Senator Welch:** Under section 5(3), which is to be found on page 6 of the bill, it appears that the association must carry on business in two or more provinces. Does that mean that a cooperative that does business in one province only cannot be incorporated under this bill; that to be incorporated under this bill it would have to do business in two provinces?

**Hon. Mr. Basford:** If it is operating in only one province it would have to organize itself under the provincial cooperatives act.

**Senator Connolly (Ottawa West):** In other words, the same rule is going to apply to cooperatives as applies to the incorporation of companies. If you apply to the federal authority for incorporation you have to establish that you are going to operate in more than one province, otherwise you cannot have federal incorporation. The same rule will apply to cooperatives.

**Hon. Mr. Basford:** No, the Canada Corporations Act does not contain that requirement.

**Senator Connolly (Ottawa West):** But the administration generally questions you a bit about this.

**Hon. Mr. Basford:** What is clear here is that cooperatives in order to come within this bill must satisfy the minister—that is, the administration—that it carries on or will carry on its undertaking in more than one province. So, if it is operating out of only one province, senator, it could not come under this bill. It would have to go to the provincial authorities for a charter.

**The Acting Chairman:** I would imagine that this has some constitutional aspect to it. Is that correct?

**Hon. Mr. Basford:** Yes.

**The Acting Chairman:** The objection taken by the Senate in 1910 was that it was a matter of property and civil rights, I think.

**Hon. Mr. Basford:** And I dare say there was some political consideration also.

**Senator Connolly (Ottawa West):** I do not want to use this opportunity to examine Mr. Lesage for discovery, but I should like to ask him this question: If a company applies for federal letters patent, and if it is known to you that it carries on its undertaking within one province only, would you readily grant the charter?

**Mr. Lesage:** As the Canada Corporations Act now stands, if it falls within the ambit of the legislative authority of the Parliament of Canada—and a matter may very well be carried on within one province and fall within the ambit of the federal legislative authority of Canada—we would. But to make a clearer picture I think that the cooperative associations are more like the non-share capital associations—the not-for-profit associations—and as a matter of fact we incorporate those non-

share capital associations when they operate on an inter-provincial or on a national basis. I think this example taken from the non-share capital organizations or associations is much closer to cooperative associations than the joint stock companies.

**The Acting Chairman:** Are there any other questions of the minister? Apparently there are not, Mr. Minister. I want to express to you our appreciation for your coming here this morning to address us and to answer our questions. We will see what the future course of this bill is through the Senate. Perhaps we shall create a precedent.

**Hon. Mr. Basford:** My expression was to the effect that I hope you will redeem yourselves.

**The Acting Chairman:** We have with us this morning three representatives of the Co-operative Union of Canada in the persons of Mr. Dierker, the solicitor, Mr. Melvin, the president, and Mr. Phalen, the general secretary, and I will ask those three gentlemen to come forward.

Mr. Melvin and gentlemen, I should like to thank you, on behalf of the committee, for attending this morning's meeting. I know from reading the proceedings of the committee of the other place that you have been following this legislation closely, and I think you are generally favourably disposed towards it. The committee would like to hear from you as to what benefit you will derive from this legislation, and what will be its specific effect upon the cooperative movement in Canada.

**Mr. J. J. Dierker, Solicitor, Co-Operative Union of Canada:** Thank you, Mr. Chairman, for allowing us to appear before the committee. We have had the opportunity of appearing before the committee of the House of Commons and I should like to repeat one of the statements I made at that time, namely, that the Co-Operative Union of Canada is very appreciative of the opportunity it had to take part in the drafting of this legislation, a fact that was indicated by the honourable Mr. Basford. There has been consultation, and we enjoyed our work with Mr. Tassé and Mr. Lesage.

In dealing with the chairman's question as to the benefit to the co-operative movement from this legislation I shall try to answer briefly the question that was raised, I believe, by Senator Argue, which was: What is the advantage of going federal as distinct from going provincial?

There has been a growth in Canada of the corporate nature of a number of cooperatives. As the cooperatives have grown in size and scope of operation they have found that the provincial garb under which they were operating often just did not suit their methods of operation. This has necessitated the securing of private bills of many legislatures in the various provinces. As the Honourable Mr. Basford has indicated, whenever it is necessary to do anything with a private bill it requires another act of the legislature, which is not only time consuming but fairly costly and really should not be required of a continued type of operation.

Also, with the growth of cooperatives across provincial boundaries the differences in provincial cooperative legis-

lation have led to difficult situations in complying with all provincial requirements. This does not mean that there is no need for provincial legislation, which is certainly still required and will continue to be used by most cooperatives.

One example of the necessity to use federal legislation occurred in 1964. It was then found necessary to approach Mr. Lesage and work with him under the Canada Corporations Act to secure a federal charter establishing a co-operative fertilizer manufacturing plant in western Canada. The provincial cooperative acts are not sufficiently broad in scope to provide for manufacturing. This meant that cooperatives had either to wait until the following session of the Alberta Legislature, in that case, or apply for a letters patent charter under the Canada Corporations Act. It was with some difficulty that we convinced Mr. Lesage that he should give us a charter at that time. His criticism really was justified, though I must say that his co-operation was excellent. We finally obtained a letters patent charter and the co-operative will be going under the federal Canada Cooperative Associations Act as soon as it is able to do so.

In addition there are a number of interprovincial supply cooperatives which have been incorporated under the Canada Corporations Act because, generally speaking, the provincial acts were not wide enough in scope to permit their operation. This is part of the reason, Mr. Chairman, for desiring a federal cooperatives act.

**The Acting Chairman:** Could a provincially incorporated cooperative operate effectively using extra-provincial licences in other provinces than that of its incorporation?

**Mr. Dierker:** Providing that the act under which it was incorporated was sufficiently broad to enable it to have the corporate powers to operate as it wished. As I mentioned in the case of manufacturing facilities, the provincial acts are not sufficiently broad to give these powers. At least, there is some real question as to whether they are that broad.

Also, in the registration interprovincially of provincial cooperatives there have been practical administrative difficulties experienced in registering cooperatives back and forth and the necessary requirements for registration imposed on the cooperatives.

**Senator Connolly (Ottawa West):** Is the practice of using extra-provincial licences resorted to frequently in connection with cooperatives?

**Mr. Dierker:** When you use the word frequently I would have to say no in relation to the number of cooperatives that actually exist, senator. As you appreciate, there are not that many large cooperatives which are supplying provincial cooperatives.

**The Acting Chairman:** I notice under clause 23 that the ancillary powers to be granted by this bill are really very extensive. They are probably as extensive as those contained in the Canada Corporations Act, if not more so. Are these broader than those generally found in provincial legislation?



**Mr. Dierker:** Yes, Mr. Chairman, they are. I think it is a fair comment to say that the bill was drafted in a form whereby it will apply to all types of cooperative operation envisaged in the future without amending the bill. It also provides for a very flexible type of administration.

**Senator Argue:** Who are members of the Cooperative Union of Canada? All the cooperatives or almost all?

**Mr. W. B. Melvin, President, Co-Operative Union of Canada:** The Co-operative Union of Canada has in membership about 35 organizations which are either provincial or regional in nature and scope and a few that are also national. Through them their members find an involvement in the co-op movement of Canada.

To be a little more specific, it includes the grain marketing pools, Maritime cooperative services, federated cooperative services in western Canada, three cooperative insurance organizations. It is quite a variety, including some fish marketing organizations, one on the west coast and one in the Maritimes, the United Maritime Fishermen.

It is confined in its membership to the English-speaking sector, as we term it, of the cooperative movement. Le Conseil Canadien de la Coopération is the organization representing the French-speaking sector.

**Mr. Dierker:** Mr. Chairman, if I might add a comment with respect to Senator Argue's question. In so far as Le Conseil Canadien de la Coopération is concerned, we also worked very closely with this group in the building up of this bill. Unfortunately, Mr. Leger, the president of that organization, could not be here today.

**Senator Argue:** Is the legislation equally applicable to them, or could they make equal use of it once it is law?

**Mr. Dierker:** That is right.

**Senator Burchill:** Does this legislation have anything to do with the national association? It does not refer to that at all, does it?

**Mr. Dierker:** Senator, I am not sure I understand the question when you say national association.

**Senator Burchill:** You gentlemen referred to the national association of the various cooperatives.

**Mr. Dierker:** The Co-operative Union of Canada.

**Senator Burchill:** Yes, exactly; this legislation does not deal with that, does it?

**Mr. Dierker:** The Co-operative Union of Canada will become one of the cooperatives under this bill.

**Mr. Melvin:** It is presently incorporated as a Part II company under the Canada Corporations Act. When this legislation is enacted we would seek continuation, is the term I believe, under this act.

**Senator Burchill:** Is it now established under the Canada Corporations Act?

**Mr. Melvin:** Yes. If I may say so, it is an example of the problem we have. We could find no other home, so

we went there. We would be very happy to find a home under this legislation if it were enacted.

**The Acting Chairman:** Your present members would become members of the new cooperative association under this act, I presume?

**Mr. Melvin:** Yes, I believe continuation is the term; we would continue, but we would be under this act instead of the Canada Corporations Act.

**Senator Carter:** Does this act not provide for a certificate of continuation?

**The Acting Chairman:** Yes.

**Senator Carter:** So you get a certificate from the minister and that automatically puts you under this bill?

**Senator Macnaughton:** After application.

**Mr. Melvin:** Yes.

**The Acting Chairman:** Are there any other questions?

**Senator Argue:** Without disclosing any trade secrets, could Mr. Melvin give us a brief picture of what he expects the co-op movement will be doing with this legislation? They have been wanting it for a long time and now they are going to get it. Just how useful will it be? Will it help with expansion, will it help co-op's pay their way, pay dividends, etc.? Will it be just a very tiny help?

**Mr. Melvin:** Earlier you remarked on the fact that cooperatives are having to grow larger in order to be efficient and hold their place and do their job in our society. This is very true. There has been quite a large development in recent years for organizations to amalgamate, or for mergers to take place, exactly for this reason, to do a good job. An illustration might be the fact that the wholesale organization in Western Canada, Federated Cooperatives Limited, now operates throughout the entire western region, the four western provinces. It was originally a provincial organization and contained within provincial boundaries. Under those circumstances provincial law was quite adequate in that day. Now it is not. We have one insurance organization that is operating throughout the country. I am sure it will very seriously consider coming under this legislation at the appropriate time. I feel, and others in our organization share the feeling, that this legislation will make it possible for us to operate more efficiently and to do the job we envisage for the people that belong to our cooperatives.

I would like to make this point if I may, Mr. Chairman. Although the regional organizations that I have mentioned are operating over larger territories, the base on which they stand is still the local cooperative back in the community, whatever the community may be.

**Senator Argue:** And still will be.

**Mr. Melvin:** And will continue to be. But they need more effective instruments to serve them than we have had in the past, and I am sure this legislation will help us very much in this regard.



**Senator Argue:** Perhaps I might bring just a wee bit of information to the committee, which underlines perhaps the need of this being done, and ask again whether it will do the job. The province I come from, Saskatchewan, has been at least one of the leading provinces in the co-op movement. I am a member of all kinds of co-ops, and I have never really stopped to count how many. As I get their annual reports I find more and more of them in what I would say would be very serious financial difficulties. One of the great co-ops in Regina has a turnover of \$5 million and is losing money; the big co-op in Saskatoon has a turnover of \$10 million and is losing money.

I hope I am wrong, but I am afraid that the investments by way of savings of many co-op members in some of our tiny co-ops throughout Saskatchewan are in danger and, to use a trade name, these little co-ops may be facing bankruptcy. I hope I am wrong, but some of them are not paying out any more dividends; even estates are not always able to claim, as I understand it, the moneys that are invested in these local co-ops. I am just wondering if this just might do the job. I think there is a big job to be done.

Secondly, I wonder if the co-op movement generally is doing any research in depth into perhaps some new and different policies to meet a new and different situation. Mr. Melvin can correct me if he thinks I am wrong, but I think one of the great difficulties facing the co-op movement is that when they go out to finance, by and large they pay going rates of interest—8, 10 or 12 per cent. Many corporations are able to finance through issues of shares, and at least initially are not obliged to have this fixed charge. I wonder if there are any new policies and new undertakings coming up that will really put the co-op movement in a competitive position. Right now I do not think the co-op in a general sense is effectively competing with ordinary business organizations.

**Senator Connolly (Ottawa West):** Before Mr. Melvin answers that, could I ask Senator Argue a question, because he has supplied information. I am afraid I do not know too much about the structure of the co-operative movement, as he does, but it is true of corporations that they can go and get equity capital, share capital, and normally pay no interest for that. This is the investment of the people who buy the shares. Is there nothing comparable in the co-op movement? Do you not buy a interest in a cooperative and have that as a sort of equity investment?

**Senator Argue:** That is really for Mr. Melvin. My little experience is that a co-op member puts in \$5 or \$10, a very nominal fee, and the co-op gets going.

**Senator Connolly (Ottawa West):** Is that a loan?

**Senator Argue:** No, it is a share, an investment in one share. The co-op then gets going; it makes some money; on the money it makes it very often declares a dividend: it says, "Hazen Argue bought from the co-op \$1,000 worth of stock. We are paying him a five per cent dividend of \$50," but they keep my \$50 to help the co-op grow. So I pay income tax on the \$50, and in the meantime they have got it. That is all right as a financial

means when the savings are there, but the savings no longer seem to be there in any real sense; in fact, there are many real losses. So when the co-op wants to expand it has to go out into the money market, or some other place, and borrow money at a fixed rate. Senator Connolly asked me the question. I am just a local farmer on a local co-op and I do not know all about it, but we have the witnesses here. That is my impression.

**Senator Connolly (Ottawa West):** I imagine the witness would confirm what Senator Argue has said.

**Mr. Melvin:** I would like to make a general comment, if I could, and then perhaps ask Mr. Dierker if he could be more specific, because he is working continuously with the cooperatives in this area.

The general comment I would like to make is that the cooperative movement and the Co-op Union of Canada recognize exactly the kind of thing Senator Argue is saying. We are in a very different kind of environment and atmosphere than we were when cooperatives were started. The little place in the small community, or on the back street and so on, just does not fit any more. The organizations with which we compete for business and so on are well organized, they are extensive, and we must be as efficient as they are to do our job.

In the past year we have had a number of meetings to examine this very problem, and part of the solution as we see it is developing larger units, not necessarily out at the front line, but larger back-up units that can provide services of many kinds more efficiently than can a small one. I used Federated Cooperatives as an example. A provincial operation was adequate at one time, but it is not now in the kind of country in which we are living. This is progress I feel. However, I think it would be more helpful to you if I asked Mr. Dierker out of his experience from day to day, working in the legal field and so on with cooperatives, to make some comments.

**Senator Argue:** Before you leave that, would you care to comment on the general statement I made about financing, that co-ops must often borrow money today at what is often a high rate of interest?

**Mr. Melvin:** This is true.

**Senator Argue:** As a major means of financing rather than as in the past perhaps when they have been able to obtain it by retaining profits or savings, whichever you would wish to call it.

**Mr. Melvin:** I think we would hope that historically we have had some role or some part to play in the bringing down of margins so that people might be served at less cost. I suppose in a sense we have helped to bring about our own present problem, to which you refer. It is quite true that the margins are changing and you have to look elsewhere for the financing, and this very often takes us to the general market. Maybe Mr. Dierker could comment, if I may ask him.

**Senator Welch:** Is this plan going to help the situation any?

**Mr. Melvin:** I think it will help, because it will facilitate the kind of reorganization we need. This legislation will make it easier to organize our back-up organizations, our wholesales and other organizations of that kind on an interprovincial basis, which is what we must have, if we are going to be strong enough to do the job we have set out to do.

May I make one other comment, sir?

**The Acting Chairman:** Please.

**Mr. Melvin:** It is rather general in nature, I realize; it is not a sort of day-to-day business kind of consideration; but I feel strongly, and I know that others do, that up until the present time, or let us say up until the possible enactment of this legislation, cooperatives have really been in a little bit of a wilderness in Canada. The ordinary joint stock kind of organization is recognized in law; mutual organizations are recognized in law and so are other types of fraternal organizations and so on, particularly in the insurance field with which I am a bit familiar. But the cooperative as such has, federally, not been recognized by having a statute which would give it a home. This for us is quite important. Perhaps it is only psychological, but psychology is pretty important. The point is that it would give us a home.

I work for an organization which is a federally incorporated cooperative company; but it is a company, and we had to use the Canada Corporations Act; with the assistance of the officers of the department we are able to make some provision in the letters patent and in our by-laws that gave us cooperative characteristics. But they were not recognized in law by a general statute. We had to take a statute and try to mould it to the extent that it was possible of suit our purposes.

This kind of legislation would give the cooperative movement a home in Canada federally. We now have provincial homes but we have some other jobs to do that require a federal statute. This is our feeling.

**Mr. Dierker:** I should like to make one or two comments in reply to the questions raised by Senator Argue. Before doing that perhaps I should advise the honourable senators that Mr. Melvin is also Secretary of CIS Limited, a management company for a number of cooperative insurance companies; and when he talks about his employer that is the company he is speaking about. That is in addition to his office as President of the Co-operative Union of Canada.

Senator Argue, your questions have been primarily directed to us as a result of your experiences in Saskatchewan. I should tell you that there is a task force among the Saskatchewan cooperatives now established with a view to considering a form of centralized retail operation under the Canada Cooperative Associations Act, if it becomes law. Otherwise it will be under some other garment if some other garment can be found. It is hoped that by setting up a formula such as that, and the collectively owning of the shares, assets and the various investments of the cooperative members of western Canada, that some of the economics that you referred to can be achieved.

With regard to the issuing of share capital by cooperatives, this is not unknown. United Cooperatives of Ontario, which is a cooperative which may come under this act, does in fact issue a preference share for financing purposes. Again, it is a type of debt issue, because there is a fixed return on preference shares.

Of course you will be appreciative of the fact, though many of the honourable senators may not be, that it is difficult in a cooperative to issue an equity share because of the very nature of equity shares in a cooperative, whereby voting is restricted and capital gains, so-called, if any, are restricted, if not in fact non-existent, so that, consequently, the cooperative shares really have no attraction to the investor.

United Grain Growers has been experimenting, as you know, senator, with a form of equity share with which they have had some success, and it may be that that pattern will be looked at by other cooperatives. I can tell you that this matter is under very careful consideration at this time for the reasons that you have outlined.

**Senator Connolly (Ottawa West):** Mr. Chairman, we have before this committee very frequently companies both large and small who play a vital part in the economy of this country. The large corporation, as a company, usually has little difficulty with its financing. It goes to the markets either for equity or for debt securities; it borrows at home; it borrows abroad; it has large ramifications. Its primary motivation is profit. That is the reason for its existence. It is the trustee acts of the various provinces that force it into this position.

As I understand the cooperative, the reason for its existence is that the cooperative is primarily formulated to help people who are not as well fixed as the element in the community that can invest in corporate securities of various kinds. It is to help primarily the poor, perhaps. It is to help the people who otherwise could not achieve certain social and economic objectives unless the cooperative were there.

I think that is the distinction between the philosophies of the two types of organization. Am I right on that so far?

**Mr. Melvin:** Yes, senator.

**Senator Connolly (Ottawa West):** Do you see a development in Canada where the cooperative movement is going to be oriented more towards helping to produce profits than helping people to help themselves?

**Senator Kinley:** Both.

**Mr. Melvin:** Well, you referred, Senator Connolly, to assisting the poor to help themselves.

**Senator Connolly (Ottawa West):** I know this does not apply in Saskatchewan, because out there they are all rich.

**Senator Argue:** No, we just have a lot of ordinary people. That is all. You do not have to be poor to belong to a cooperative.

**Mr. Melvin:** I must say in all honesty that cooperative organizations find it difficult to assist those who are



second or third generation poor. I am not sure of the proper sociological term, but it is difficult to assist the poor who are second or third generation poor, those for whom poverty has become almost a way of life. They require other assistance. Cooperatives have a role to play here, however, because their methods can be applied.

**Senator Connolly (Ottawa West):** Agreed.

**Mr. Melvin:** But to generate the necessary strength to do this job within themselves—I think cooperatives have not that capability. However, we are able to give assistance and to provide a way of self-help to people who have some means. They may be poor, but they have the means of improving their position. They may have ability or have some small monetary means or some bit of possession—land or whatever it may be.

**Senator Connolly (Ottawa West):** Or it may be something that they produce.

**Mr. Melvin:** But at any rate there are the tools with which to work. The cooperatives are also serving a good many of the people who are in what you might call the lower-middle income stratum of society. I hope I am addressing myself to your question.

**Senator Connolly (Ottawa West):** You are doing all right.

**Mr. Melvin:** But the possibility of doing something for those people who are locked into poverty seems to be beyond our capacity, other than to provide a method.

**Senator Connolly (Ottawa West):** You are on the fringe of that area, I take it—perhaps the upper fringe.

**Mr. Melvin:** I would think so. One group which we have been able to assist, and which we continue to assist today, is the native population of various parts of our country, and particularly in northern Saskatchewan and northern Manitoba. The cooperative method generally has been applied to their situation with a good deal of success. Mr. Phalen has had actual experience in that area.

**Senator Connolly (Ottawa West):** I was thinking primarily of the cooperative movement that was developed in Nova Scotia under the aegis of St. Francis Xavier University. I think that that was designed primarily to help the fishermen and farmers down there who were not organized in any way. They were certainly on the lower rung of the economic ladder, and I gather the movement has not only been successful there, but the idea has been exported. I have found it in various parts of the world to where specialists from there have gone to assist in the establishment of co-operative movements comparable to the one that was established originally by the Cody people.

**Mr. Melvin:** Yes, the Cody International Institute, which has grown out of that program at St. Francis Xavier University, is renowned as a centre for training of people from abroad.

**Senator Connolly (Ottawa West):** Did you by any chance appear before the Special Committee of the Senate on Poverty?

**Mr. Melvin:** Yes, we did, and we presented a brief. I might also add that the Saskatchewan Cooperative Credit Association, which is one of our member organizations also appeared and presented a brief which was considered to be a very thoughtful and helpful document. The chairman of the committee mentioned this.

**Senator Argue:** That is the credit union end of it.

**Mr. Melvin:** Yes, it ties the credit unions and the cooperatives together.

**Senator Welch:** I should like to make one remark regarding the cooperatives in Nova Scotia to clarify what Senator Connolly said. I cannot talk about the fish end of it, but I can talk about the agricultural end of it. In Nova Scotia they have built up a very large agricultural cooperative. It is a very nice thing for the cooperative. It is worth a lot of money. Although it did lose some money this year, it has a great reserve. As far as shippers are concerned, they are not doing as well through the cooperative as they were when they were shipping themselves or through other companies. All I can see the cooperatives doing in the agricultural area of Nova Scotia is diminishing the number of people who used to ship. When a shipper joins a cooperative it means that we lose another of the fellows who gave us that same service. It takes practically all of the money earned to operate the cooperative, especially when they are borrowing money at 8 or 9 per cent. I cannot see where we would be very much worse off if the cooperatives folded tomorrow.

**Mr. Melvin:** I do not think I am aware of this particular situation, senator.

**Mr. Dierker:** Perhaps I could make one general comment. I am certainly not aware of the factual situation of which you are speaking. However, there is one thing that you must keep in mind, senator, and that is that at least to this point in time the cooperative system is the one that has been devised whereby the producer himself will become an owner of that facility that you have been talking about. You have indicated that it is a facility of some size, so the shipper will have a portion of ownership in this.

**Senator Welch:** Yes, you have a portion of the ownership, but you do not get anything in return. I might own a part of the cooperative, but I do not get one blessed thing in return. I do not get any interest. I get absolutely nothing. I put my money in there, and there it is.

**Senator Connolly (Ottawa West):** You get the service.

**Senator Welch:** I get the same service I can get around the corner from anybody else.

**Senator Macnaughton:** You get moral satisfaction.

**Senator Burchill:** Like Senator Welch, I am interested in cooperatives. Is not good management the answer to



the success of a cooperative as well as it is to the success of a credit union? That has been my experience in our part of the country. Is not that the final answer?

**Mr. Melvin:** Mr. Chairman, it is certainly a very large part of the final answer.

**Mr. J. T. Phalen, General Secretary, Credit Cooperative Union of Canada:** Mr. Chairman, a cooperative is people trying to solve problems. We have heard discussions like this around similar tables across the country. The question is: What are the problems and what can we do about them. The senator's point of good management is a key answer.

**Senator Welch:** I should like to ask one more question. Is this legislation the brain child of the task force that covered Canada during the last two or three years?

**The Acting Chairman:** Are you referring to the Special Joint Committee on Consumer Credit, senator?

**Senator Welch:** No, I think they called themselves the task force. They crossed Canada, and they put out a book entitled "Agriculture in the Seventies".

**Mr. Phalen:** That was the agricultural task force.

**The Acting Chairman:** I think not, senator. I think the recommendation that this legislation be enacted was contained in the report of the Special Joint Committee on Consumer Credit, which was published about four years ago.

**Senator Connolly (Ottawa West):** These witnesses will not take the same dim view of the Senate and its committees that the minister jokingly took.

**The Acting Chairman:** Apparently there are no further questions, gentlemen, so I will thank you for your attendance here this morning. We appreciate it very much. Our interest in your problems is evident from the questions put to you.

I asked Mr. Lesage and Mr. Tassé to remain, and they have very kindly done so. May we turn our attention now to the bill itself. It is a document of 107 pages which you will find on the table in front of you. Are there any questions as to specific sections of the bill? Perhaps I might start off by asking either Mr. Lesage or Mr. Tassé a question. Our witnesses referred to cooperative mutual insurance companies, and I was wondering if those companies fall within section 5(1)(c), which is a prohibitory section of this bill, or do they operate in some other manner that allows them incorporation?

**Mr. Roger Tasse, Assistant Deputy Minister, Department of Consumer and Corporate Affairs:** They would not have the right to come under this bill. They could come under the Canadian and British Insurance Companies Act if they are organized federally.

**The Acting Chairman:** They would have to come under the Canadian and British Insurance Companies Act rather than this legislation?

**Mr. Tasse:** That is true, Mr. Chairman.

**The Acting Chairman:** Are there any other questions the members of the committee would like to direct to our witnesses?

**Senator Kinley:** Mr. Chairman, are the directors of the insurance company appointed by the cooperative? I think that when I was in the Commons they were appointed by statute.

**The Acting Chairman:** I am afraid I cannot answer that question.

**Senator Kinley:** I think the reason for it was that they wanted them under the blanket of their organization, and that sort of thing. I remember that when I was in the Commons it was an issue. The directors were not appointed by the cooperatives. Is that not true?

**The Acting Chairman:** I doubt that these witnesses would be familiar with that aspect of the matter.

**Senator Kinley:** I thought you were dealing with insurance.

**The Acting Chairman:** No, we were not.

**Senator Kinley:** They have an insurance company.

**The Acting Chairman:** Yes; as to the details of that insurance company our witnesses would not be competent.

**Senator Kinley:** Is it provincial? It used to be federal when I was in the House of Commons.

**Senator Macnaughton:** Mr. Chairman, we have 138 such clauses in this bill; are we to go through it clause by clause?

**The Acting Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Honourable senators, we have also referred to this committee Bill C-174, to establish the Tax Review Board to which Senator Connolly (Ottawa West) spoke yesterday on second reading. Mr. Ainslie of the Department of Justice is here. The time is now 10.45 a.m. Would you prefer to deal with this bill this morning? The committee is meeting on the Canada Grain Act tomorrow or Friday morning.

**Senator Macnaughton:** May I suggest that we defer the bill, Mr. Chairman. There is an important conference this morning.

The committee adjourned.

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Ottawa, Thursday, December 17, 1970

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-174, an act respecting the Tax Review Board, and Bill C-175, an act respecting Grain, met this day at 10 a.m. to give consideration to the bills.

**Hon. Daniel A. Lang** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, this morning we have two bills before us; firstly, the Tax Review Board Act; and secondly, an Act Respecting Grain.

In connection with the first mentioned act we have Mr. G. W. Ainslie here, the Assistant Deputy Attorney General. Without further ado, I would ask Mr. Ainslie briefly to review the provisions of this bill. I think that he is the man who is quite competent to answer any questions that we have as to its technical or legal implications.

**Senator Connolly** (*Ottawa West*): You are certainly right on that, Mr. Chairman.

**Mr. G. W. Ainslie, Assistant Deputy Attorney General:** Mr. Chairman, as Senator Connolly advised the Senate on second reading, the purpose of this bill is to update the provisions of the Income Tax Act, the Estate Tax Act and the Canada Pension Plan in relation to appeals to an administrative tribunal.

As you are undoubtedly aware, the Carter Royal Commission on Taxation had recommended the creation of a tax court. They recommended there should be a tax court with the right of appeal to a panel of three judges. They contemplated the scheme would be that the appeal would be to the Exchequer Court. With the new Federal Court bill we now have a tax court which is the trial division of the new Federal Court, and there will then be an appeal from that court to the Court of Appeal.

Having done that, there then arose the question as to whether or not there should still be kept an administrative tribunal to which a taxpayer, at his option, could go, rather than going directly to a court of law. I believe, as was mentioned in the Senate, this was the original idea that was advocated by the Senate in 1946, and as far as the officials of the Government are concerned we felt that there was much merit in having this scheme, whereby you had a tribunal and a taxpayer, at his option, could decide to go to either the tribunal or to the court.

With the administration of the Tax Appeal Board it had been felt that there was perhaps some difficulty in the fact that the tenure of the members of the board was for a period not exceeding ten years. This provision has now been changed so that the people appointed to the new board will have tenure until seventy.

**Senator Beaubien:** That is, until 70 years of age?

**Mr. Ainslie:** Yes. In other words, they will have a security of tenure that they did not have in the Tax Appeal Board.

**Senator Connolly** (*Ottawa West*): It will be the same as applies to judges of the Federal Court.

**Mr. Ainslie:** Yes. There is also provision whereby the members of the new board will be entitled to a pension on the same basis as a judge's pension. Those are the first two significant changes.

Another change that has been made is to make the board responsible to the Attorney General rather than to

the Minister of National Revenue. The Carter Royal Commission felt, under the existing scheme, that it was undesirable that the board should in fact and in law report to the minister who was always a party in the proceedings before it.

There is also in the act a provision whereby either the chairman or the assistant chairman must be a person who is versed in the laws of the Province of Quebec. Again, this is a matter of some importance since the board has jurisdiction in respect of appeals under the Estate Tax Act. In a great number of appeals under the Estate Tax Act the issue is often a question of law in relation to property and civil rights, as opposed to the statutory provisions of the Estate Tax Act.

In addition, there are provisions in the bill to indicate that the board is to act in an expeditious and informal manner, so that the parties appealing to the board will have an assurance that they can have their appeal heard in a cheap and inexpensive manner.

The other major provision that I should like to bring to your attention, Mr. Chairman, is the provision whereby the Income Tax Act is to be amended so that if there is an appeal to the board, and if the minister loses the appeal, and if the amount of tax involved. . .

**Senator Connolly** (*Ottawa West*): Or if he makes it.

**Mr. Ainslie:** Yes. If the amount of tax involved does not exceed \$2,500, and the minister appeals that decision to the court, then the taxpayer will receive his costs in any event of the cause. There have been situations where the amount of money involved was very small but where the interpretation of a particular section of the act affected millions of taxpayers. If the minister is in the position where he feels he must appeal in order to have the law adjudicated upon then the taxpayer will have the assurance that his costs in the Federal Court will be paid in any event of the cause. This is to alleviate the feeling that people sometimes have that if they take their appeal to the board and are successful they might then be faced with the prospect of the minister's appealing to the Exchequer Court which might reverse the board's decision, and if the court reversed the board then the normal rule would be that the taxpayer would have to pay the full costs.

**Senator Kinley:** Is there anything in the bill with respect to the personnel of the board? Are they all to be lawyers?

**Mr. Ainslie:** The provision in relation to the board is that the chairman and the assistant chairman must be lawyers. I direct your attention to clause 4(2) which provides:

No member shall be designated as Chairman or Assistant Chairman unless he is or has been

(a) a judge of a superior court of Canada or of a superior, county or district court of a province, or

(b) a barrister or advocate of not less than ten years' standing at the bar of any of the provinces. . .



That is a provision in relation to only the chairman and the assistant chairman, and it is the same as under the existing act. So, other members who are not necessarily lawyers could be appointed.

**Senator Kinley:** Chartered accountants, for example, could be appointed as members?

**Mr. Ainslie:** They are not precluded from being appointed to the board under this bill.

**Senator Beaubien:** How many members of the present Tax Appeal Board are not members of the legal profession?

**Mr. Ainslie:** My understanding is—and I stand to be corrected—that all of the members on the present board are, in fact, lawyers. However, I am not certain, and I may be wrong there.

**Senator Kinley:** The chairman gets \$24,000 a year.

**Mr. Ainslie:** There is provision there for the Governor in Council to fix the salary provided it shall be at least \$24,000 a year.

**Senator Kinley:** I think the Senate ought to take notice of that.

**Senator Connolly (Ottawa West):** Mr. Chairman, may I ask the witness a question arising out of a point he made a little earlier, and which is not quite clear to me from my reading of the section. The minister is responsible for costs in an appeal which he takes to the Federal Court when the amount of the tax involved is \$2,500 or less. Suppose for the sake of argument that the minister finds that the Appeal Division of the Federal Court has not given him the kind of decision he feels is warranted and that he should appeal further. In that event is the taxpayer going to be saddled with the costs that are involved in either the Appeal Division of the Federal Court of Canada, or in the Supreme Court of Canada should the minister go that far?

**Mr. Ainslie:** Senator Connolly, I wonder if I could answer that question by saying that in my view the word "court" in the new section 101 of the Income Tax Act, which is to be found on page 13 of the bill, is sufficiently broad as to include the court of appeal. In other words, with this section incorporated in the Income Tax Act, I see no difficulty in regard to the court of appeal.

Now, in regard to an appeal to the Supreme Court of Canada—I am sorry for not having with me the new Federal Court Act, but I think I am correct in saying that one would have to obtain leave of that court because the amount in controversy would be \$2,500. The practice that has applied, certainly in the United Kingdom and I assume that as a matter of course the court in exercising would only grant leave on conditions, and I would assume that as a matter of course the court in exercising its discretion would allow the appeal provided that the minister undertook to pay the costs.

**Senator Connolly (Ottawa West):** Yes, but if we say that in the Senate, or if a witness says that before a

committee of the Senate, we do not bind the court, because it is a discretionary matter.

**Mr. Ainslie:** I appreciate that.

**Senator Connolly (Ottawa West):** However, I think that perhaps it is all right.

**Mr. Ainslie:** May I say, sir, that there was one appeal in respect to which we had to obtain the leave of the Supreme Court of Canada, and in that case leave was, in fact, granted on the basis that the minister had to pay the solicitor-client costs throughout.

**Senator Connolly (Ottawa West):** The solicitor-client costs?

**Mr. Ainslie:** Yes, that was the order. It was a very small amount that was in controversy—it was, in fact, \$25.00—but it involved a question of whether a particular plan was a deferred profit-sharing plan or an employee's profit-sharing plan, and it involved 2,000 or 3,000 employees. So, it was a matter of some importance, and the court there did give leave, but it was on the terms of the minister having to pay the costs.

**Senator Cook:** Who won?

**Mr. Ainslie:** I am sorry, but I cannot tell you now. I have forgotten the result.

**Senator Beaubien:** Mr. Ainslie, will the Tax Review Board be in a position to give a ruling? If a taxpayer is contemplating some particular transaction and wants to know the tax implications, can he go to the board and obtain a ruling beforehand?

**Mr. Ainslie:** No, this board will deal only with appeals from assessments made by the minister. In other words, the procedure will remain the same. The jurisdiction of the board is limited. There will have to be an assessment, and after the assessment an objection, and then the minister will have to refuse to accede to the objection, and then in that case the taxpayer will appeal to the board, but the board will have no jurisdiction to entertain questions of law or to give a ruling at the wish of a taxpayer.

**Senator Beaubien:** I think that that is terribly important. Many people go to the Department for a ruling, and when they get it they are told that it is not binding.

**Senator Connolly (Ottawa West):** Many people can go to the Department and not get a ruling.

**Senator Beaubien:** Yes, they will either not give you a ruling or give you a ruling that is not binding.

**Senator Benidickson:** It is only recently that you have been able to obtain a ruling from the department.

**Senator Beaubien:** This board seems to me to be the place to which you should be able to go.

**Senator Connolly (Ottawa West):** With all due respect to Senator Beaubien's views, Mr. Chairman—and I can understand why he puts them forward—if we try to change the character of the Board to the extent of giving



it power to give rulings before the fact, it would, I think, create a very cumbersome situation. I would prefer to see something in the Income Tax Act to cover Senator Beaubien's point. What he is talking about is something that may seriously affect business decisions.

**The Acting Chairman:** As I understand it, formal rulings are now made on request to the department, but I understand that they are all of dubious legal significance.

**Senator Beaubien:** They tell you that. I know of many cases where people have asked for their opinion, and where they have been told: "We think, but..."

**Senator Kinley:** Mr. Chairman, we know some of these things, but we want to get them on the record. I should like to ask Mr. Ainslie if it is possible to take an appeal against the discretion of the minister on class or kind.

**Mr. Ainslie:** No, sir, because the jurisdiction of this board is limited to appeals under the Income Tax Act. The discretion as to class or kind is a discretion exercised under the Customs Act.

**Senator Kinley:** By the minister.

**Mr. Ainslie:** Yes, sir, but there is no jurisdiction in this board to deal with customs matters; they go to the Tariff Board. I am sorry, but I am not familiar with the exact scope of the jurisdiction of the Tariff Board.

**Senator Flynn:** Perhaps there would be an appeal from the Tariff Board to the federal court.

**Mr. Ainslie:** Yes, there is.

**Senator Kinley:** My interest is that industries are given huge amounts in subsidiaries and a man who needs a machine to build up a viable plant seems to be in trouble getting it. The discrimination is not good.

**Senator Connolly (Ottawa West):** I think as a matter of practice though that within the customs department a ruling before the fact on class or kind before an importation is a relatively easy ruling to obtain. They will tell you very quickly before you import.

**Senator Kinley:** Well, I have had experience; I know you have to fight to get what you want.

**Senator Connolly (Ottawa West):** That is undoubtedly true in every case.

**The Acting Chairman:** Mr. Ainslie, probably the committee is more familiar with the appeal procedures under the Income Tax Act than those under the Canada Pension Plan Act and the Estate Tax Act. It might be useful if you would refer to the provisions as to how appeals are carried under those two acts.

**Senator Cook:** Clause 9. (1) provides:

Where an appeal is made to the Board under any Act, the appeal shall be made in writing but no special form of petition or pleadings shall be required by the Board, unless the Act under which the appeal is made expressly otherwise provides.

What is the effect of that? I would have thought that dispensing with pleadings would make the matter extremely difficult.

**Mr. Ainslie:** The reason for that provision is twofold. Our experience has been that if the taxpayer has retained a solicitor prior to the filing of the notice of objection, the notice usually clearly sets forth the matters in dispute. It is then a waste of paper to require the solicitor or taxpayer to rewrite it.

Our experience has also been that if a taxpayer does not retain a solicitor for the preparation of the objection he normally does not do so for the preparation of the notice of appeal. Therefore, before the present board there are some notices of appeal that quite frankly really do not disclose the issues. The board is faced with the problem of whether it should act as a court and strike these documents out on the grounds that they have not complied with the rules of adequate pleading, which would defeat the whole purpose of the board and prevent it from being a tribunal of easy access.

Therefore we felt that on balance it would be preferable; there is a risk, but it would be preferable to allow the board to hear an appeal even though the notice of appeal or the document instituting the appeal is not one which would normally be expected from a solicitor.

**Senator Connolly (Ottawa West):** That has been the law for a long time.

**Mr. Ainslie:** That is correct, sir. The other point is that in our view no harm can come from this procedure. There is the appeal to the court so that in the long run it would encourage or facilitate individuals appealing to the board without the necessity of retaining a solicitor.

**Senator Connolly (Ottawa West):** What was your second reason?

**Mr. Ainslie:** The first one was just to dispense with the necessity of lawyers' offices having to retype the notice of objection. In 90 per cent of the cases the notice of appeal to the board is identical to the allegations of fact and the reasons contained in the notice of objection. There was a tremendous amount of paperwork involved.

**Senator Benidickson:** When Senator Connolly very ably outlined the procedures under the bill on second reading he intimated that it was the original intention with respect to the existing board that its procedures would be similarly very simple but that over the years formalities have developed. This, of course, makes it very plain that it is not the desire to have these procedures other than simple and inexpensive. Senator Connolly said that even an objection by letter would be adequate to put things in motion.

**Mr. Ainslie:** Yes, sir.

**Senator Cook:** That is my point; I am not raising any objection. An appeal is commenced in writing but it might emerge as an entirely different issue. If there are no pleadings the case may open and become an entirely different issue than was originated.

**Mr. Ainslie:** That is the risk that the Minister of National Revenue will run. However, in our view on balance the risk is very nominal because if the issue should turn out to be something entirely different...

**Senator Cook:** And of importance.

**Mr. Ainslie:** Then the taxpayer by failing to disclose adequately in his document the issue is inviting an appeal to the court. Therefore in the long run it would not be to the taxpayer's benefit to cloak or disguise the real matter in dispute.

The other point is that as a matter of practice I find that in most cases the department is well aware of the issue, because after the assessment has been filed the taxpayer is obliged to file a notice of objection with the minister and generally there is correspondence or interviews. Therefore in the majority of cases the real issue of fact or law between the parties is known before the case commences.

**Senator Cook:** The only one who would suffer hardship would be the poor old judge.

**Senator Benidickson:** The questions put by Senator Lang were very important and should be dealt with before we are diverted.

**Mr. Ainslie:** In regard to appeals under the Estate Tax Act, section 23 of the act provides that a person who has filed an objection to an assessment may appeal to the board. It also provides that the provisions of the Income Tax Act regulating all matters in connection with an appeal under the Income Tax Act are to apply *mutatis mutandis* to the appeal under the Estate Tax Act. So that the procedure under the Estate Tax Act is the same as that under the Income Tax Act.

In regard to the Canada Pension Plan Act, section 37 gives a limited jurisdiction to the board to entertain an appeal in regard to the quantum of self-employed earnings. In other words, the Government wish to be in a position whereby income for the purposes of the Canada Pension Plan Act would be the same as that for the purposes of the Income Tax Act. It was felt that it would be undesirable to have one tribunal saying the income is X dollars and another arriving at a different amount.

For that reason section 37 of the Canada Pension Plan Act provides that:

Subject to this Part and except as otherwise provided by regulation, the provisions of Divisions F, I and J of Part I of the *Income Tax Act* with respect to assessments,

I will leave something out,

... objections to assessments and appeals, ... apply *mutatis mutandis* in relation to any amount paid or payable as or on account of a contribution for a year in respect of self-employed earnings...

Have I answered the question satisfactorily, Mr. Chairman?

**The Acting Chairman:** Mr. Ainslie, I have an idea that there is an itinerant tribunal under the Canada Pension Plan Act consisting of three judges. I am not sure what appeals they hear.

**Mr. Ainslie:** The Canada Pension Appeal Board is established under the Canada Pension Plan Act. The jurisdiction of that board, I believe, is limited to the determination of the question of status as employee or self-employed. It also relates to the question of the amount of benefits payable under the act. However, that board does not have jurisdiction in regard to the narrow issue of determining the amount of income of a self-employed person.

**The Acting Chairman:** Are there any questions on this area?

**Senator Connolly (Ottawa West):** I think Senator Benidickson had another question.

**Senator Benidickson:** That was on another matter. Mr. Ainslie, I have not got *Hansard* in front of me, but my recollection of the very able speech Senator Connolly made on second reading is that he indicated that under the terms of this bill certain members of the existing Tax Appeal Board, notwithstanding that they have not filled their ten-year tenure, will be compulsorily retired. He also told us that they would have the right to render judgments. Notwithstanding their retirement, they will have the right to render judgments that have not been rendered. However, he indicated that there was a backlog. I think he only gave us the backlog for the board as a whole, for retiring and non-retiring members of the Tax Appeal Board. With respect to those that are retiring when this bill passes, have you any indication how many of them will likely render judgments following hearings that they undertook before retirement? I believe they retire on full pay.

**Mr. Ainslie:** The provisions are to be found in clause 18. You will see that subsection (3) provides:

Each member of the Tax Appeal Board who is seventy years of age or older on the coming into force of this Act shall thereupon cease to hold office.

I think that is the provision you are referring to. I believe the other provision you are referring to is subsection (3) of clause 21, which provides:

Each member of the Tax Appeal Board... may within six months after the coming into force of this Act and notwithstanding that he is not a member of the Tax Review Board, give decisions in respect of appeals heard by him prior to the coming into force of this Act.

I am unable to say just what would be the number of appeals the members of the board would be unable to give decisions on in six months. I have no information on that. I would assume, though, that the board could deal with the majority of the appeals. Again I must say that I have no information; I have not discussed this matter with the members of the board.



**Senator Carter:** What happens to the cases that are left over? Do they have to start right from scratch again?

**Mr. Ainslie:** They would not have to start from scratch. The concluding provisions of subsection (3) of clause 21 provides:

...and where no decision is given within such six month period in respect of an appeal heard by any such member, the appeal shall be reheard.

Therefore, there would be a necessity for a re-hearing.

**Senator Benidickson:** You start right from the beginning then?

**Mr. Ainslie:** I would say that provision is sufficiently broad so that certainly you would not have to start from the beginning, in the sense that you would not have to file a new pleading. Similarly, the word "rehearing" would be broad enough, in my view, that if the parties consented thereto it could be argued on the basis of the transcript or of the evidence that had been taken before the previous member.

**Senator Benidickson:** We just rely on hope that those who are retired, and are on full pay, will during this six months period render judgments if their health permits.

**Senator Connolly (Ottawa West):** It might help the committee if I said this. I think I got this document from the Tax Appeal Board Registrar. I did not put it on the record in *Hansard* because I did not think it was appropriate to show how many cases a member of the board had under advisement. It shows the number and the names of the cases, I think, which each of them has under advisement at this time. It is not a big list in any case. I think this is just a ballpark guess, but I would say that perhaps then or fifteen at the outside would probably cover it. Many of these are perhaps not complicated cases, I would think; the decisions just had not been rendered up to the date I got the material. I can supply that to the committee; I can go and get it if it is necessary, or if individual senators would like to see it I would be glad to produce it. I did not think it was the kind of thing I should have put in *Hansard*.

**Senator Cook:** Very often a decision of the Tax Appeal Board is held up pending a current appeal to the Exchequer Court. There have been cases where they have waited because a similar case was under appeal to the Exchequer Court, after which decision they have rendered their own decision.

**Senator Aird:** I am not sure whether I missed the point made by Mr. Ainslie. I should like to refer him to clause 9(1), the last phrase of which says:

...unless the Act under which the appeal is made expressly otherwise provides.

Inasmuch as this bill seems to be directed to the Income Tax Act, the Canada Pension Plan and the Estate Tax Act, do you have any knowledge whether or not there is an express direction at this time as to the method of filing those appeals? In the event you do not have that knowledge, what is the intention, as it relates to each of

these acts, of the respective departments? It seems to me this could very well, if it were so decided by the respective departments, take out this discretion, which seems to be the fundamental purpose of this bill.

**The Acting Chairman:** A good point.

**Mr. Ainslie:** I do not think it could depend on the discretion of the department. It would have to be an express provision in an act of Parliament, requiring either a particular form of pleading or that the appeal be instituted in a particular manner.

**Senator Aird:** That is my first question. Are those in being now?

**Mr. Ainslie:** Certainly they are not in being. There are provisions in relation to the manner in which the appeal is to be instituted.

**Senator Aird:** In each of these three acts?

**Mr. Ainslie:** Yes. I think it is fair to say it is primarily in the Income Tax Act, and the other acts incorporate the provisions *mutatis mutandis*.

**The Acting Chairman:** If I may interject, I think your point, Senator Aird, is that by amending the Income Tax Act one could defeat the purpose of the simplified form of proceedings established by this clause.

**Senator Aird:** That is correct.

**Mr. Ainslie:** I wonder if I could refer the members of the committee to, for instance, section 89 of the Income Tax Act which provides:

An appeal to the Board shall be instituted by filing with the Registrar of the Tax Appeal Board or by sending by registered mail addressed to him at Ottawa three copies of a notice of appeal in such form as may be determined by the rules.

There you have a provision whereby there is an order to institute the appeal; you certainly have certain conditions precedent that have to be met, such as sending it by registered mail and things of that nature. Have I satisfactorily answered the question?

**The Acting Chairman:** Yes.

**Senator Aird:** You have answered my question in part, but the real purpose of this act is to simplify procedures. What I am concerned about is that some amendments to the Income Tax Act, the Canada Pension Plan Act or the Estate Tax Act might in effect from a practical point of view obviate the purpose of this act, if in fact they do otherwise provide.

**Mr. Ainslie:** Mr. Chairman, my answer to that is, of course, that would be the case if in fact Parliament at a subsequent date was to enact legislation under either the Income Tax Act or the Estate Tax Act. If Parliament was to specify, provided that notice of appeal must contain certain provisions, the way this is drafted those provisions would override the provisions of this bill.



**The Acting Chairman:** Or by order in council, I would gather, from that section you read in the Income Tax Act, which makes the proceedings as may be set out by regulation. I presume under that proviso, orders in council could make the proceedings very complicated without any necessity for amending the act itself.

**Mr. Ainslie:** The answer to that, Mr. Chairman, could be found in the new division (i) which is to be brought into force by virtue of the provisions to be found on page 11. You will find there that it provides how the appeal is to be made.

**Senator Cook:** Parliament may change its mind.

**Senator Aird:** We would agree that Parliament could change its mind. My first question is, has Parliament changed its mind before this act comes into effect? I am getting a partial answer as it relates to the Income Tax Act, but I have not, as far as I know, gotten an answer as to how it might apply to the Estate Tax Act or the Canada Pension Plan Act.

**Mr. Ainslie:** The answer is the same. Under both acts the scheme of both the Estate Tax Act and the Canada Pension Plan Act is that the appeal is governed by the provisions in the Income Tax Act. The answer I have given in regard to the Income Tax Act appeals...

**Senator Aird:** Is applicable across the board?

**Mr. Ainslie:** If I can direct your attention to section 23 of the Estate Tax Act: the provisions of the Income Tax Act relating all matters in connection with an appeal under section 59 of the Income Tax Act shall *mutatis mutandis* apply, so that the provisions of the Income Tax Act or the governing provisions will find a similar legislative intent in section 37 of the Canada Pension Plan Act.

**The Acting Chairman:** I think we are still concerned and that it is outstanding.

**Senator Flynn:** We will have to watch for any amendment which may be brought eventually.

**Senator Cook:** In one respect subsection (1) differs from subsection (2) because the latter says, "notwithstanding the provisions of the act". This has a different philosophy.

**The Acting Chairman:** They could potentially have a different philosophy.

**Mr. Ainslie:** I wonder if I might bring the attention of the committee to subclause (1), clause 11:

Subject to the approval of the Governor in Council, the Board may make rules not inconsistent with this Act...

I merely wish to bring to your attention that the board under its own rules could not override the provisions of section 9(1) of the act.

**Senator Connolly:** Did the former law explicitly say that? I think it is always implicit that a regulation should

be within the four corners of an act. Because you are enacting new legislation here I think you probably should put everything in it that you can. I wonder whether the Income Tax Act had that specific provision in it with respect to the Tax Appeal Board.

**Mr. Ainslie:** The provisions are to be found in subsection (1) of section 87 of the Income Tax Act which provides:

The Board may, subject to the approval of the Governor in Council, make rules not inconsistent with this Act governing the carrying on of the business of the Board and practice and procedure in connection with appeals.

**Senator Connolly:** Thank you very much. You are just carrying that forward.

**Mr. Ainslie:** That is true.

**The Chairman:** Are there any other questions?

**Senator Flynn:** Mr. Chairman, I would like to come to section 18. I understand that the present members who are now over 70 would retire when this act becomes effective and would continue until the end of their term and receive the same salaries as they are receiving presently, and then they will be pensioned under the Public Service system. I understand that three out of five members will be retired because they are presently over 70. That leaves two members, who by the application of subsection (4) of section 18 will become members of the Appeal Board, but only for the remainder of the term for which they had been appointed or if they reach 70, whichever comes first. These two will be in a rather awkward position compared to those appointed for life. There will be three appointments for life and two will remain there for I don't know how many years. It seems to me that under those circumstances the least that can be done would be to give them the opportunity to retire now and get the same salary as the three who are forced to retire because they have reached the age of 70.

I am not suggesting that the Government should appoint them for life or until they reach 70, but it would appear to be fair to either appoint them as are the others or give them the opportunity to retire with full salary. I feel they will be in an awkward position in comparison with the new appointees.

**Senator Benidickson:** With due respect, Mr. Chairman, I do not quite agree with that. I do not know what the terms are from the point of view of years remaining in each of these cases, but I would just as soon get their services even if we have to pay the same remuneration as we are now paying to them until they do reach age 70. In addition, it seems to me that since they have a few years to go their experience would be of some value to the new members of the board.

**Senator Flynn:** I agree with that, but the point is that they could be appointed to the Tax Appeal Board the same as the three others who will be appointed under the act until they reach 70. The problem arises if they do not reach 70 before the end of their term of 10 years. Sup-

pose they had been appointed seven years ago. They are going to be there for only three years with members appointed until they reach 70. I do not see why the Government does not appoint them if they are qualified. Of course, the way to do it would be to strike out subparagraph (b) of clause 18(4).

**Mr. Ainslie:** I wonder if I might interject for a moment to say that my information in regard to the two members is that their terms will expire in November 1972 and in March 1972. That is my understanding.

**Senator Flynn:** If they have only two years to go, it is not too interesting.

**Senator Beaubien:** What age will they have at that time?

**Senator Flynn:** I know that one is 63 and the other is only 46. If they are qualified, I do not see why the Government does not appoint them to the Board.

**The Acting Chairman:** We do not know their ages, so it is hard to judge that.

**Senator Flynn:** I know they are 63 and 46 respectively.

**The Acting Chairman:** This seems not unlike our own situation in the Senate, where the age was amended. I notice that my new colleagues do not seem to suffer any disability.

**Senator Flynn:** This is not a problem for the witness but is really a problem for the Minister of Justice. I was wondering whether the Minister of Justice would not agree to appoint the two who are not yet 70, appoint them under subclause (4) until they reach the age of 70 years.

**The Acting Chairman:** Would it please you, Senator Flynn, if I gave an undertaking to speak to the Minister of Justice on that specific point?

**Senator Flynn:** Yes.

**Senator Cook:** What would have happened if this act had not come into force?

**Senator Flynn:** They would have retired in two years.

**Senator Cook:** But they would possibly have been re-appointed.

**Senator Flynn:** They would be with other members who are re-appointed for a term, not only until they reach 70. There is a mixture of lame ducks. It may not be entirely unfair but it puts them in a rather curious position with respect to the other members, the new members who would be appointed. So it could be done, Mr. Chairman, by deleting subparagraph (b) of subclause (4).

**Senator Connolly (Ottawa West):** Under the act as it now reads, I would think that if the minister, or the powers that be, so decide, both of these people whose terms expire in 1972 could be appointed under the terms of this bill and retired at 70.

**Senator Flynn:** They could be re-appointed at the end of 1972.

**Senator Connolly (Ottawa West):** Yes. They could be re-appointed at any time.

**Senator Flynn:** I do not know. If you read subclause (4).

**Senator Connolly (Ottawa West):** Perhaps they have to run out their term.

**Senator Flynn:** I think it would be for the minister to re-appoint them now. The way the act reads, you may wonder whether the Minister can appoint them again, because it says that their term will expire—"that he will cease to be a member on the day on which the term for which he was last appointed to the Tax Appeal Board would, but for this act, have expired." They are already condemned.

**Mr. Hopkins:** Not forever, I would say.

**Senator Flynn:** Maybe not, but it sounds like that.

**The Acting Chairman:** I would be glad to express the concern of the committee on that point.

**Senator Beaubien:** Suppose the minister was trying to get rid of them.

**Senator Flynn:** That is what I was trying to find out.

**Senator Cook:** Does the witness know if there is any expectation that this bill will lead to an increased volume of work for the Board, more appeals?

**Mr. Ainslie:** It is very difficult to forecast. One of the purposes of putting in this provision in regard to cost was to try to make the Board more accessible. I think the problem is one which is up to the taxpayer's advisers. The trend of the statistics is that there is more litigation under the Income Tax Act, and it fluctuates from year to year at present as to whether the appeal is originally brought into the Board or originally brought into the court. This is something which is entirely in the discussion of the taxpayer and his advisers, so it is very difficult for me to make any forecast as to what the volume of the work would be.

**The Acting Chairman:** With the new income tax we may be expecting next year, I would think that the volume would be much greater.

**Senator Benidickson:** I have not read the details of the bill and I have forgotten what we were told with respect to the pension provisions for the members of the Tax Review Board, in comparison with the pension arrangements now existing with respect to the Tax Appeal Board and particularly as to whether both the contributions on the part of members of the Board, whether one is contributory and the other is non-contributory.

**Mr. Ainslie:** If I may answer that, Mr. Chairman, the present provisions that apply to the existing members will be found in section 96(1) of the Income Tax Act. It



deals with members of the Board who were contributing to the Civil Service Superannuation Act prior to their appointment. It provides:

Notwithstanding any other statutory law, where a person who is appointed a member was immediately prior to his appointment a contributor under the Civil Service Superannuation Act, he continues while he is a member to be a contributor under the said Superannuation Act.

Subsection (4) provides that the Civil Service Superannuation Act is applicable to a member to whom subsection (1) does not apply as though the Board were listed in Schedule A to the act.

So the existing members are entitled to their pension pursuant to this provision, whereas under the new act the members will then become entitled to a pension...

**Senator Flynn:** Under the Judges Act.

**Mr. Ainslie:** Under the Judges Act, and that is to be found...

**Senator Flynn:** Section 6, paragraphs 2 and 3.

**Senator Connolly (Ottawa West):** I think it is section 53 of the Judges Act that sets out the details.

**Senator Benidickson:** Do the judges contribute to the pension?

**Mr. Ainslie:** No. The judges have a non-contributory scheme.

**Senator Carter:** What about the two lame ducks that Senator Flynn was talking about? Do they qualify for a pension when their term is up?

**Mr. Ainslie:** Yes, under the existing act.

**Senator Flynn:** Yes, but not under the Judges Act.

**Mr. Ainslie:** No, no.

**Senator Carter:** They are contributing to the Civil Service Pension Fund.

**Senator Flynn:** They will contribute for the remainder of their term, too.

**Mr. Ainslie:** And, Mr. Chairman, can I say that they will not lose any of the rights that they have under the Civil Service Superannuation Act.

**Senator Carter:** Unless they came from the Civil Service, they will have only ten years' contribution and their pension will be based only on that ten years.

**Mr. Ainslie:** That is correct.

**Senator Benidickson:** That was the contract under which they took the job on the Board.

**Senator Flynn:** Yes. I am not criticizing that, I am just thinking of the position now.

**The Acting Chairman:** If there are no further questions, I wonder if I might have a motion to report the bill.

It is proposed by Senator Connolly (Ottawa West) and seconded by Senator Beaubien, that we report the bill without amendment.

**Mr. Ainslie,** I wish to thank you very much, on behalf of the committee, for a most able and competent presentation of the information this morning. It has been most useful to us.

**Senator Kinley:** I think it is the best explanation we have had yet of a bill.

**Senator Connolly (Ottawa West):** Mr. Chairman, I hope that Senator Kinley's remarks will go on the record.

**The Acting Chairman:** That concludes the discussion on this bill.

Honourable senators, in respect of Bill C-175, we have with us the Honourable H. A. Olson, Minister of Agriculture, and Mr. C. R. Phillips, Director General, Production and Marketing Branch, Department of Agriculture.

Mr. Olson will give to us the general background of this piece of legislation and an explanation of it. In doing that, Mr. Minister, I hope you will comment on the new policies that might be embodied in Bill C-175. I might caution you, too, that members of this Standing Senate Committee on Banking, Trade and Commerce are not necessarily agricultural experts. I, for one, am not, and there are several others in the same position. We do, of course, have one or two outstanding experts on the committee with us here this morning, including Senator McNamara, Senator Hays and Senator Argue.

At the moment, Mr. Minister, we would appreciate it if you would make a brief reference to the general background behind the preceding legislation and comment on the philosophy behind it and how it is carried forward into this bill.

**The Honourable Horace Andrew Olson, Minister of Agriculture:** Thank you very much, Mr. Chairman. Honourable senators, I have a few points that I should like to raise with you this morning respecting Bill C-175, but I will not go into much detail, because this bill has been in the House of Commons since March of 1970.

**Senator Connolly (Ottawa West):** They are pretty slow over there, Mr. Minister

**Hon. Mr. Olson:** I prefer not to comment on that, Mr. Chairman.

**Senator Connolly (Ottawa West):** At least by comparison with the Senate.

**Hon. Mr. Olson:** There has been a great of discussion with all sectors of the industry respecting the changes in the Canada Grain Act.

Bill C-175 provides, as did its predecessor, Bill C-196 of the last session, what many people in the industry regard as the Magna Carta for the grain producers, particularly in that area administered by the Canadian Wheat Board. It is designed to provide grade standards for Canadian grain. It regulates the handling and storing of grain through the elevator system. It provides protection for the owners of grain stored in Canadian elevators. It



provides for the allocation of available railway cars among shipping points. It provides authority for the Governor in Council to direct the railway to provide railway cars for the delivery of grain.

As I said, Mr. Chairman, this bill was prepared after a great deal of consultation with all sectors of the industry involved in both the production side and the marketing of grain. The Department of Justice obtained for assistance in drafting this bill one of the most qualified lawyers in Canada in the area of grain marketing.

Mr. Chairman, this bill updates the Canada Grain Act which was passed in 1930, and, while there have been some amendments to that bill since 1930, there has not, until this proposal, been a major revision of the act since that time.

The significant changes in the bill are that it sets out the grade standards as a schedule to the act and makes that amendable by Order in Council. The current act has the grade standards in the act itself and they are, therefore, statutory and require an act of Parliament for their amendment. The purpose of this change, as I have said, is to provide machinery for much more rapid response to the needs of the market and of our customers. So the Canadian Wheat Board and the other grain merchandisers, knowing the requirements of their customers and the need for these changes from time to time, can make adjustments in the grades to satisfy those customer demands.

The bill also provides for the use of newer, more modern quality factors such as protein—and any other quality factors, if they become important to our customers—in the establishment of these grain standards.

The bill also provides the authority of the Board of Grain Commissioners, which, by the way, will be called the Canada Grain Commission under the new act. Moreover, that authority is broadened under this bill to give the Commission the authority to exercise a measure of control as the situation warrants over the entire grain elevator system, including facilities such as feed mills and elevators associated with the processing industry. The current act does not give this authority respecting feed mills and elevators associated with processing.

Bill C-175 also provides the legislative base for the block system and complete control over railway cars and grain movement; and it provides the flexibility to place under the authority of one minister, or one agency, the matter of the allocation of available railway cars among shipping points and among elevators.

I should like to emphasize here that this bill provides the legislative authority and base for this allocation of cars, but I should point out that it does not necessarily, and probably would not in most instances, be delegated to the new Canada Grain Commission but probably in many cases to the Canadian Wheat Board.

There has been a significant updating of the provisions to protect the interests of producers and elevator operators. There is provision for appeal of grades; provision for appeal against refusal by the Commission to issue elevator licences; for investigations, for public hearings and for appeals to the Exchequer Court.

That, Mr. Chairman, is a very brief resume of the major changes and the amendments in the authority that we seek from parliament with the passage of this bill.

**The Acting Chairman:** Thank you very much, Mr. Minister.

**Hon. Mr. Olson:** If I may, Mr. Chairman, I will have distributed some mimeographed sheets comprising a summary of the information related to grain handling in Canada. The members of the committee might find this information useful.

**Senator Carter:** Is it the intention that this should be appended to the record of our proceedings?

**The Acting Chairman:** Well, I am looking at it for the first time now, but if the committee deems it worthwhile, we could certainly do so. The heading is "The Canadian Government Supervision of the Handling and Movement of Western Grain."

**Hon. Mr. Olson:** It is really some background information concerning that subject, and it could be added as an appendix if you so desire.

**The Acting Chairman:** This is probably for the benefit of senators such as Senator Connolly (Ottawa West) and myself.

**Senator Benidickson:** I would like to see it appended. (see attached Appendix to these proceedings). We had some very able speeches on second reading of the bill. Now, I do not know anything about grain marketing, but as a listener we heard quite a bit about what the various committees were doing, what our export prospects were and things of that kind. But in large part the speeches were, with respect, I thought directed in a broad way to the history of the grain business rather than being particularly directed to this bill. I think that to have on record somewhere a little historical information about the past, in this form, and about the Canadian Government supervision of handling and movement of western grain would be very useful.

**The Acting Chairman:** Is it the wish of the committee that it should be so appended?

**Senator Carter:** I so move.

**Senator Aird:** I second that.

**Hon. Senators:** Agreed.

**The Acting Chairman:** I agree with you, Senator Benidickson, particularly for people such as myself who come to this subject with such little knowledge of the historical development of the grain situation.

**Senator Argue:** This is not the historical development; this is just the situation as of this moment.

**The Acting Chairman:** That is true, but what I wanted to direct to the attention of this committee is this, that I think it would be of use if the compulsive sections, the operative compulsive sections on, say, grain producers and elevator operators in this act which must be the

backbone of the rest of the legislation—if our attention could be directed to those two areas. I know, for example, from the summary in front of me that a Delivery Permit Book is issued to each grain producer and that all country elevators in western Canada are required to be licenced by the Board of Grain Commissioners. I imagine that those two points are the nub of the act as they undoubtedly were of its predecessor act.

**Hon. Mr. Olson:** Yes, Mr. Chairman. With respect to the Delivery Permit Book mentioned in the first paragraph, this, of course, is a permit book that is issued to each producer and it is really administered by the Canadian Wheat Board, but the legislative authority for that permit system is not contained in this bill. There are no amendments dealing with that, with the one exception and that is to give effect to a fair distribution of access to the space in the elevator system provided under that section that deals with the allocation of railway boxcars.

I should mention that from time to time throughout the last few years there has been a committee set up within the industry, and, indeed, headed up by the Canadian Wheat Board to do this kind of thing. It has been called a "Transport Co-ordinator" in some cases, or a "Transport Committee" and it has operated rather effectively in my view. But it has really been, and here I am sure Senator McNamara will agree, an agreement to agree on these things without the statutory authority to allocate these boxcars in a tight situation. So, it has now been put in here because we would like the block system, and I could explain that if you like, to work effectively. We think we should have some base of authority in a statute to make that effective, although it has been working, in my opinion, reasonably well over these past few months on the basis of agreement to agree on it.

So far as the country elevators are concerned, it is not only the country elevators that have to be licenced. That is not new. That was in the previous Canada Grain Act. It includes what we describe as primary elevators, transfer elevators and terminal elevators and so on, and generally the provisions in the licencing section are that these elevators shall meet certain standards structurally and so on, so that they can in effect look after the grain properly while it is the elevators, and furthermore so that the Board of Grain Commissioners can in fact carry out the inspection requirements they need to do from time to time. This will involve such things as taking samples, making weigh-overs and doing audits of various kinds in those areas.

**Senator Connolly (Ottawa West):** Mr. Chairman, if I may interrupt the Minister for a moment. Here again I am like the other lawyers on the committee in that I know practically nothing about the grain trade except what I hear here. From time to time we read in the papers about deliveries of Canadian grain to foreign purchasers, and that the grain is defective in one way or another; sometimes it has foreign substances mixed in with it and sometimes it has deteriorated. This, I think, causes the general public to be quite concerned about the downgrading of the Canadian image in respect of high quality produce, and particularly high quality grain produce. Would the Minister care to say something about

this general proposition? I take it that under the provisions of this bill it is within the ambit of the bill for comment on this point.

**Hon. Mr. Olson:** Yes, Mr. Chairman. The Board of Grain Commissioners have set what they call an "Export Standard Quality" in this respect. In other words, all the grain going into export position must be cleaned or must be processed in any other way required to bring it up to that export standard. I may add that in my view it is a very high standard, probably a higher standard than that adhered to by any other country in the world. The problem we have had from time to time—and I am happy to say that we have not had very many—arises from situations where we have had, for example, some foreign substance in the grain. In one instance we had a claim for some glass in one or two of the holds of the ship. I cannot explain how it got there because I do not know. I rather suspect it would not have been in the grain all the way from the farmer to the export position; I think it must have got in somewhere else along the line. But this was, in my view, either an act of deliberate damage or an accident. In any event, all this grain is cleaned as it goes into the terminals that load for export, and it is not possible for anything like that, in my view, to remain in the grain while it is being cleaned.

Latterly, we have had a problem regarding some insect infestation, and there was a lot of discussion about the so-called rusty beetle in some grain in western Canada. That is not an uncommon thing to see or to find after a number of months in any grain that has a high moisture content. The eggs of these particular insects are very common around the grain producing areas, and whenever the physical condition of that grain is such—and the climatic conditions, I may add—for them to multiply, then, of course, that happens. As I say, it is usually associated with keeping grain which has a higher than normal moisture content over a long period of time without having it aired out or moved from time to time.

I would like to say this, however, that I checked with the Board of Grain Commissioners and with the Canadian Wheat Board and, in spite of some of the press stories that were circulating, we have received no claims from any of our foreign customers because of rusty beetles in grain. Indeed, I would be very surprised if they could get through the inspection and cleaning system at the terminal. That is why I was surprised.

What we did have a claim for—and we have had more than one, not only this year but many times in the past—was for some other types of insects. I could give you the names of them—I think we could dig them up—but they are commonly referred to as mites, but even then there are several types. The eggs of this particular minute insect are also very commonly found in grain, and whenever you get that grain into climatic conditions favourable for them to hatch and to multiply, this happens. Quite often when grain from Canada and other countries is being shipped to countries where the climatic conditions are suitable for an explosion in the population of these insects, that grain is fumigated. It is just done as a matter of standard practice, to try either



to clean out the eggs or to kill the fertility in those eggs so that they cannot multiply. Even that is not a very unusual thing.

In my view, it was unfortunate that there was some evidence of quite a lot of grain—although it is still a very small percentage of the total—that had rusty beetles in it in Canada at the same time as we received some publicity for, I think, about three claims for grain that had these mites. It was not the same insect, but it hit the press at about the same time, and there was an association there that, in my view, was unfortunate.

**Senator Carter:** Mr. Minister, are you saying that the steps you take to destroy the eggs of the rusty beetle are not effective in destroying these other eggs?

**Hon. Mr. Olson:** I am not quite sure if exactly the same chemical compound is used for the mites and the rusty beetles. I know that it is a fairly simple process to get rid of either one of them. In some cases it is as simple as airing the grain out. In other cases I think they use malathion—which is harmless to humans if it is used properly—that does in fact kill all of the insects. I am not sure that we have a chemical that we use in Canada that is potent enough to kill the fertility of the eggs here.

**Senator Carter:** I noticed you said you would have been surprised to receive claims with respect to these beetles, but you did have claims with respect to these other insects.

**Hon. Mr. Olson:** Yes.

**Senator Carter:** That is not unusual and you have had instances in previous years?

**Hon. Mr. Olson:** That is right.

**Senator Carter:** It led me to think that possibly if you take steps that would make it a surprise to have claims for rusty beetles, these steps, whatever they are, are not effective to destroy the other.

**Hon. Mr. Olson:** I think that is true, because with a number of handlings—that is, the number of times this grain has to be elevated and actually exposed to the air—into the country elevator, out of the country elevator, into the terminal, through the cleaning facilities, and then again onto the boat—I would be very surprised if any rusty beetles could survive that much handling and airing. But that is why I said I was surprised. It may be possible, but I was surprised that the rusty beetles could survive that much handling.

**Senator Argue:** In an ordinary year when you might export 300 million bushels of wheat, against how many bushels might there be a claim?

**Hon. Mr. Olson:** I am not sure. I think there is someone else in the room who has more expertise in that than I have.

**The Acting Chairman:** Perhaps you could ask Senator McNamara to answer.

**Senator McNamara:** I want to ask the Minister if he does not agree with me that the recent comments about

the rusty beetle and, to a great extent, the mite are closely related to the disastrous 1968 crop, of which.

In all my experience, most of this trouble could be related to the particularly poor harvest we had that year, and I think there has been undue publicity given to it.

A lot of these mites do not originate in Canada, but you find them in many vessels handling other grains and unless they are very carefully cleaned the mites will be left on the shelves, and so on.

I do not consider in our country the rusty beetles and mites are a problem. They have to be watched, and the Department of Agriculture extensively checks for them, but I think this recent publicity was most unfortunate because it was a tempest in a tea pot and we should not have been talking about it with our customers overseas.

**Senator Hays:** You should have dealt with it in the Mass Media Committee.

**Senator Connolly (Ottawa West):** That brings up a point I wanted to raise, Mr. Minister. You are taking authority here to control the quality of the grain that is sold both domestically and on the export market.

**Hon. Mr. Olson:** Yes.

**Senator Connolly (Ottawa West):** But are you in the hands of the shipping companies and the individual ships, and have you any control there in respect of shipments abroad?

**Hon. Mr. Olson:** Mr. Chairman, under the present Canada Grain Act we have grades that are set down by statute; and then under the regulations we have certain tolerances to set the quality to meet those grades. When a certificate for grain—which is really a grain ticket or a warehouse receipt—it is issued to anyone—that is what they get when they purchase a cargo or a lot of grain from us—that person or customer has the right to demand that the grain that he receives is up to the standards that we have spelled out in the act and in the regulations with respect to the tolerances.

So I think it would be, if not impossible, very difficult for anyone to try to sell a grade of Canadian grain—that is a Canada grade standard—if he was not prepared to deliver grain that met that standard.

**Senator Connolly (Ottawa West):** Yes, but it is the further step that I am concerned about. Assuming that the grain is of prime quality when it goes into a ship, have you any control over the conditions existing in that ship which might downgrade that grain?

**Hon. Mr. Olson:** Yes, Mr. Chairman, we have, although it is not in this act. I will ask Mr. Phillips to explain in a little more detail what we do with respect to that. There is still another act, the Canada Shipping Act, that deals with the condition of the ships.

**Mr. Phillips:** Mr. Chairman, the Canada Grain Act deals with the quality of grain *per se*, and as explained by Mr. Olson the Destructive Insect Pest Act provides for the checking of the ships that carry the grain for export, and no ship may be released for loading until it has been approved by the inspection staff under that act.



Reference was made to the matter of glass and so on earlier. That is not covered by the Destructive Insect Pest Act, and we had to provide for that under the Shipping Act, as I recall, and the same inspectors that check the ship for infestation are also checking for glass to see that there is not glass in the ship to start with before the grain is put into it. This is a procedure to protect the export of grain.

**Senator Carter:** Do you exercise the same control over the railway cars?

**Mr. Phillips:** The railway cars are covered under the Canada Grain Act. If at any time railway cars arrive at an elevator where there is an indication that the grain is infested then the Board of Railway Commissioners orders the fumigation of the railway cars.

**Senator Hays:** Is it not true, Mr. Minister, that with the exception of the rusty beetle most insects are destroyed by frost. Most of this grain is grown in areas where there is widespread frost in the winter. I have 150,000 bushels of grain stored, and one bin has rusty beetle in it. This is caused by damp grain, as Senator McNamara pointed out. The minute the first frost gets in the rusty beetle burrows right down inside the grain. It eats the centre out of the grain, which ends up as dust, which can be skimmed off. You can then put in these gas bombs and eliminate the rusty beetle. I do not know how it gets into the elevator, because they watch these things very closely.

**Hon. Mr. Olson:** There is no doubt about that, and I want to concur in what Senator McNamara said that almost all of the problems we had with the rusty beetle were associated with the 1968 harvest. One of the reasons why it became known was that during the past few months we have had very significantly increased orders for lower grade wheat, and they were calling all of this wheat forward from those shipping points that had grain that was stored since the 1968 crop. That is why there was an explosion of it. Even with all of that I am satisfied that the amount of grain that had any infestation at all in it was probably less than three per cent. As a matter of fact I think we suspended less than ten country elevators as a result of finding these rusty beetles. The suspension is that they are not to discharge grain into any conveyance, particularly a railway car, until they have cleaned it up.

**Senator Hays:** But is is really a very easy thing to handle. There is a rod with little holes in it that you shove down into the grain, and you drop the pellets containing the insecticide into it. I am sure that any farmer who has \$10,000 worth of wheat in the bin watches this like a lawyer watches his bank account. He is not going to allow the bug to stay there very long.

**Senator Burchill:** I am afraid I am an easterner and thus not very familiar with the grain trade. Is all grain sold on a delivered basis? Are you responsible for the transportation, and all that sort of thing?

**Hon. Mr. Olson:** Almost all of the grain that is sold for export position I believe is sold in the terminal—that is, at tide-water, so that it is in export position.

**Senator Burchill:** The ships then would not be your responsibility.

**Senator McNamara:** Mr. Chairman and Mr. Minister, most of it is sold in store. Other sales are made f.o.b., even though they are made by a Canadian agent or an agent of the Canadian Wheat Board. Sometimes in the international trade it is sold c.i.f. destination. In any event, the ship has to be approved by the Department of Agriculture before the wheat is permitted to be loaded.

**Senator Burchill:** That applies whichever way it is sold?

**Senator McNamara:** Yes.

**Senator Burchill:** I am not clear on the distinction between the functions of the Canadian Wheat Board and the Canadian Grain Commission.

**Hon. Mr. Olson:** To state it very briefly, the Canadian Wheat Board is the sales agent for and on behalf of all the farmers. It also administers the quota system which ideally at least provides equal access to whatever volume of market there is to the producers. The Canadian Grain Commission, or what is known now as the Canadian Board of Grain Commissioners, are really the policing agents in the whole system who see that the grade standards are met and that the conditions at the elevators are attended to, and they look at the auditing of the entire system.

**Senator McNamara:** Mr. Chairman, may I ask the minister if he agrees with me that the dual system we have in Canada—that is a regulatory system that is completely divorced from the sales agency—has been of great benefit to the country. The buyers know that the sellers have no control over the grades, and it is not possible for them to manipulate them, because that matter is handled by another body. Does the minister agree with me in that?

**Hon. Mr. Olson:** Yes, I do.

**Senator Aird:** Mr. Minister, in your opening remarks you talked about the protein content factor, which might be important to our customers. There have been suggestions from time to time that Canada has lagged behind some other exporting countries, such as Australia and the United States, in that we have been slow to adopt this protein grading factor. I wonder if you would care to comment on this suggestion.

**Hon. Mr. Olson:** Yes, I would, Mr. Chairman, because I think it is important for us to have the kind of flexibility in adjusting grades so that we can, in fact, grade according to quality factors and, in this case particularly, protein, when our customers demand it.

We have had some requests for grain segregated according to protein content now. It is not, perhaps, a majority of the sales that we make, and I think one of the reasons for that is because generally the protein

content of Canadian grain is higher than that of the grain grown in any other country of the world. But, we are moving into a new era in milling and baking quality factors where many of our customers would like to know in advance—that is, in addition to the visual grading of grain—what is in it. It is not necessarily that they would all demand high protein, but they would like to have consistent protein because if they have cargos of wide variations in protein content it does do a great disservice to the milling and baking processes that follow. For example, if they set their grist or their mix thinking or hoping—perhaps judging it on the basis of their experience—that it is, let us say, 14 per cent average protein, then that requires a certain type of process, and the bakers set their formulas and so on to fit that. If they get a cargo which is very much lower or, indeed, very much higher than that, it does foul up the whole system.

**Senator Aird:** It would seem obvious, then, Mr. Chairman, and Mr. Minister, that the diet of the receiving country has a good deal to do with their requirements. Would you comment, therefore, upon whether or not potential future sales to the People's Republic of China and/or Japan might be affected materially one way or the other, if, in fact, we in a protein content factor measurement on these sales, or are in a position to say what the content will be?

**Hon. Mr. Olson:** I think it will be very important, and it will become more and more important as we move into what is commonly referred to as continuous flow baking systems, because uniformity of the protein content is very important to them.

These continuous-flow baking systems have been used for only about eight years but I am persuaded that there will be increased demand for uniform protein levels. I repeat, not necessarily high, but uniform levels. Many of our customers, for example China, have not been asking for this segregation. However, the United Kingdom and others have indeed asked for guaranteed protein levels.

**Senator Argue:** There has been a great demand amongst the producers for a system of protein grading at the local elevator. Certain organizations have come forward based mainly on this demand.

Can the minister indicate whether or not such a system is likely to come into effect, when it will do so and what premiums, if any, might be attached to high protein grades coming off the farm?

**Hon. Mr. Olson:** To answer the last part of your question first, the payments would be directly related to the difference in value placed on protein levels by our customers. I suggest that will vary from time to time.

I cannot predict when this will come about. We do not have a mechanism or device at the moment that will give us a protein test sufficiently rapidly for an elevator agent to apply to each load delivered by the farmer. Some are coming pretty close, but in the initial stages I think that it is possible, although it would not be perfect, to call grain forward into particular bins in the terminal elevators from those shipping points that have a high average

protein. That is between 13 per cent and 14 per cent. The grain would be segregated on that basis.

It will take somewhat longer in my view to have a protein system in place sufficiently effective to relate the tests to individual farmers.

**Senator Argue:** As I understand it, an American wheat producer does receive the benefit of a premium attached to protein grading. I wonder if this is so and how an American farmer can be paid a bonus for high protein if it is not possible to pay a Canadian farmer?

**Hon. Mr. Olson:** That is true, although it is not applicable to all American grain. Indeed, it is not applicable to all the American grain in those areas such as Montana and North Dakota which is comparable to the Canadian protein.

My understanding is that some very large elevators in the United States have facilities for making a protein test, but there is some delay. However, if these tests are made in advance of delivering a large quantity of grain then, of course, they can be related. The grain is segregated on that protein basis because of the larger number of bins and larger capacity of the elevator and it can be directly related to the farmer. However, it certainly does not cover 100 per cent of American grain at the present time.

We are also able to do that fairly quickly because we are building a new protein testing laboratory in Calgary which will test the shipments going west to the Vancouver terminal.

In fact, most of the flour mills in western Canada have the ability to make protein tests. We hope that when this comes into operation a sample of each carload shipped will be sent to the laboratory. A reading on the test would be received by the terminal operator by the time the car arrived at the terminal so that the load would be put in a bin containing grain of the same protein level.

**Senator Carter:** In view of the food shortages in underdeveloped countries and particularly the protein deficiency in their diets, is there a trend towards higher proteins to take care of that problem?

**Hon. Mr. Olson:** I do not think that that problem will be solved by the differences in the protein in Canadian grain. That is not really the purpose for making our grades according to protein levels. It is more closely related to the milling and baking processes because the protein test gives us and our customers an indication of a number of factors, including the water absorption rate in the mixing of the dough for bread. This changes very significantly according to the protein level in the flour.

However, in so far as it making a significant change to the dietary requirements of the people eating the bread it is not significant.

**Senator Carter:** I have in mind the situation of a famine, in India for instance. In the past we have shipped a few carloads of wheat or grain, but if it does not provide the necessary nutritional qualities it seems to be almost an exercise in futility.



**Hon. Mr. Olson:** This grain does provide for certain diet requirements, but I would have to say that it is not a substitute for very high levels of animal proteins such as are found in milk powder, meat, eggs, et cetera.

**Senator Carter:** I am informed that the grain millet has a protein content much higher than any other grain. Can we produce that kind of grain in Canada and are we doing anything about it?

**Hon. Mr. Olson:** I am advised that we cannot. However, there are other grains, for example rapeseed, that also contain far more significant levels of the type of protein that is useful to make up these diet deficiencies.

**Senator Carter:** You referred to the storage of wet grain as one of the main factors in respect to insects. Is there anything in the grain regulations to control the amount of moisture as a factor in accepting or exporting grain?

**Hon. Mr. Olson:** Yes, there is. A test of the moisture content in grain is a relatively simple process. Every elevator agent in the country has a device which enables him to do this very quickly.

I am not sure of these figures, but I believe that if the grain contains more than 14.5 per cent moisture it is no longer considered to be dry grain. Between 14.5 per cent and 17 per cent is graded as tough and over that as damp. The elevator agent has the right to refuse to take grain that contains moisture levels higher than he himself thinks he can take care of and keep it from going out of condition.

The problem we had in 1968 was that everybody involved in the industry—the Canadian Wheat Board, the Board of Grain Commissioners and everyone else—tried to be as helpful as they could to all of the producers who had very high volumes of this high moisture content on hand, and we took into the system, I suggest, far more high moisture grain that year than we would normally do, because we wanted to give the farmer the benefit of the drying facilities in the terminal elevators. However, I have to say, too, that a lot of that grain that came into the system, which was perhaps below the damp category, stayed in those elevators for a long period of time. While it did not, as we say in the industry, heat because of the high moisture content, it did raise all of these other problems.

**Senator Argue:** There is one further question on the causes where you have authority over the allocation of boxcars. Once in a while we seem to fail to move the grain into position at a sufficiently rapid rate to meet sales et cetera; at least, there is that feeling around. Is there any authority here to order the railway companies to produce a certain quantity of boxcars for the carriage of grain, or is this authority confined to merely the allocating of the number of boxcars that the railways make available for hauling the grain?

**Hon. Mr. Olson:** I would hope that the application of these rules and orders would be on a basis of negotiation and working it out with the railways. In the event that we disagreed with the railways, clause 97(a) says:

The Governor in Council may by order,

(a) where he considers it necessary in the public interest to do so, require a railway company to supply to and place at any point at which the railway company supplies a service, railway cars for the carriage of grain.

Thus if there was a disagreement, the authority is there.

**Senator Argue:** I think that is important.

**Senator Cook:** What would be the penalty if they do not? Is there any penalty if the railway company fails to carry out the order in council?

**Hon. Mr. Olson:** That penalty is not spelled out in the bill. If we need one, I suppose we would have to put it in the regulations under the authority provided to make regulations under this bill.

**Senator Cook:** Perhaps the persuasive force would be very great.

**Hon. Mr. Olson:** I would think so, yes.

**The Acting Chairman:** Mr. Heath, when he was here yesterday, I believe said that the English used only hard wheat, and that if the United Kingdom did enter the Common Market it would likely have little effect on our wheat sales into the United Kingdom. Would you care to comment on that?

**Hon. Mr. Olson:** I hope that that is the way it turns out. Indeed, I think all of the western farmers do too. But I am apprehensive about the kind of levies that may be placed on that grain entering the United Kingdom. If this should put us in a disadvantaged position vis-à-vis the competitive grains that are produced in Europe or other grains that may also have access to the United Kingdom market, I am very concerned about that. If they are going to subscribe and adhere to the common agriculture policy that is presently in existence in the EEC, then we are apprehensive that there may be some additional levies placed on that grain going into the United Kingdom. I am very grateful for Mr. Heath's comment that they intend to continue to use large quantities of hard grain; that is encouraging; but we are also very conscious of having access to that market without too many charges along the way.

**Senator Carter:** Looking to the future, with protein content becoming more and more preminent as a sales characteristic, how would you meet the requirements supposing a market demanded a certain protein content, say 10 per cent or 12 per cent? Would you have to grow that or could you dilute the various grains down to an average of that?

**Hon. Mr. Olson:** We do not have any large quantities of grain growing in Canada that would have a protein content much below 12 per cent; that is about the bottom so far as the hard spring wheats are concerned. We grow a very small quantity of what we call soft white spring wheat that has a protein content lower than 12 per cent. The range we are talking about is between 12 per cent



and something over 15 per cent in some years, but not very much. It is within that range that we are discussing this. We know very shortly after a new harvest comes in what the average protein content is in any particular district; that is, the shipping point. That information is available to us, and I think that if we have the statutory authority to keep this grain segregated along the way according to protein content we would not find it too difficult to call forward grain from those shipping points that had a level of protein in it that was satisfactory to our customers.

**Senator Carter:** But then you run into the problem of quotas.

**Hon. Mr. Olson:** There is no doubt about that, but I am of the opinion that maximizing our total sales is good for all the farmers, whether they happen to have the kind of grain that can be supplied to one or another of the particular deals we make.

**Senator Carter:** There was a problem some months ago over farmers in one province blackmarketing wheat, I suppose is the description.

**Hon. Mr. Olson:** "Bootlegging" is what they call it.

**Senator Carter:** I also read in the newspapers that some farmers were reduced to the point where they were paying their education taxes and municipal taxes in wheat. Are these things covered in the bill?

**Hon. Mr. Olson:** No. The administration of the quota system is contained in the Canadian Wheat Board Act. It is not in this bill.

**Senator Carter:** You said earlier this was a policing bill, which polices only the quality of the grain.

**Hon. Mr. Olson:** And the elevators, and that sort of thing.

**Senator Carter:** The handling of it.

**Hon. Mr. Olson:** Yes.

**Senator Benidickson:** The Minister, this has been a busy and even rather a hectic week for most us, because it is the week prior to the Christmas adjournment, and we have not had this bill before us for very long. That is why the day before yesterday, when it was introduced for second reading, I had some apprehension about portions of the speech made by my good friend Senator Argue. In this busy week have you had an opportunity to read his speech?

**Hon. Mr. Olson:** Yes, I have. I thought it was a good speech.

**Senator Benidickson:** I refer to page 342 of *Hansard*. I wanted to get your comments. I remind you that he pointed out that in recent months and years, under the leadership of yourself and Mr. Lang, very many things have been done that are helpful in solving the problems of the grain trade. He referred to certain organizations

that have undertaken studies within recent periods, that have been helpful, and then he went on to say:

This has been done with a substantial measure of success in many ways. The main point that I have been critical of in some of these various proposals is that the powers that be...

I assume you are one of those. He then goes on to say:

...did not in any sufficient way ask for the opinions of the producers themselves before action was taken. All of a sudden some revolutionary program was announced, and the opinions of general producers were not asked; they did not have a clue that such a program was forthcoming; basically they did not support it, although they went along with it, because of the quota provisions...

You say that this particular bill was introduced in March of this year. This frightens me. What is your answer to Senator Argue, who is a western farmer, and his assertion that the producers themselves have had inadequate invitations to express their views?

**Senator Argue:** Not on this bill.

**Hon. Mr. Olson:** Mr. Chairman, I think that in part of his speech he was referring to the LIFT program of last year.

**Senator Benidickson:** He indicated that he was opposed to the LIFT program.

**Hon. Mr. Olson:** Those comments were also related to the LIFT program and of course I could make a great argument I think that would persuade you that we had to do that kind of a program in the crop year 1970.

**Senator Benidickson:** I did not think his remarks were confined to the LIFT program.

**Senator Argue:** That is the revolutionary program which I was talking about and certainly not this bill—it has taken 40 years.

**Senator Bourget:** We are not dealing with that today, are we?

**Senator Benidickson:** We were dealing with the bill. I thought that since it was presented in *Hansard* and it is paragraphed there that it could refer generally to the bill because the speech was on the bill.

**Senator Argue:** There are a lot of things other than the bill.

**Senator Benidickson:** He did say that he has made representations indicating that he did not particularly favour the LIFT program. Prior to the portion I have quoted he went on to say that in connection with this attempt to be helpful and improve the situation in the grain trade, a task force on agriculture had been appointed.

**Hon. Mr. Olson:** The task force consisted of a number of eminent agriculturalists headed by D. L. MacFarlane, chairman, and D. R. Campbell, P. Comptois, J. C. Gilson,

and D. H. Thain, members. That is the report to which I think he was referring. They were appointed in 1967, I believe, to give us an analysis and some recommendations for the whole agriculture structure in the 1970s.

**Senator Benidickson:** What was involved in the reference to a study of grain marketing by Mr. S. C. Hudson? What relationship does that have?

**Hon. Mr. Olson:** I understand that was done for the Economic Council of Canada.

**Senator Benidickson:** The Wheat Board itself commissioned a similar study domestically and internationally.

**Hon. Mr. Olson:** Yes, it was the Wheat Board.

**Senator Benidickson:** Is that part of the background for the preparation of this bill?

**Hon. Mr. Olson:** Not really, Mr. Chairman, because the marketing and the techniques of marketing, other than to make sure that the quality is provided for in the grades and so on, is really in another area completely.

**Senator Argue:** Mr. Chairman, if I might say a word, I did speak about this in my speech. It involves many things other than the bare bill itself, because it opens up the whole question, in my opinion, for a second reading discussion of the grain marketing situation. I think Senator McNamara would agree that a large part of his speech was not on this precise bill but on the general grain situation and the tremendous improvements in markets. This was very much in order and is the kind of thing which should be done. Senator Benidickson has quite rightly said that I objected to the LIFT program. It did come, to a large extent, out of the blue as far as the actual producer was concerned.

A new policy has been announced by the Honourable Otto Lang. I should like to relate a private conversation we had. I said that there should be more consultation with the producers, and he replied that you cannot really have a public opinion survey. I said, "Maybe that is what you should have." Well, I was delighted to find out a couple of weeks later that he had sent out a letter to every grain producer in western Canada, almost 200,000 of them, asking for their opinions. I think that was a wise move. The minister will get all these opinions and I am sure that after looking at them some improvement may result—because the farmers will have been consulted.

**Senator Benidickson:** I remember you referring to that letter and commending the minister for sending it. Did that letter have application to the bill before us?

**Hon. Mr. Olson:** Not this bill, but the stabilization program that was announced. Of course, the purpose was to invite some kind of public debate or reaction to these proposals prior to the bill becoming operative, hopefully, for the 1971 season. That legislation will have to come to Parliament early in February. After consideration has been given to all the opinions that have been expressed, the bill will be drafted and presented to Parliament.

**Senator Benidickson:** I am satisfied. This portion of the speech rather frightened me. It does not particularly

relate to this bill and certain agricultural policies are recommendations in general.

**Hon. Mr. Olson:** Mr. Chairman, I ought to explain with respect to this bill that there were many meetings across the country; indeed, the Standing Committee of the House of Commons on Agriculture spent several weeks hearing witnesses from farm organizations.

**Senator Carter:** Is this a new bill? Does this update the existing legislation?

**Hon. Mr. Olson:** When this is passed we will repeal the present Canada Grain Act, and there are one or two acts which will be amended by the passage of this bill. There is section 108 which I believe deals with section 11 of the Prairie Farm Assistance Act, which modernizes or updates some of the provisions. In section 107 under the heading of consequential amendments on page 75 there is an amendment to the Wheat Board Act and the PFA Act. Under section 109 there is a minor consequential amendment to the Crop Insurance Act, and in several other places. Many of these are technical matters where we have, for example, changed the name from the Board of Grain Commissioners to the Canada Grain Commission.

**Senator Carter:** Does this act include new powers that did not exist in the old legislation?

**Hon. Mr. Olson:** There is a new provision in section 97 (a) dealing with the allocation of railway cars. There is a new provision under Section 41 of the bill, giving the commission authority to alter the charges from the full storage charges, when any elevator is inoperative due to labour stoppage or for any other reason that the elevator cannot function. That is a new provision, and it brought in some other elevators that were not covered before.

**Senator Carter:** I notice under clause 74 you have investigations and arbitration, and there is a list running from (a) to (i). Do you have many of that type of complaint to investigate?

**Hon. Mr. Olson:** Yes, Mr. Chairman, we do. There is a continuous flow of appeals. I am not sure that they would fall into the category of investigations, but of appeals against a grade, for example, by a farmer who is not satisfied with the grade that the local elevator agent may give him. On a continuous basis also, the Board of Grain Commissioners are doing inspections at all of the elevators, to make sure that the kinds of grain that they claim they have there, and the volume, is, in fact, there.

**Senator Carter:** Is this the final court of appeal for the farmer, or can he go higher, if he does not think that he has got justice?

**Hon. Mr. Olson:** Yes, he could appeal to the minister, and in any case he could appeal to the Exchequer Court, depending on what he is appealing.

**Senator Benidickson:** I was interested in the point raised by Senator Cook, on the question of penalty, when we put in statutory form the authority of the Governor in Council to direct the railway companies in their allocation of box cars. I have been around here for a great



number of years and I repeat that I know very little about the grain trade, but I have seldom been here in a session when there has not been considerable complaint, from the representatives from the farming areas, about the provision and allocation of box cars for their production. My understanding is that, over the years, the Department of Transport and the Department of Agriculture and other agencies of Government, and the Wheat Board perhaps, have been relying on persuasion and negotiation. Notwithstanding the reliance simply on that, there has been, to my knowledge, in every session, complaints of considerable strength from the producers of grain about this matter of box cars. I wonder if the minister, when he is drafting regulations, would give some consideration to that. I believe that we have been working on persuasion and negotiation for years, and I think Senator McNamara will probably be able to confirm that.

**Hon. Mr. Olson:** I do not believe that all of the complaints are going to go away simply because we have within the act the authority to direct the railways to put cars at certain places and, indeed, even the number of cars.

**The Acting Chairman:** There might not be enough cars.

**Hon. Mr. Olson:** There are two or three things we have to take into account. As the chairman has pointed out, one has to consider the number of cars that are available. Also, when a car is loaded, in fairness to the railway company, they ought to know when that car is going to be unloaded. We have had experience where grain has been left in cars for a long period of time, because there was no place to unload it. This usually happens at the end of the crop year, when the Wheat Board is trying to equalize the quotas as much as they can. Therefore, I do not think all the complaints are going to disappear. A farmer living a hundred miles away from another elevator is usually not very happy if he sees the quota there has gone up to four bushels, for example, while his elevator is still at two. If the Wheat Board could explain to him the reasons why this is so, from time to time, I think he would have a better appreciation of it. These complaints will continue as long as we have production in excess of the immediate market demand.

**Senator Benidickson:** I have some sympathy for the railways, too, because I had a function to perform at one time in the Department of Transport as parliamentary assistant to the Minister of Transport. We often had to convey the Department of Transport's reports, as received from the railways, with respect to these constant complaints in Parliament.

**The Acting Chairman:** Honourable senators, if there are no more questions for the minister, I would like to draw your attention away from the general to the more particular. While the minister and Mr. Phillips are here, are there any questions you would care to direct to specific clauses in the bill? I am sure the minister and Mr. Phillips would be glad to stay with us while we go

through the bill clause by clause. Alternatively, if there are no more questions, may I have a motion to report the bill?

It is moved and seconded to report the bill without amendment.

**Hon. Senators:** Agreed.

**The Acting Chairman:** Mr. Minister, thank you very much for your patience in answering these long and difficult questions. We appreciate very much your having taken the time to be with us. We also thank you, Mr. Phillips, for your assistance.

**Hon. Mr. Olson:** It has been a pleasure to be here.

**The Acting Chairman:** Honourable senators, we have a precedent today which I think should be noted for the record. We have with us Mrs. Aline Pritchard, of the Committee's Branch, who is acting today as our clerk. I am advised that this is the first time that a woman has performed this function. I am glad that we have such a beautiful and charming woman as Mrs. Pritchard here this morning, and we acclaim her heartily.

**Hon. Senators:** Hear, hear.

The committee adjourned.

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Friday, December 18, 1970

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-179, an act respecting the Buffalo and Fort Erie Public Bridge Company, met this day at 10.30 a.m. to give consideration to the bill.

**Senator Daniel A. Lang** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, we have referred to us Bill C-179, respecting the Buffalo and Fort Erie Public Bridge Company, and our witness is Mr. B. Pomerlan, of the Department of Finance. Mr. Pomerlan, would you describe to the committee the necessity for this bill?

**Mr. B. Pomerlan, Financial Operations Branch, Department of Finance:** Yes, Mr. Chairman.

Honourable senators, this bill is very brief. It contains just three clauses, two of which are key clauses. One relates to the borrowing power of the bridge authority and the other relates to what we call the reversionary date—that is, the date upon which the property of the bridge authority located in Canada reverts to the Government of Canada.

The need for this bill may be attributed to the fact that the bridge authority is looking at its traffic projections over the next period of time, and it is considering the possibility of widening the bridge in the event that such widening is required to handle the increased traffic which they expect.

The decision has not been taken on (a) whether the bridge is necessary, or (b) if it is necessary when it will



be constructed, but this legislation is intended to be ready in that event.

**Senator Connolly (Ottawa West):** Do you mean the widening?

**Mr. Pomerlan:** Yes, the widening of the bridge. What the bridge authority is faced with immediately is what they call the rehabilitation of the bridge—that is, the strengthening of the bridge, replacing the decking on the bridge, installing new lighting systems, and generally putting the bridge in a much better condition than that in which it exists at the moment. This is what they call phase one.

Phase two is the widening of the bridge, if widening is decided upon. Phase one fits in with phase two, but it could be that only phase one will be undertaken, and not phase two.

The existing borrowing authority of the bridge is \$4 million, and this is actually sufficient to take care of phase one, but if phase two is necessary then the costs of that will run anywhere from \$10 million to \$12 million, and this additional borrowing power is necessary.

**Senator Connolly (Ottawa West):** What did the bridge cost originally?

**Mr. Pomerlan:** The cost was of the order, I think, of \$1 million.

**Senator Connolly (Ottawa West):** \$1 million?

**Mr. Pomerlan:** Yes, it was a very small amount at the time.

**Senator Connolly (Ottawa West):** Has it been increased in size since it was originally built?

**Mr. Pomerlan:** No, it has not. Improvements are made to arrangements and systems to accommodate increases in traffic, but the bridge is essentially safe. It is approximately 40 years old.

The reversionary date under the present legislation is 1992. If the bridge authority decides to proceed with the widening they would have to seek financing by borrowing in the market. The term of such borrowing would likely be of the order of 40 or 50 years. The reversionary date of 20-20 is about 50 years from now. While it is quite true that the language is when the bonds are paid off or 20-20, whichever is later, the 20-20 is more consistent with the likely term of the bonds. In any event it gives the bridge authority an assured life of approximately 50 years, after which time the Canadian property reverts to the Canadian authorities and the American property to the American authorities. At that point in time they would decide how the bridge would be administered.

**The Acting Chairman:** Did some United States governmental body have to pass equivalent legislation?

**Mr. Pomerlan:** Yes, that equivalent legislation was in fact passed during the current year.

**Senator Connolly (Ottawa West):** By the State of New York?

**Mr. Pomerlan:** By the State of New York; this is parallel legislation to the extent it is required.

**Senator Connolly (Ottawa West):** How did it come about that the Canadian Government became involved in this when only a state is involved in the United States? Is it simply because it is international?

**Mr. Pomerlan:** It is an international bridge; that is right.

**Senator Connolly (Ottawa West):** Can you tell us anything about the operating position of the bridge? Has the authority been making money?

**Mr. Pomerlan:** Yes, they have been making small surpluses in each year.

**Senator Benidickson:** But the amount given to the Canadian Government as its share of the surplus has been at a fixed amount for some time.

**Mr. Pomerlan:** It has been at about \$200,000 per year to the Canadian Government.

**Senator Benidickson:** They have had a net surplus beyond the amounts they have distributed to governments.

**Mr. Pomerlan:** Yes, but that has been very modest; there is very little left over.

**Senator Benidickson:** The sponsor pointed out that the toll rates relative to other international bridges are rather low.

**Mr. Pomerlan:** These rates have been unchanged since 1956, when they were referred to the Board of Transport Commissioners and approved.

**Senator Beaubien:** Is the bridge administered in the United States?

**Mr. Pomerlan:** Yes, the bridge authority is incorporated in the United States. However, its powers in Canada derive from the Canadian legislation.

**Senator Benidickson:** But there are Canadian directors.

**Mr. Pomerlan:** That is right.

**Senator Benidickson:** And the chairmanship alternates between a Canadian and an American year by year.

**Mr. Pomerlan:** That is right; one year there is a Canadian chairman and a U.S. vice-chairman and the following year it reverses.

**Senator Benidickson:** The sponsor, Senator Kinnear, said last night that we would not be called upon, or there would be no appeal made with respect to the \$2,500,000 that might be required for the repairs and renovations at the moment.

**Mr. Pomerlan:** That is right.

**Senator Benidickson:** But that there might be an appeal in the case of the larger expenditure of about \$12 million when the widening is carried out.

I may be quite wrong in this, but there are two international toll bridges in the area I represent. I have been informed that no federal assistance would be forthcoming with respect to a toll bridge. Indeed, if it is privately operated by a private company charging tolls, on which basis most of them are organized, one of the difficulties that the organizers of this public service has is that we even asked them to put up the money for our customs officers and immigration offices.

**Mr. Pomerlan:** That is right.

**Senator Benidickson:** Why would we mention the possibility of an appeal to the Government for assistance with respect to the widening if it has not been done in the past? Would that be a reversal of past policy?

**Mr. Pomerlan:** I am afraid, senator, I cannot speak on Government policy in these matters.

**Senator Benidickson:** Do you know of any international toll bridges to which the federal Government has made a contribution?

**Mr. Pomerlan:** There are some in the eastern part of the country that have been put up between the Department of Public Works and one of the American states. There are several in the east.

**Senator Benidickson:** Which are subject to tolls?

**Mr. Pomerlan:** No, they are toll-free.

**Senator Benidickson:** Well, that was the point. When tolls are charged, as is the case here, my understanding is that the bridge authority has to find considerable funds for customs and immigration offices. Theoretically this expenditure is eventually reimbursed by tolls.

However, there is a bridge in Kenora-Rainy River where the tolls are insufficient to carry the debt charges. It has not been a success. It has been a wonderful public advantage to have the bridge, but from the point of view of financing revenues have not been adequate to pay obligations under the debentures. Our departments have consistently refused to make any contribution with respect to the structures that actually house departmental officials.

**Mr. Pomerlan:** This is a problem with regard to government policy; I cannot speak to it.

**Senator Benidickson:** My curiosity was aroused last night when there was some hint that we might expect an appeal for assistance when the major undertaking is decided upon, namely the widening of the bridge at considerable expense.

**The Acting Chairman:** Maybe we will cross that bridge when we get to it, senator.

**Senator Connolly (Ottawa West):** Perhaps Senator Benidickson feels that we are crossing the bridge now. Once this bill is passed and in force the authority for the financing will be there.

**Mr. Pomerlan:** That is right.

**Senator Benidickson:** The authority for the private organization to do the financing.

**Mr. Pomerlan:** That is right.

**Senator Benidickson:** But this amendment does not involve any commitment on the part of the Government to share in any future expenses, or change their policy.

**Mr. Pomerlan:** Not a bit. It is just enabling legislation which, if passed, authorizes the bridge authority to borrow. There is no indication of the source of the funds and no mandate as to where to borrow.

**Senator Benidickson:** It is proposing policy whereby a non-profit organization, usually sponsored by public-spirited people on one or both sides of the river, raises the financing and gets it going. Then our Government says they will not even pay the costs of the buildings required at the end of the bridge for their immigration and customs officials.

**Senator Carter:** Does the federal Government pay rent for these buildings?

**Mr. Pomerlan:** No.

**Senator Carter:** If the authority started to charge rent, on what basis could they refuse to pay it?

**Senator Benidickson:** I do not know, but they do. With respect to one of the bridges to which I referred in my area, the one that has been unprofitable, I would say that in initiating it, in the actual fund raising, 98 per cent of the financing, what was required to provide this public advantage—which is just as much an advantage to Canada as it is to the United States—resulted from funds raised on the United States side of the bridge and guaranteed by a relatively small village in the State of Minnesota. The state, seeing the predicament of this village, with deficits for the international bridge, has indicated that it is willing to buy the bridge and put up state funds to relieve the village of this obligation, or relieve the people who put up the money, although in fact it was under the guarantee of the village, because it is realized they cannot carry it. However, they balk at the State of Minnesota having to finance the cost of Canadian facilities for the Canadian side of the bridge, which are used for government purposes.

**Senator Connolly (Ottawa West):** And without compensation.

**Senator Benidickson:** Without compensation.

**Senator Connolly (Ottawa West):** Is it in the legislation?

**Senator Benidickson:** Here is a free gift of the bridge, paid for by the citizens of Minnesota, and we get just as much advantage from it as they do. Indeed, I do not know why they put up a bridge to move tourists into Canada, but they did. Then, as I say, we will not even pay rent for our facilities.

**Senator Connolly (Ottawa West):** Can Senator Benidickson say whether or not the legislation authorizing the



erection of the bridge made these other contributions a condition precedent?

**Senator Benidickson:** I frankly do not recall whether that was stated in the bill. I sponsored the bill some years ago, but I cannot remember that. I do remember it was made clear that that was government policy.

**Senator Connolly (Ottawa West):** It is the practice anyway.

**Senator Benidickson:** It was the practice and the policy has continued.

**Senator Connolly (Ottawa West):** I think the same situation arises on this bill.

**Senator Benidickson:** On this bill, because this is standard policy. There may have been some exceptions in the east, but one would still think they were exceptions with respect to non-toll bridges.

**Mr. Pomerlan:** That is right.

**Senator Benidickson:** That is a different situation.

**Mr. Pomerlan:** Yes, I presume it is, because it is not the same as the bridges in this part of the country.

**Senator Carter:** When you say it is a non-profit organization, are you saying that the tolls are set only to cover operating expenses?

**Senator Benidickson:** Yes.

**Senator Connolly (Ottawa West):** There is no profit.

**Senator Benidickson:** There is no equity.

**Senator Connolly (Ottawa West):** There is no equity money.

**Senator Benidickson:** No equity money at all.

**Senator Connolly (Ottawa West):** Except provided by the public.

**Senator Benidickson:** Except the people who bought the bonds. The revenues have not been adequate to do that, so the poor little village on the American side is under an obligation to pay the deficit. I would say that on a bridge of that kind we get more benefit than they do, because the incoming traffic from a heavily populated country like the United States benefits our tourist industry to a much greater extent than the reverse, Canadians going across to the United States on that facility.

**The Acting Chairman:** If I could bring the committee to order and back to the bill itself, are there any other questions of the witness on this bill?

**Senator Connolly (Ottawa West):** I just want to make this suggestion. I hope Senator Benidickson's proposal can be arranged, and then I would think perhaps the village might make him an honorary citizen!

**Senator Carter:** Is this the so-called Peace Bridge?

**Mr. Pomerlan:** That is right.

**Senator Carter:** This is the Peace Bridge?

**Mr. Pomerlan:** This is the Peace Bridge, yes.

**Senator Carter:** Is there anything significant about its construction? Why it should get this particular name? It seems to be a special project.

**Mr. Pomerlan:** After World War I the citizens on both sides of the border felt that as a gesture of good will this bridge should be built. There was a need for a bridge and they thought it would be nice to have such a bridge as a demonstration of the good will existing between the two countries. This is what gave rise to the bridge, and this is why it was called the Peace Bridge, because it was erected shortly after World War I.

**Senator Connolly (Ottawa West):** They paid 98 per cent and we paid 2 per cent.

**Senator Benidickson:** No, not the bridge dealt with in this bill. I know nothing about the financing of this bridge.

**Mr. Pomerlan:** It was paid out of borrowed funds.

**Senator Beaubien:** Mr. Chairman, I move that we report the bill without amendment.

**Hon. Senators:** Agreed.

**The Acting Chairman:** Thank you very much, Mr. Pomerlan.

**Senator Benidickson:** Is there any way of putting into the report something about the present stern policy of the Government on non-profit international bridges? It seems rather harsh when the Government will not pay for their own facilities.

**The Acting Chairman:** I imagine the transcript of this committee meeting could be passed to the appropriate officials.

**Senator Carter:** Is the committee not able to make a recommendation to the Government with respect to policy on this?

**Senator Benidickson:** Future policy with respect to other bridges.

**Senator Carter:** Yes, future policy.

**The Acting Chairman:** I certainly would not think it would be within the ambit of reference of this bill.

**Senator Connolly:** It seems to me from the material that is now on the record that there is an implicit recommendation from the committee that there would be a review.

**Senator Benidickson:** I thank Senator Connolly for his support on the policy.

The committee adjourned.



## APPENDIX

### SUMMARY INFORMATION RELATED TO GRAIN HANDLING IN CANADA

#### *Canadian Government Supervision of Handling and Movement of Western Grain*

A delivery permit book is issued to each grain producer in Western Canada by the Canadian Wheat Board. This book contains a record of acreage seeded to grain by the producer and of all grain delivered to elevators from his farm during the current crop year. Delivery quotas for the various kinds of grain, and for each delivery point in Western Canada, based on farm acreage, are set by the Canadian Wheat Board.

All country elevators in Western Canada are required to be licensed by the Board of Grain Commissioners. The licensee is required to be bonded by an approved surety company, to carry insurance against fire on all grain stored in licensed premises, to submit reports of grain handlings and stocks, and to audit grain stocks in each elevator at reasonable intervals and submit audit results to the Board. The Board's Assistant Commissioners inspect all country elevators regularly to see that requirements of the Canada Grain Act and the Canada Grain Regulations are being complied with. The Assistant Commissioners also investigate complaints relating to producer transactions with licensed country elevators.

When the producer delivers a load of grain to a licensed country elevator, if he agrees with the grade and dockage offered by the country elevator agent, he receives payment based on the initial payment price for the kind and grade, established by the Canadian Wheat Board. If the producer and the country elevator agent do not agree on the grade and dockage, the producer receives an interim elevator receipt for his grain and they jointly forward a representative sample of the grain to the Board of Grain Commissioners for government grading. This official Board of Grain Commissioners grade then becomes the basis of settlement for the grain delivered.

The Canadian Wheat Board issues shipping orders to companies which operate licensed country elevators. These orders authorize the company to ship carloads of a specified kind and grade of grain to a specified terminal point, such as Vancouver, Thunder Bay or Churchill; to one of the Canadian Government Elevators in Western Canada; or to a flour mill elevator. Rail movement of grain from country points is controlled by the Block System and is administered by the Canadian Wheat Board.

Terminal elevators are licensed by the Board of Grain Commissioners to handle, treat and store grain shipped in carload lots from country points in the prairie provinces. Licenses are required to be bonded, to insure all grain stocks against fire, and to submit regular reports of grain stocks and handlings. The elevator buildings and all grain handling equipment including scales are subject to the Board's inspection and approval. The stocks of grain in all licensed terminal elevators are audited annually by

the Board of Grain Commissioners and the quantities on hand are compared with totals of outstanding registered warehouse receipts as shown by the Board's records. After the results of audits have been compiled, the elevator licensees are required to make adjustments covering all overages and shortages.

On arrival at a terminal elevator, grain is officially sampled, weighed and graded by officers of the Board of Grain Commissioners cleaned to tolerances established for commercially clean grain; treated if necessary to remove excess moisture, mineral matter or for other reasons; and binned according to grade. Warehouse receipts are issued and registered by the Board of Grain Commissioners and delivered to the manager of the terminal elevator. The warehouse receipts are then delivered to the Canadian Wheat Board, the owner of the grain. Warehouse receipts are negotiable documents representing a specified quantity and grade of grain and are used by the holder as security to obtain bank financing for grain transactions.

When the grain is sold by the Canadian Wheat Board for domestic use in Canada or for export, and is loaded out of the terminal elevator to railway cars or vessels, it is again sampled and graded by the Board of Grain Commissioners' inspection staff, according to export standard samples and specifications, and weighed under supervision of the Board of Grain Commissioners. When the grain is ordered out for shipment, the Canadian Wheat Board surrenders registered warehouse receipts for the grade and quantity, and the receipts are cancelled by the Board of Grain Commissioners.

The references to buying, pricing and selling of grain apply specifically to the kinds of grain over which the Canadian Wheat Board has full marketing jurisdiction in Western Canada, namely: wheat, oats and barley. Other grains handled through country and terminal elevators such as rye, buckwheat, flaxseed, rapeseed and mustard seed are bought and sold by producer co-operatives, elevator companies, processors and grain exporters. The Board of Grain Commissioners' inspection, weighing and documentation apply uniformly to all kinds of grain and oil seeds.

Elevators located east of Thunder Bay, Ontario, which handle Western grown grain are licensed by the Board of Grain Commissioners as "Eastern" elevators, and are subject to Board requirements for bonding, insurance of grain stocks, and reporting. These are transfer elevators and are situated at ports on the Great Lakes, the St. Lawrence River and at the Atlantic seaboard. Eastern warehouse receipts are issued by the elevator managers to cover all grain received. The receipts are registered with the Board, and are surrendered and cancelled when the grain which they represent has been shipped. As all western grain handled has already passed through terminal elevators at Thunder Bay, it has been officially inspected and does not require further cleaning or drying at eastern elevators. This grain must be binned according to grade and no mixing of grades is permitted during storage or shipment. All western grain loaded out into ocean vessels for export is officially sampled, verified for grade and certified by the Board of Grain Commissioners.

Otherwise, the Board of Grain Commissioners' inspection and weighing services are provided at an eastern elevator only on request of the elevator manager or the owner of grain consigned to or in store in the elevator. All stocks of grain in licensed eastern elevators are audited by the Board and quantities on hand are compared with totals of outstanding eastern warehouse receipts as shown by the Board's records.

The Board of Grain Commissioners establishes in the Canada Grain Regulations maximum tariffs of charges for the various services performed by licensees of country, terminal and eastern elevators, such as elevation, storage, cleaning and drying. Generally, the elevator licensees charge the maximum rate permitted, but may charge less providing they file the schedule of charges with the Board. The Board also sets out in the Regulations allowances for invisible loss and shrinkage on grain received at country and terminal elevators.

#### *Canadian Government Supervision of Handling of Eastern Grain*

Licensed eastern elevators, in addition to handling western grown grain, for export or for domestic use, may handle shipments of grain grown in Eastern Canada and grain grown outside Canada (U.S.A.). The handling of this grain by these elevators is subject to the same

requirements as in the case of western grain, that is, bonding, insurance, issuing of warehouse receipts and reporting to the Board. The Board of Grain Commissioners provides services for this eastern grain and grain grown outside of Canada only on a request basis.

There are elevators in the eastern division which handle principally eastern grown grain and are not licensed by the Board of Grain Commissioners. These are country elevators and feed mills. The Board maintains an inspection unit at Chatham, Ontario, which provides official sampling and grading services on request to grain producers and to the grain trade in the surrounding area. Services are also available from Board offices located at Toronto and Montreal.

#### *Board of Grain Commissioners Operating Costs.*

The Board of Grain Commissioners' total expenditure budget amounts to some \$11,000,000 per annum; about 75 per cent of this amount is recovered through fees for services, charged according to Schedule A of the Canada Grain Regulations.

Additional information relating to expenditure and revenue is contained in the Board's annual report for 1968.

Winnipeg, Manitoba

April 1, 1970









THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 6

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WEDNESDAY, JANUARY 27, 1971

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First Proceedings on Bill C-3,

intituled:

“An Act respecting investment companies”

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(For witness—see Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin  
(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 15, 1970:

"A Message was brought from the House of Commons by their Clerk with a Bill C-3, intituled: "An Act respecting investment companies", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, January 27, 1971.

(9)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

Bill C-3, "An Act respecting Investment Companies".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Carter, Cook, Desruisseaux, Flynn, Gelinass, Hollett, Isnor, Kinley and Lang.—(13)

*Present, but not of the Committee:* The Honourable Senators Lafond and Urquhart.—(2)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

*Witness:*

*Department of Insurance:*

Mr. R. Humphrys,  
Superintendent of Insurance.

At 11.55 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, January 27, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-3, respecting investment companies, met this day at 9.30 a.m. to give consideration to the bill.

**Hon. Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** This is the first meeting of the committee this year, so I welcome you all. We will have a lot of work. We have before us today Bill C-3, respecting investment companies. If you recall, originally we had Bill S-17 in the session of 1968-69. We rewrote the entire bill with the full support of Mr. Humphrys—perhaps the word “full” is not appropriate, but Mr. Humphrys can explain whether it was full or not.

The bill before us now contains substantially the provisions of Bill S-17 as they were in June of 1969 when that bill left the Senate. Some additions and changes have been made.

Mr. Humphrys is here this morning to explain the bill. I have asked him to refer to the clauses and tell us those which have not been changed in relation to Bill S-17. That will assist our consideration.

We have had inquiries from various organizations who wish to appear, a number of them in relation to the specific provisions dealing with sales finance companies. Following our usual practice we have informed these organizations that if they are expeditious in presenting their material, we will hear them. We have at least one for next Wednesday, and perhaps there will be more. Therefore we may take three or four sittings in consideration of this bill, but I can tell Mr. Humphrys that we are not going to waste any time on it.

Mr. Humphrys, will you come forward?

**Mr. R. Humphrys, Superintendent of Insurance:** Mr. Chairman and honourable senators, as the Chairman has already mentioned, this bill is substantially the same as Bill S-17 which was before you in the session of 1968-69 and which was given third reading in the Senate in June of 1969. Following that date the bill moved over to the House of Commons, but it was not possible to deal with it in the balance of that session. It was introduced in the fall of 1969 in the House of Commons, but again was not dealt with at that session. It was reintroduced last fall as Bill C-3.

The nature, the scope and the purpose of the measure I believe are well known to you. It was reviewed again briefly at the time of second reading. However, as a brief

reminder I might say that the principal purpose of the bill is to establish a system of reporting and supervision for companies that are substantially in the business of acting as financial intermediaries.

These are defined broadly as companies that raise money and debt instruments and use a significant portion of the money so borrowed for investment purposes. The main type of company covered would be those usually known as sales finance companies, but there would be a considerable number of other types of companies covered by the definitions as well.

The main effect of the bill would be to require companies subject to it to submit annual statements to the supervisory authority, which is stated to be the Department of Insurance; it would empower the Superintendent of Insurance and his staff to examine the condition and affairs of companies at their head offices; it would require the Superintendent to report to the minister in any case where he thought that the ability of the company to meet its obligations was inadequately secured; and it empowers the minister to take one or more of a series of steps designed to result in improvement in the financial position of the company, or in extreme cases to stop it from borrowing from the public, or even to enable the minister to initiate winding up proceedings by applying for a receivership order under the Bankruptcy Act.

The bill does not prescribe any particular standards of financial strength, or classes of eligible investments. It does, however, have the overriding requirement that a company subject to the bill is supposed to keep itself in a financial condition to give adequate security for its debts, and also to refrain from making investments and loans where there may be a conflict of interest.

That in brief outline is the nature and purpose of the measure, which are exactly the same as in the measure that was before you nearly two years ago.

**The Chairman:** Mr. Humphrys, if we put the purpose of the bill in a nutshell, it applies to companies that borrow money on their bonds, debentures, etc., and use that money for financing purposes and other operations—not necessarily operations with which they have any share connection—by loaning the money, by purchasing shares, etc. We proceed from that as a base and there are exceptions. That is the broad base. I do not want to interrupt the way in which you are planning to present this, but I wonder if we could collect some of these ideas. For instance, perhaps we could collect in the record at some stage the exceptions that cut down the application of this bill to the business of investment or investment companies.



**Mr. Humphrys:** Yes, Mr. Chairman, I will summarize that, and it will fit very well with the comment I am about to make, pointing out the two major areas this bill differs from the one that was before you in 1969.

The first major matter, and the one that ties in with the comments you have just made, Mr. Chairman, is a change in clause 3, which broadens the area of ministerial discretion to exempt companies from the application of the bill. A moment ago I mentioned that the bill would apply to companies that are acting as financial intermediaries; that is, companies that raise money on debt instruments and use some or all of the money so borrowed for investment. If the definition were left at that it would obviously cover a vast number of companies, because nearly every company borrows some amount of money at some time or other, and nearly every company has an investment in securities or investment type instruments at some time or other.

In order to restrict the application of the measure to companies that are, to a significant degree, acting as financial intermediaries, some tests were put in to make sure that it would not apply to companies that were only borrowing a very small amount, or investing only a very small amount.

The first test was, that in order to measure whether a company is significantly in the investment side of the business the bill would not apply to any company if less than 40 per cent of its assets were in investment type instruments. On the other side, it would not apply to a company if its borrowed money, its debts from borrowed money or its guarantees were less than one-third of its capital and surplus. Those are the basic tests to make sure that it applies only to companies that are borrowing a significant amount and investing a significant amount. In order to be covered the company has to borrow at least an amount equal to one-third of its capital and surplus, and have at least 40 per cent of its assets in investment type instruments—bonds, stocks, investment real estate.

**The Chairman:** You are now referring to subsection (3) of clause 2 on page 3.

**Mr. Humphrys:** That is the major qualification of the first broad category, of those companies that borrow and invest.

In addition to those tests, a certain number of companies would be excluded. The first exclusion would be companies that are acting as securities dealers, if they are licensed under provincial law. Securities dealers and brokers often borrow money, and often have a considerable inventory of securities of one type and another that they have for sale to their clients. There is a specific exclusion for those companies if they are licensed under some relevant legislation. In most provinces there is a licensing requirement on securities dealers, and there is really a code that applies to them, so it was not thought necessary to cover them by this measure.

Also excluded would be companies that borrow only from banks or from major shareholders. Major shareholders are defined as shareholders who own more than 10 per cent of the equity stock. It was thought that major

shareholders would know what they were about in lending to companies in which they have such a significant interest, and it was thought not necessary to apply this kind of measure for their protection. The exclusion in relation to companies that borrow only from banks is proposed because most companies borrow from banks from time to time, and it was thought that in the absence of such an exclusion the measure would cover a great many companies that are not really in the business of acting as investment intermediaries.

**Senator Isnor:** What is the main reason for excluding any companies?

**Mr. Humphrys:** There are a number of reasons. The first would be exclusion of companies that are borrowing only small amounts, or investing only small amounts, because the intention of the measure is to cover only companies that are significantly acting as investment intermediaries.

That was the purpose of the first tests on the proportion of their assets that would be investment type instruments and the amount of borrowing. The exclusion for securities dealers was based on the consideration that they are not essentially investment intermediaries and that they are supervised in other legislation.

The exclusion in relation to companies that borrow only from major shareholders and banks was proposed because major shareholders would be expected to know the full details of companies in which they have such an important personal interest; and the exclusion of companies that borrow moneys from banks was intended to avoid bringing within the measure a great number of companies that borrow from their banks from time to time perhaps more than the minimum limits prescribed here, but are not really acting as investment intermediaries.

There was a subsidiary consideration that in this country the banks are all strong and can be reasonably expected to look after their own affairs; but this was not the major consideration in that exclusion, because the same point could be made in respect of a number of other important financial institutions.

**The Chairman:** They are regarded as sophisticated borrowers?

**Mr. Humphrys:** Sophisticated lenders.

**The Chairman:** Sophisticated lenders, yes.

**Senator Carter:** Would it be fair to say that in the original bill what happens is that you had the net so wide that you were picking up companies that did not need the provisions you have in mind to protect investors, and at the same time you were creating an administrative problem because you would have more than you could actually deal with satisfactorily.

**Mr. Humphrys:** Yes, senator, that is a very accurate comment. In the original bill that was brought before you, the original scope was very wide, but there was quite a broad power for the minister to exclude companies. The Senate—and, in particular, this committee—though that that perhaps was going too far in bringing a

great many companies in and then letting them out. It made a lot of administrative work and created a number of problems for the companies concerned. So this committee, in studying the matter, decided that it would be better to narrow the original scope, to try to focus more accurately on the type of company that should be under such a measure; and consequently a number of amendments were made to try to accomplish that end.

That, in essence, is the effect of the provisions of the bill defining the companies that would be covered.

Since the matter was considered by this committee in 1969, further discussions have taken place. Some representations have been made to the department and other representations were made before the House of Commons committee. It was realized that, even within the narrower range of the definitions adopted in the amending Bill S-17, cases might arise where really there was no good reason in the public interest that the particular company be subject to a measure such as this.

It was thought that to try to define every such case in the terms of the legislation would be practically impossible, in the present state of our knowledge; it would complicate the legislation greatly, without giving us any real feeling that we had dealt with every case. So a change was made that broadened the area of ministerial discretion, whereby companies could be excluded if, having regard for a number of specific circumstances, it appeared that the public interest did not require that such companies be covered.

That broadening of the ministerial discretion is set forth in clause 3 on page 5 of the bill. I think it might be of interest if I just expanded on that particular provision, because it is quite relevant to this important aspect of the bill, as to who is going to be covered by it.

Turning to clause 3 on page 5—and, in particular, to subclause (2)—paragraph (a) permits the minister to grant an exemption if the business of investment carried on by the company, or a significant portion thereof, is of short duration and is incidental to the principal business carried on by it.

This is substantially the same as the ministerial discretion that was in Bill S-17—with a slight change in wording to make it a bit more workable.

Paragraph (b) is substantially the same as in Bill S-17—with some additional wording to clarify the interpretation. That is in favour of companies that become incorporated after the effective date of this measure, primarily for the purpose of carrying on the business of investment. Such companies may be excluded if they are, and intend to remain, companies with less than 40 per cent of their assets in investment type instruments or with borrowed money less than one-third of their capital and surplus.

Paragraph (c) is an important new one. It enables an exemption to be granted if the minister considers that it is not necessary in the public interest that the company be covered, having regard to:

- (i) the persons to whom the company is indebted in respect of money borrowed by it,
- (ii) the amount of the indebtedness of the company in respect of money borrowed by it,

(iii) the nature of any security given by the company in respect of money borrowed by it, and

(iv) the extent of the integration of the company's activities with the activities of its subsidiaries, if any, and with the activities of any corporation of which it is a subsidiary and any other subsidiaries of that corporation,

To bring this into focus, perhaps I might give a general example. I would not wish any comments that I might make in respect of examples to be interpreted as a determination of policy at the present time, because each case that applies for an exemption will have to be considered on the basis of the particular circumstances.

**The Chairman:** Will you have covering regulations under this section, or just depend on each individual case?

**Mr. Humphrys:** It would depend on an examination of the individual case but it is expected that, by the time the measure has been in force for a year or two and we have had a chance to look at all the cases that become covered by the act and that apply for exemptions, that it will be possible to draw rules that are more accurate and more precise than we can now; and that we would be in a position then to report on the classes of cases that had been exempted, so that if the bill comes before Parliament again, this matter could be considered in the light of actual experience, to see whether the terms of the legislation should be changed at that time or whether the discretionary approach should reasonably be continued.

Some examples might be, for example, under (i) the persons to whom the company is indebted in respect of money borrowed by it—I have already referred to the fact that companies that borrow only from banks would be exempted. There might be cases where a company borrows from another sophisticated lender, it might be a private placement, a special arrangement, a consortium of foreign banks or some arrangement whereby one can reasonably take the view that the public interest does not demand that this kind of supervision be applied.

Another example is under paragraph (ii).

**The Chairman:** But under paragraph (i) it might be a parent company.

**Mr. Humphrys:** Well, borrowing from a parent company should be exempted anyway, because a parent company would be a major shareholder.

**The Chairman:** Yes, but there are some complications in that that I will mention to you later.

**Senator Desruisseaux:** How about street money? What about short-term money that they get from the street on the basis of a note?

**Mr. Humphrys:** I would not think, senator, that that would justify an exclusion, if you are asking for my opinion right now, because many companies, sales finance companies particularly, borrow short-term on the market, and that is the kind of situation that should be covered by a measure such as this.



**The Chairman:** If I recall the facts correctly, Atlantic Acceptance did a lot of short-term borrowing.

**Mr. Humphrys:** Yes, a great deal.

**The Chairman:** And that is exactly the kind of operation we are interested in.

**Senator Cook:** Would there be such a thing as a conditional exemption, then, dependent upon a change in circumstances

**Mr. Humphrys:** No, the exemptions would not be conditional, senator, but the minister would have the right to withdraw the exemption if he thought that the circumstances had changed.

**Senator Cook:** But how would he know?

**Mr. Humphrys:** It follows that the administration would keep in touch with cases that had been exempted. They would not be formally required to file returns if granted an exemption, but I think in practical terms the administration would have to keep in touch with such cases to see whether circumstances had changed.

**The Chairman:** Mr. Humphrys, what concerns me is that if the minister grants an exemption under section 3 he does have the right at a later time to revoke; but where is there any authority in the bill under which he can require the furnishing of any material to him after an exemption has been granted?

**Mr. Humphrys:** There is nothing in the bill that would require such an exempt company to file information with the department or with another body specifically for this purpose, but all the companies that are subject to this measure, being federally-incorporated companies, are also subject to the Canada Corporations Act, and therefore would be required to file annual statements with the Department of Consumer and Corporate Affairs so that there would be a source of information in that respect. To take a practical view, I would not expect that there would be a serious difficulty in obtaining a reasonable degree of information about companies that had been exempted from the measure. The problem that arises is quite similar to the problem that arises in getting information about the company in the first instance to see whether it is a company that is subject to the measure or not.

But we thought that to give a conditional exemption, that is, to exempt the company from some provisions of the bill but not from others, would be adding to the complication and would leave the public in a position where it would not know really whether a company was subject to the essential control provisions of the act or not. So it seemed better to give an outright exemption or not to give an exemption so that the public would know that, if a company is on the list as a registered company, the measure applies to it; if it is not on that list, the measure does not apply to it. In that way it presents a clearer picture.

**Senator Aird:** Mr. Chairman, the last point you made is very important. How, in fact, will be public know? Will these companies carry the information on their letter-heads? Will it be advertised?

**Mr. Humphrys:** The bill requires that there be a list of the registered companies published in the *Canada Gazette* each year. The fact that the company is registered would also be on file in the Canada Corporations Act so that if one were making inquiries about a company pursuant to that act one could always obtain information about whether the company was registered under this act or not.

**Senator Aird:** Do you have any forecast at the present time of the number of companies that you contemplate this will cover?

**Mr. Humphrys:** So far as we have been able to determine, we believe it will be about 90 companies. How many of those might apply for and be granted an exemption I do not know at this stage.

**Senator Hollett:** Has the Governor in Council yet delegated or stated what minister or department this will come under?

**Mr. Humphrys:** It is intended that it be the Minister of Finance and that it be administered by the Department of Insurance, which reports to the Minister of Finance.

**Senator Cook:** On the same point, you give an exemption under paragraph (i), the persons to whom the company is indebted in respect of money borrowed by it. If, for instance, that were changed materially, should there not be some obligation on the company which enjoys the exemption to report the fact that the condition under which they got the exemption was changed? Would that not simplify the thing for you?

**The Chairman:** You mean such as any substantial variation or departure?

**Senator Cook:** Yes, from the current conditions under which the exemption was granted in the first place.

**Mr. Humphrys:** I think it would be incumbent upon us to try to become and keep informed in relation to such cases. We thought that we could accomplish that without having a statutory requirement resting on such companies to report under the measure. It is a question that relates to your earlier point, senator, about whether the exemption should be conditional or not. On balance we thought that it would be workable to give an outright exemption, but to try to keep ourselves up to date on the cases in an informal way. I think if we find that that does not work, then a different approach will have to be taken. But I do not really expect that a company that has received an exemption under this would take the attitude that they would not make available to us any information concerning their affairs. If it came to an outright difficulty where we had reason to think we should know, the minister could withdraw his exemption which would have the effect of forcing them to report.

**The Chairman:** I think your decision to be forthright in the exemption is a wise one, Mr. Humphrys, because otherwise I can see how it might interfere very considerably with financing.

**Mr. Humphrys:** Yes.



**The Chairman:** If it were a conditional exemption as against an absolute exemption, I can see where that might pose problems for those people who would be dealing in that field. Is it necessary in your opinion that a corporation that has been granted an exemption should be required to report any material change in its operations?

**Mr. Humphrys:** Well, Mr. Chairman, it is a difficult point, but I think it is one that is quite important from the point of view of the extent of the supervisory responsibility, and the implications of Government responsibility in relation to a company that may be in question. If a company is reporting officially to the supervisory authority and the supervisory authority has no power to do anything about the situation that is being reported, then I think it is almost worse from the public point of view than if the public knows it is an outright exemption.

If you are going to require these companies to report, then it is a conditional exemption and what the minister is really doing is saying, "I will not exempt you from the requirements of providing information to the Superintendent of Insurance. I will exempt you from my powers to do anything about your company if I think a bad situation has arisen." He would have to first find grounds for withdrawing the exemption. Then he would have to have the Superintendent make his examination, and then would have to take the other action. So we thought the company should be either under the measure or not, because a conditional exemption, in effect, gives the minister the power to amend the act and say, "I will make certain portions of the act apply to this company and "others apply to another company," and I think it could be quite a confusing situation.

**The Chairman:** But the companies are under the act, if it is necessary for them to get an exemption.

**Mr. Humphrys:** But once they are exempt, they are not under the act.

**The Chairman:** All I was saying was not that they are compelled to go through all the reporting here, but I asked you if you thought it was necessary for good administration that exempt companies be required to report material changes. That would give you a starting point.

**Mr. Humphrys:** We would want to know about material changes, Mr. Chairman. We hesitate to put a statutory requirement on an exempt company. I will say, in relation to the same thing, that I should draw your attention to the fact that the power of the minister to exempt is conditional to this extent, That he cannot exempt a company from the limitations on the transfer of shares to non-residents.

**Senator Carter:** Would it not depend largely the permanence of the change? There might be a variation for a period of three or four weeks, and by the time you get your report in it would be back to normal again.

**Mr. Humphrys:** We would not want to have to deal with every such case. The idea of an exemption would be to put the company in a category where we do not have

to concern ourselves with its day-to-day operations. If a material change did occur in the scope of its activities or the nature of its investing or borrowing, then, truly, it would be a case that the exemption should be reconsidered. So I think this implies that there would be some continuing contact to review the exemption, if circumstances change. But the imposition of a statutory requirement on the exempt company to report material change is something that we did not propose. I admit that in one way or another we should try to keep informed on such matters.

**Senator Cook:** If the department was not in such good hands as yours, would it not be a good idea to put the onus on the person who first made the exemption?

**Mr. Humphrys:** A statutory requirement of that type is subjective with the company, if you say that the company shall report any material change. It would have to be any change that, in the opinion of the company, is material—which, again, leaves it to the company's judgment whether to report or not.

**Senator Aird:** Yes, but the alternative, Mr. Humphrys, is the only place you are going to get this information from is a filing under the Corporations Act, and you have a sizable time lag factor.

**Mr. Humphrys:** Yes, senator, but the implication of this is that the onus is not on the administration to bring an exempt company back in. It can be done, but it does not require the administration to withdraw the exemption if certain things happen.

**Senator Gelinas:** Are these exemptions reviewed every year?

**Mr. Humphrys:** I think they would be reviewed periodically. It is hard to judge at this stage how many there would be and what the nature of them would be.

**The Chairman:** This bill does not require an annual review of the exemptions.

**Mr. Humphrys:** No, it does not, Mr. Chairman.

**The Chairman:** So here we are doing our best to provide a measure of protection for the public against conditions we know have existed. For the purpose of this bill we are assuming that once a person qualifies and the minister gives him an exemption, he carries on and it is up to the minister to try to find out whether he has been true to the circumstances on which the exemption was given.

**Senator Cook:** I think we should reserve the point and come back to it after we have heard the evidence of the other people.

**The Chairman:** Yes, I think we have talked it out, and we can make a note of it.

**Senator Desruisseaux:** Mr. Chairman, if I could revert to clause 3(2)(c)(ii)—"the amount of the indebtedness of the company in respect of money borrowed by it,"—what would be the present guidelines? I cannot see what they would be.

**Mr. Humphrys:** I could give two examples there, senator. Under the test in subclause (3) of clause 2 a company is not considered to be an investment company if the outstanding debt, together with guarantees, is less than 25 per cent of the aggregate of the debt and capital and surplus.

We might have a case where a company had guaranteed debts of some of its subsidiaries but had not borrowed any money or had borrowed only a small amount, so the indebtedness for the money borrowed might be quite small although the total of its guarantees plus borrowed money might be more than the 25 per cent base. So we thought that might be a kind of case we would want to look at to see whether the borrowed money was of such significance that the company should be covered or not.

Another case might be where a company buys a parcel of real estate that has a big mortgage on it. When it prepares its balance sheet that mortgage would appear as a debt, but it is not money that was borrowed by the company. So, again, we might want to look at that case in the light of the actual money borrowed by the company, as distinct from its debt.

Those are the kind of cases we would want to look at.

**Senator Aird:** Mr. Chairman, I would like to go back to the numbers again, and perhaps Mr. Humphrys does not have them available at this time, but it seems to me that it would be very useful for us to have on the record a breakdown, province by province, of the 90 that he forecasts will come under this act, so that we will have an idea as to where this responsibility is ultimately going to lie.

**Mr. Humphrys:** We have done the best we can so far, senator, to try to identify the companies that might meet the tests. We have not received all the information that we would need from all the companies, so we do not want to commit ourselves too firmly on any predictions, although most of them are centred in the two major provinces of Quebec and Ontario.

**Senator Aird:** More than half?

**Mr. Humphrys:** I think so, yes.

**The Chairman:** In your projection by which you reached 90, have you projected incorporations, looking forward, or is this just existing companies?

**Mr. Humphrys:** This is just existing companies, so far as we could identify them.

**The Chairman:** If there are no other questions, will you carry on, Mr. Humphrys?

**Mr. Humphrys:** That area of discretionary exemption was one of the principal changes in this measure as compared to the bill you studied although, as you can see, it is aimed at the same kind of problem that this committee was working on when you last studied the measure.

**The Chairman:** I think your Roman numeral (iv) in section 3 is a very important additional basis for exemp-

tion; that is, the integration feature of the company's activities. Would you develop that a bit?

**Mr. Humphrys:** Under the measure as it left the Senate, where a company loaned money to or invested in a subsidiary it was provided that that type of investment would be ignored for the purposes of testing whether a company was an investment company or not, provided that the subsidiary was not itself an investment company.

Some cases have come to us since then where there could be two, three or four layers of subsidiaries and the company may have made an investment in the second or third layer. Rather than try to revise the wording dealing with subsidiaries that has been adopted by this committee, we thought it better to take this approach and permit the minister to look at the extent of the integration in the activities of the particular company with those of its subsidiaries, of its sister companies and of its parent, and to try to judge in that context whether it is really an investment intermediary so far as the public is concerned or whether it is part of the whole operating function of the corporate enterprise.

There may be a variety of cases—perhaps more so than anybody can list at this stage—where a company may serve only the parent, or it may serve all the companies in the group. There may be quite a variety of circumstances.

This permits such companies to be studied and in the light of the integration of its activities with companies in the family, to determine whether this kind of supervision and control is necessary in the public interest.

**The Chairman:** Even if such an operation were covered and exempt, or the act did not apply under the provisions, this integration might apply in the situation where you have a top company which fully owns a number of subsidiaries that are manufacturing companies, and then it has also a wholly owned subsidiary which it uses as a financing media. The top company may lose money in addition to holding shares in its financing subsidiary, but all the borrowing from the public for the financing of the manufacturing companies may be done by this financing subsidiary. We have dealt with that elsewhere on a percentage relationship of assets. But this integration feature would apply, would it not?

**Mr. Humphrys:** Yes. Such a case could be studied under this clause.

**The Chairman:** The committee will remember that we had Massey-Ferguson who were making substantial representations on this point.

**Mr. Humphrys:** The other important addition to the bill deals with the limitation of the transfer of shares to non-residents in respect of sales finance companies. These new measures are found in clauses 10 to 17, and they carry with them the subsidiary provisions enabling the making of emergency liquidity loans to companies that are subject to that restriction. These emergency loans could be made by the Canada Deposit Insurance Corporation using funds borrowed from the Consolidated Revenue Fund.



**The Chairman:** That is a curious set-up, Mr. Humphrys. This is to deal with the nationality of the shareholders of the company and requires that the non-nationals cannot hold more than a certain percentage of shares of the company. Is that right?

**Mr. Humphrys:** Yes, Mr. Chairman. Clauses 10 to 15 impose limitations on the transfer of shares of a sales finance company to non-residents. A sales finance company is defined on page 17 of the bill as:

—an investment company at least twenty-five per cent of the assets of which, valued in accordance with the regulations, consist of

- (i) loans, whether secured or unsecured, made by the company, or
- (ii) purchases by the company of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange, promissory notes or other obligations representing part or all of the sale price of merchandise or services;

Such a company would be subject to these limitations and the limitations are practically identical with similar limitations applicable to life insurance companies, trust companies, mortgage loan companies and banks. That is, they impose a maximum of 25 per cent on the portion of the shares that can be held by non-residents and a maximum of 10 per cent on the shares that can be held by any one non-resident. In relation to those companies, those limitations apply to each class of shares if there are several classes.

**Senator Lang:** Assume that a company was exempted under this act and it had outstanding options to non-residents involving more than 25 per cent of the stock, and then the exemption was revoked and the option holders exercised their option? What sort of position would the directors find themselves in?

**Mr. Humphrys:** I would say first that the power of the minister to exempt a company from the application of the act does not extend to enable him to exempt a company from the limitations of transfer of shares between non-residents. That is the first answer to your question.

The second point, which is a difficult one, is that a company is subject to these limitations only if it is a sales finance company that is, only if it remains an investment company and remains as a sales finance company within these definitions. Should it fail to do so, it would drop out of the act completely and would also be freed from these exemptions.

It would be possible to imagine a case of a company that was subject to these restrictions and its financial position changed in such a way that it was no longer an investment company. Then it might be sold to non-residents and might subsequently come back in as an investment company.

Once a company is registered under this act, it remains an investment company regardless of the change in its assets until that registration is allowed to lapse or is withdrawn.

**The Chairman:** The company can bring the thing to issue. It would not renew its registration?

**Mr. Humphrys:** The renewal is at the discretion of the minister and not the company.

**The Chairman:** How does the company let it lapse?

**Mr. Humphrys:** It could not let it lapse. The minister might let the registration of the company lapse if it is no longer acting as an investment intermediary; but it is discretionary with him whether he allows it to lapse or not.

**Senator Beaubien:** Mr. Humphrys, what about CIT Finance and such people who are wholly owned in the States?

**Mr. Humphrys:** Any company that is controlled by a non-resident—that is, where more than 50 per cent of the voting stock was held by a non-resident on October 17, 1969, which was the date that this measure was announced—is exempt from this restriction.

**Senator Aird:** I should like to ask a question under 10(1)(a). Is it normal to say:

- (i) an individual who is not ordinarily resident in Canada,

I query the word "ordinarily".

**Mr. Humphrys:** This is the same wording as that used in the Bank Act, the Insurance Companies Act, the Trust Companies Act and the Loan Companies Act in connection with similar measures. We therefore considered it wise to following that wording, which I have not had questioned.

**Senator Cook:** Is it also used in the Income Tax Act?

**Mr. Humphrys:** As I say, it has been used in other cases. Maybe Mr. McDonald, the Legal Adviser to the Department of Insurance, would comment in this connection.

**Mr. H. B. McDonald, Legal Adviser, Department of Insurance:** I would only say that the expression has been used in other statutes and there is a body law to assist in the determination of the meaning of the expression.

**Senator Aird:** You are satisfied that there is sufficient jurisprudence and a number of rulings on the point to provide a sensible interpretation of the wording "ordinarily resident".

**Mr. McDonald:** I would think so, senator.

**The Chairman:** I think that is correct, senator; there is much jurisprudence on the question of establishing whether a person is or is not to be regarded as a resident. He may think he has done all that is necessary to cease being a resident, but the jurisprudence provides that no matter where else he may have residence he still retains residence in Canada.

**Senator Aird:** In any event I draw to the attention of the Superintendent that from a common sense point of view this seems to be wording that would give rise to a number of questions and therefore should be reconsidered.



**The Chairman:** Yes, they could avoid it by prescribing a time limit, such as is contained in the Income Tax Act. A person spending so many days in Canada becomes a resident for tax purposes.

**Senator Aird:** In my opinion a person is either a resident or a non-resident of Canada and the word "ordinarily" has nothing to do with it. That would be a layman's approach.

**The Chairman:** That is open to various interpretations.

**Senator Aird:** Yes.

**The Chairman:** Would you consider a definition that would not present such problems, for instance by time limit?

**Senator Beaubien:** Or as defined by the Income Tax Act.

**Mr. Humphrys:** I would suggest, Mr. Chairman and senators, that the provision has been in the federal legislation since 1965. We have had no difficulty with it.

In this connection we are creating a prohibition against the directors' transferring shares to persons of a certain class. The decision rests with the directors and if they act in good faith and on the basis of their knowledge and understanding, this is all that is required of them. Therefore, if they reach the conclusion that a person is not ordinarily resident in Canada and refuse him a transfer of shares, they are acting in accordance with the requirements resting on them.

However, the extent to which this provision might be criticized is that in the context of this type of measure does it leave the way open for a person who is really a non-resident to achieve control of a company where Parliament does not wish him to do so? I doubt that there is enough range of judgment within the measure to arrive at that result. In the first place, it would deal only with individuals, because the residence of a corporation will be known precisely. If an individual is moving back and forth, in and out of Canada and his connection with Canada is such that the board of directors feel that in their judgment he is ordinarily resident in Canada, is close enough to the borderline that there would probably be no objection from the point of view of public policy if he does own more than 10 per cent or 25 per cent of the stock of a company.

**The Chairman:** Except that you would agree with the principle of drafting the provisions of a bill clearly enough that litigation will not be provoked.

**Mr. Humphrys:** I could not quarrel with that principle, definitely not.

**The Chairman:** Do you not think that the word "ordinarily" in this clause might very well have that effect?

**Mr. Humphrys:** It gives a broader range of judgment to the directors, but I do not think it would provoke litigation.

**The Chairman:** But penalties are imposed on the directors if they permit transfers by a non-resident.

**Mr. Humphrys:** They are protected from penalty if they act in good faith on the basis of the best of their knowledge and belief. Therefore, if they form a judgment that a person is not ordinarily resident in Canada and refuse transfer of shares, in my opinion he has no recourse against them and no penalties are imposed for improper action. The converse also follows.

**The Chairman:** That is too broad a statement. Certainly the directors might have an exposure to litigation as between themselves and the affected person. You are speaking from the point of view of prosecution and penalty under the statute; if they act in good faith they would not be subject to it. However, we are considering it from the point of view of the obligations imposed on directors vis-a-vis the person who is refused a transfer because they consider him to be a non-resident. He makes an issue of it and the courts hold that on the basis of the evidence he is ordinarily a resident.

**Mr. Humphrys:** In that case he could obtain the shares, but I see no serious problem arising from that.

**The Chairman:** Except the cost; litigation is expensive.

**Senator Aird:** Perhaps a practical answer would be to ascertain the interpretation as to whether a person is a resident or a non-resident by consulting your department.

**Mr. Humphrys:** Yes, and he might not attempt to buy the shares, which is essentially the purpose of the measure.

**Senator Beaubien:** What would be the effect of simply deleting the word "ordinarily"? Ordinarily is a wonderful word invented by the lawyers.

**The Chairman:** It would then read "a person who is not resident in Canada".

**Mr. Humphrys:** I cannot answer that without consulting the Department of Justice. I would be very reluctant to see a change in this measure as compared with similar measures containing identical wording.

**The Chairman:** I do not think the fact that we have not checked this in other legislation is any argument against checking it in this bill.

**Senator Hollett:** Do you not consider there to be a slight grammatical error in paragraph (c): "resident" means an individual...that is not a non-resident;"

**Mr. Humphrys:** "...an individual, corporation or trust that is not a non-resident;" I do not think so senator.

**Senator Hollett:** "Resident means an individual that is a non-resident". Would it not be better to have "who" in there somewhere? I am not worrying very much about it, but I would not like your department to come out with grammatical errors. It means an individual who is not a resident or a corporation or trust that...

**Senator Aird:** The word "ordinarily" also appears.

**Senator Hollett:** Well, no one knows what that means.

**Mr. Humphrys:** I do not think that would be necessary.

**The Chairman:** It is a negative manner of defining; however, its meaning is clear.

**Mr. Humphrys:** Your point is correct, senator, from the point of view of the purity of English. The clauses through to 14 are, as nearly as possible, identical with similar measures in the other legislation.

**The Chairman:** When you say "other legislation" you mean the amendments we made to the Trust Companies Act?

**Mr. Humphrys:** The Trust Companies Act, the Loan Companies Act, the Canadian British Insurance Companies Act and the Bank Act, with, of course, whatever changes in wording are necessary to accommodate them to the new type of company covered by this measure. Sales finance companies that were foreign owned at the effective date of this announcement, October 17, 1969, are exempt from this restriction. The exemption holds as long as one non-resident owns more than 50 per cent of the stock. If the situation should change and that condition no longer exists—that is, it is no longer a case that one non-resident owns more than 50 per cent—then they would be subject to this restriction and future transfers of shares would be restricted.

**The Chairman:** Mr. Humphrys, would you rationalize the policy that makes it necessary to have this kind of restriction on non-resident holding apply to sales finance companies?

**Mr. Humphrys:** I can only refer back to the announcement of the Minister of Finance. The press release dated October 17, 1969, issued by the Minister of Finance was as follows, in the significant passage respecting your question, Mr. Chairman:

These companies play an important role in financing retail trade and in financing business and industry through loans for equipment and inventory. The Government considered it important to preserve a significant Canadian controlled element in this type of financial enterprise.

This type of company, in the activity that it plays in the financial fabric in the sale of goods and in retail trade, was of a special defined type. I think sales finance companies are generally known and recognised for their particular type of business; it comes close to a kind of banking activity. The fact is that in Canada a large number of the sales finance companies that are foreign controlled. There are some that are Canadian controlled.

The policy, as I interpret it, was that the Government thought it desirable that a Canadian controlled element be maintained in this financial activity, and consequently they proposed this measure. I do not think it necessarily implies any policy decision respecting other types of companies, whether they should be subject to similar restrictions or not. Steps have been taken class by class from time to time as circumstances seemed to indicate. You will recall that this type of restriction was imposed respecting life insurance companies back in, I think, 1965,

and loan companies and trust companies at the same time. Following that, similar restrictions were adopted for banks. Then there were provisions relating to broadcasting companies and other types that are defined as constrained share companies under the Corporations Act.

**The Chairman:** You would not regard, would you, the modus that might impel you in connection with a broadcasting company to require Canadian ownership to be the same as that requiring Canadian ownership in sales financing companies? Is there a principle that is common to the two?

**Mr. Humphrys:** I would not think so, Mr. Chairman, but I really think that any proposal in this regard is a matter of government policy and it is hard for me to say more than I have.

**The Chairman:** I am not going to ask you to.

**Mr. Humphrys:** The policy decision was evidently that so far as sales finance companies are concerned, the Government thought there should continue to be a Canadian controlled element, although not obviously an exclusive area for Canadian control. As I see it, the significance of these companies is the part they play in the financing of retail trade and business and industry generally through corporate loans and other financing activity. They do play an important part in the financial fabric of the country, and, just as in the case of banks and other major financial institutions, there is a case for seeing to it that there is some Canadian control voice in this activity.

**The Chairman:** Mr. Humphrys, I was wondering if you have a statement, or if you could prepare one, that would show the number, size and scope of the business operation of non-resident companies operating in Canada in this sales finance field; then sales finance companies operating in Canada that are majority controlled as against, say, 100 per cent; and then the Canadian owned.

**Senator Beaubien:** Are those figures available, Mr. Humphrys?

**Mr. Humphrys:** We would not have that type of information yet. We think that if this measure is adopted and the reporting procedure begins, we would then be able to produce that kind of information, at least as respects federally incorporated companies. We could not necessarily get it with respect to provincially incorporated companies.

**The Chairman:** You mean that if we ask the Bureau of Statistics to tell us the percentage operation of the field we could not get it?

**Senator Beaubien:** Would General Motors Acceptance and C.I.T. Finance report on the size of their Canadian operation?

**Mr. Humphrys:** General Motors Acceptance would. C.I.T. is a United States company but they have a Canadian subsidiary.

**Senator Beaubien:** Which would report.



**Mr. Humphrys:** It would report to us. We would be able to produce figures for federally incorporated companies. We would be able to produce figures in relation to federally incorporated companies. The difficulty of getting accurate figures is that we would have first to see whether the company falls within the definition of a sales finance company in this measure, which may not be exactly the same as the definition being used for the DBS figures, but I imagine that the DBS could produce a breakdown of the companies that they include in their definition of sales finance companies.

**Senator Beaubien:** If you got the figures of General Motors Acceptance and C.I.T. Finance I think you would have 99 per cent of what the foreign-owned people are doing.

**Mr. Humphrys:** I can say that, of the ten largest sales finance companies in Canada, as put forward by the briefs of the Federated Council of Sales Finance Companies, seven of them are federally incorporated. Their total assets were reported by the Federated Council at the end of 1968 as being \$3.1 billion. I think that 75 per cent of that would be represented by federally incorporated companies and two of the major companies that are Canadian controlled, the I.A.C. and the Traders Group would account for close to two billion of the \$3.1 billion.

**The Chairman:** So there is a significant Canadian market in this kind of operation?

**Mr. Humphrys:** At this point of time, there is a significant Canadian controlled element in this particular industry, yes.

**The Chairman:** And this would check inroads.

**Mr. Humphrys:** It would prevent the sale of any such company that is now Canadian controlled, it would prevent the sale of control to non-residents. It does not by itself prevent the formation of a new company, owned by non-residents from the outset. So it does not protect the Canadian controlled company from competition from other existing foreign controlled companies or new companies. But it does prevent the sale of existing Canadian controlled companies in this field.

The fact that the Canadian controlled companies have to compete to such a significant extent with foreign controlled companies leads to comments in relation to this lender-of-last-resort provision. It was noted that the number of foreign controlled companies in this field in Canada are subsidiaries of very large foreign companies. They may have access to funds from their parent, or they may be able to put the guarantee of their parent on their paper which they market in the Canadian market. In such cases it gives them a significant advantage in the investment market as compared with Canadian controlled companies that cannot add the extra name to their paper.

It was felt that if a Canadian controlled element of any significant size is to be retained in this industry, not only must one prevent the sale of the company to non-residents but one must try to put the companies in a position where they can compete for the business without signifi-

cant disadvantage. Part of the competition in this field is the ability to raise money in the market in order to finance the purchase of the sales finance paper and carry on the other activities. Consequently, to attempt to equalize the competition position this facility is proposed to add an extra degree of confidence to the paper of the Canadian controlled companies.

This measure proposes that a lender-of-last-resort facility be created, whereby loans could be made to Canadian controlled sales finance companies if needed to meet an emergency liquidity problem. Such loans, under this proposal, could be made only for emergency liquidity. They would be limited to six month periods and would be made only if the company concerned had substantially exhausted sources of liquid funds otherwise available to it.

**The Chairman:** Are you referring to clause 16?

**Mr. Humphrys:** Yes.

**The Chairman:** Or the Canada Deposit Insurance Corporation may make loans?

**Mr. Humphrys:** Yes.

**The Chairman:** I think that was in connection with sales finance companies that are subject to clauses 11 to 13?

**Mr. Humphrys:** That is correct, sir. Clauses 11 to 13 deal with companies that have a non-resident share limitation. They are companies with respect to which there is a restriction on the transfer of shares to non-residents. So any such company is in a position where it cannot become controlled by non-residents. This lender-of-last-resort facilities through the CDIC is available only to such companies, so it can be said that it is available only to Canadian controlled sales finance companies.

**The Chairman:** Do you think that is clear from clause 16?

**Mr. Humphrys:** Yes, senator, because clause 16 permits these loans to be made only to companies that are subject to clauses 11 to 13, and those are companies for which the transfer of shares is limited, and such companies do not include foreign controlled companies.

**The Chairman:** What is the source of the money that the Canada Deposit Insurance Corporation may use for liquid purposes?

**Mr. Humphrys:** The Canada Deposit Insurance Corporation is really used as an agency vehicle for these loans. It will not use the funds that it has accumulated from its deposit insurance activities. Its activity in this regard would be completely separate from its deposit insurance activities. This bill would empower the advance of moneys from the Consolidated Revenue Fund to the CDIC for the purposes of such loans and would require the CDIC to account for such activities, quite separately from these deposit insurance activities.

**Senator Aird:** Do you have a figure, Mr. Humphrys, as to the assets of the CDIC at the end of 1970?



**Mr. Humphrys:** I have not it with me, senator. I can easily get it.

**Senator Aird:** Do you have an approximate idea—or your colleagues?

**Mr. Humphrys:** I would rather get the figures.

**Senator Cook:** Were there any claims on it last year?

**Senator Beaubien:** It is a one-way street only?

**Mr. Humphrys:** There will be claims on it. In effect, there have been claims, yes. The Commonwealth Trust Company in British Columbia is now under liquidation, which will give rise to a claim against the Deposit Insurance Corporation. Mr. McDonald will get the figure for the assets of the CDIC by telephone.

**Senator Cook:** Would it be of any great magnitude?

**Mr. Humphrys:** It is hard to estimate at this stage, but I think the claim will be substantial, yes. I would expect so.

**The Chairman:** The contributors are financing the failures.

**Senator Beaubien:** Of competitors, yes.

**Mr. Humphrys:** The funds from the contributors are paying the depositor's losses. That is the intention of the plan.

**Senator Beaubien:** The force that is strong has to look after the weak.

**The Chairman:** That is a good principle.

**Senator Aird:** The point is that it is an increasing sum of money, and is it being put to use?

**The Chairman:** This money for this purpose will come from the Consolidated Revenue Fund.

**Mr. Humphrys:** It is quite separate from any other activity of the corporation and will not be advanced unless there is an application for a loan from the company, in which case the Deposit Insurance Corporation would then seek an advance from the Consolidated Revenue Fund for the purpose.

**Senator Lang:** Does it say that anywhere in the bill?

**Mr. Humphrys:** Yes, senator, in clause 29, page 40, it says that out of the Consolidated Revenue Fund the minister may advance funds to the CDIC for the purpose of making loans under section 16.

**The Chairman:** I was just wondering whether there should be some tie-up between section 16 and section 29. What do you think Mr. Hopkins?

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** There is in section 29 (1)(b).

**The Chairman:** Well, the significance of that does not fall exactly...

**Mr. Humphrys:** I think, sir, it should be line 14 of paragraph (a):

... the Minister

(a) may, on terms and conditions approved by the Governor in Council, authorize advances to the Canada Deposit Insurance Corporation (in this section and sections 30 and 31 referred to as the "Corporation") of amounts required for the purpose of making loans under section 16;...

**The Chairman:** But that is not an exclusive thing. Is it not still within the scope of section 16(1) for the Deposit Insurance Corporation to make the loan?

**Senator Cook:** Or to use its own funds.

**The Chairman:** It may be that I have missed it, but there is nothing I have seen in the bill that requires the Deposit Insurance Company to maintain this as a separate operation and to use only those funds.

**Senator Lang:** But section 29 (b) is mandatory, however. It says that the minister "shall".

**The Chairman:** It is a question of intention.

**Mr. Humphrys:** The intention is that the corporation shall not use its own funds but shall use only the funds advanced to it under section 29, but subject to reimbursement. The Deposit Insurance Company should not be put in the position where it can incur losses for the funds that it has for the particular purpose.

**Mr. Humphrys:** It is not intended that the CDIC be empowered to use any of its deposit insurance funds.

**The Chairman:** Where is the limitation?

**Senator Cook:** Section 31 says that it has to be kept separate.

**The Chairman:** Section 30 says that the corporation shall establish in the Bank of Canada a separate account. Under section 31 on page 41 there is a provision that the record shall be kept separate and distinct. But that still could govern within the limits that the Deposit Insurance Company was putting up its own money.

**Mr. Humphrys:** But section 31 says:

31. The assets and liabilities and the receipts and disbursements of the Corporation arising from its operations under this Act, and the records of the Corporation relating thereto, shall be kept separate and distinct from those arising from its operations under the *Canada Deposit Insurance Corporation Act*.

**The Chairman:** It does not tie it down in section 16 that they have general authority to make loans in certain circumstances. True, there is a source named in section 29 which may provide the money, but it does not take away from the Deposit Insurance Company the right to use its own funds. At least I have not seen it there. Maybe I should read it more carefully.

**Mr. Humphrys:** We will look at that point, Mr. Chairman.

**Mr. Hopkins:** It should be looked at, yes.

**Senator Cook:** As it is, it is just a cross-reference. Section 29 relates to section 16, but section 16 does not relate to section 29.

**The Chairman:** All right. I think it should be tied in and I would appreciate your looking at it.

**Mr. Humphrys:** It is certainly intended that any activity of the CDIC in this regard be kept quite separate from its deposit insurance activities, because it is intended to use the CDIC only as an agency vehicle.

**The Chairman:** I believe we interrupted your presentation, Mr. Humphrys.

**Mr. Humphrys:** I was almost finished, Mr. Chairman. I dealt with the lender of last resort facility which is linked to the restriction on transfer of shares of sales finance companies to non-residents, and we touched on clauses 29, 30 and 31, which also are linked in with the lender of last resort facility. So that is the outline especially of the new clauses that are in the bill, stemming from the limitation on transfer of shares with respect to sales finance companies.

**The Chairman:** Except for section 15.

**Mr. Humphrys:** Section 15 is part of the same piece. It is inserted in order to prevent the restrictions on the transfer of shares being avoided by the sale of all the assets and liabilities of the company to another company so that, effectively, the whole business could be transferred to another company leaving the selling company as an empty shell. The provision states that no sale or disposal of the whole or any part of the undertaking of a sales finance company—that is, a company under this restriction on transfer of shares is of any effect unless it is approved by the minister, if the minister thinks that the sale is likely to result directly or indirectly in the acquisition of the whole or any part of the undertaking of the company by a non-resident.

Now, there is an area of judgment left in there, because cases might arise where the sale is from a federal company to a provincial company and the provincial company, while it may be Canadian-controlled at the time of the sale, might promptly be purchased by a non-resident, if there is no restriction under its jurisdiction. So that one would have to look at the end result of the sale of the undertaking to try to judge whether it is a move intended to get the business and undertaking into the hands of non-residents.

It is not put up as an absolute prohibition—that is, that the minister shall refuse, because there might be cases where a company would wish to sell parts of its undertaking, and in such cases it might be that perhaps the only purchaser or best purchaser is a foreign-controlled company. So that dealing with part of the undertaking I think makes it important to leave a certain amount of flexibility to consider the particular case.

This type of control over the sale or disposal of the whole or any part of the undertaking is one that is found in other legislation that we administer. This one is not quite as extensive as we have it in other legislation. It is intended here primarily to serve an auxiliary purpose to the limitation of the transfer of shares.

**The Chairman:** There seem to be a number of problems inherent in the language of section 15, Mr. Humphrys. Maybe you can clarify them for me. This relates to Canadian-controlled companies.

**Mr. Humphrys:** Yes, sir.

**The Chairman:** Where it may have some percentage of non-resident shareholders.

**Mr. Humphrys:** It may have, yes.

**The Chairman:** But not up to control.

**Mr. Humphrys:** That is correct, sir.

**The Chairman:** So it is a Canadian-controlled company. You talk about the "sale or disposal" of the whole or any part of the undertaking of "a sales finance company". The question that arises right away is: What is "the undertaking or part of the undertaking"? What does it include, and what is the creditors' position in relation to this? Are we getting into that old situation of matters of property and civil rights in the province? Are you trenching on rights of creditors by saying that under certain circumstances only with the consent of the minister can a sale be made part of the assets?

I have sent for the Canada Corporations Act because "undertaking" is defined there. I think it is defined as being "the whole or any part of the business". It is in the interpretation section. What does that include? Does this "sale or disposal" include the matter of mortgaging or pledging for the purpose of raising money, or creating a floating charge for the purpose of raising money?

**Mr. Humphrys:** I do not believe that the sale of the undertaking of the company...

**The Chairman:** I am going to the word "disposal" as well.

**Mr. Humphrys:** I do not believe it is synonymous with the sale of assets of the company.

**The Chairman:** "Undertaking" in the Canada Corporations Act is defined this way, that it "means the business of every kind which the company is authorized to carry on". So if a sales finance company of this character, to which section 15 would apply, wishes to sell a block of its assets, is it subject to section 15 and must you get the consent of the minister?

**Mr. Humphrys:** One would have to look at the case, but the sale of assets by itself in the normal trading of assets would not, I think, in anybody's interpretation, be the sale of part of the company's undertaking. But where it is the sale of a block of business which includes the sale of assets and all the pertaining rights and privileges,



where it is part of the business the company is carrying on, then it would be the sale and disposal of part of the undertaking of a company.

**The Chairman:** But you are distinguishing between "assets" and "undertaking"?

**Mr. Humphrys:** Yes.

**The Chairman:** And you are distinguishing between "part of the undertaking" and "some of the assets".

**Mr. Humphrys:** I am distinguishing between the whole of the undertaking or part of the undertaking, and I am distinguishing between the undertaking and the assets.

**The Chairman:** Have you any connotation on the word "disposal"? Certainly, it is different from "sale" because you use the two words.

**Mr. Humphrys:** Well, it is a broadening of the concept, to take care of any case where the assets are really separated from the company. There may be cases where it is questionable whether it is a sale. It could be a trade, for example.

**The Chairman:** What is mortgaging? In a mortgaging you are pledging and you are giving a prior right to the mortgagee in relation to the assets which are charged.

**Mr. Humphrys:** I would not regard it as being a disposal if you were giving a claim against your assets, but if you are transferring title of the assets I would regard it as being disposal, even if you have a contingent right to recover.

**The Chairman:** If I use a form of trust deed or indenture in creating a floating charge, have not I got right into the question you are mentioning, that there is inherent in that a transfer to a trustee? It may not become effective as a floating charge and does not interfere with the operation of the company until there is a default, but is there not some kind of disposal there?

I would have thought that instead of saying "the whole or any part of the undertaking" you might say, "the whole or any substantial part of the undertaking". That would cut down the problem a bit, and in a lot of legislation I think they use it. In trust deeds, for example, they use that expression as to what the company, notwithstanding the charge on its assets, may do in the ordinary course of business.

**Senator Cook:** In default.

**The Chairman:** Yes.

**Mr. Humphrys:** Well, in fact, it is unlikely that any refusal of the minister to approve a sale would be directed against anything other than a sale of a substantial part of the undertaking. But putting the word "substantial" in adds to the uncertainty, as to what kind of case shall be brought forward. The chairman has already mentioned that there may be some question about whether a particular transaction is the sale of part of the undertaking. Putting the word "substantial" in there raises another judgment point. If you decide it is a sale

of part of the undertaking, is it a substantial part? Again, it is a question of judgment, of what is substantial. So we left the word out, really, to try to make more precise the kind of cases that should be put before the minister to see whether, in his opinion firstly, it is a case that would result in the acquisition of the whole or any part of the undertaking by a non-resident; and, secondly, if he says "Yes", whether he would approve or disapprove of it.

**The Chairman:** But, Mr. Humphrys, the language used in trust deeds is "to the whole or substantially the whole of the undertaking". I think the reasonable interpretation of that has been that it covers and includes any viable part of the operation.

**Mr. Humphrys:** I would say "substantially the whole" is a much easier phrase to interpret than "any substantial part".

**The Chairman:** Then why should not this read in that fashion: "the whole or substantially the whole of the undertaking"?

**Mr. Humphrys:** Well, we wanted to deal with cases where the proposal might not be "substantially the whole"; it might be half; it might be a quarter, and you might want to say, "We do not think that transaction should go through."

**Senator Beaubien:** If it was a big undertaking, even a relatively small part might be a very big piece of the business.

**Mr. Humphrys:** Yes.

**The Chairman:** I can conceive a sales finance company might have operations in a number of provinces, and it might decide that in the interests of its business operations it wants to get out of the business in a particular province, maybe based on experience or something else. Here, it seems to me on the reading of section 15, it has to come to the minister for his consent.

**Mr. Humphrys:** That is right; it is intended.

**The Chairman:** Then we are at the question as to whether it should be intended and whether we should approve.

**Mr. Humphrys:** Exactly.

**The Chairman:** This is ordinary business judgment; it is not disposing of a viable part of the business operations.

**Senator Cook:** It is only questioned if it tends to end up in the hands of non-residents?

**Mr. Humphrys:** That is correct, sir.

**The Chairman:** This may be the logical place to solve it; and it may be the only place.

**Mr. Humphrys:** It is intended to complete the pattern of control of the transfer of shares to non-residents, and really to block the possibility of avoiding that by selling the undertaking, or a substantial part of it.



You could do this piecemeal, of course. You could sell part this week, and part next week, and so on. So, in order to make it effective we thought we should put in the words "the whole or any part", and then if it is a sale of the undertaking in anybody's judgment the matter can be placed before the minister.

In practical terms I do not think it is all that difficult to find out or settle upon when the transaction is a sale of part of the undertaking as distinct from a sale of assets. We have a lot of precedent in our other legislation. For example, the Loan Companies Act provides that the company may sell and dispose of the whole or any part of the business, rights, credits, effects and property of the company, and that no such sale or disposal shall be made until approved by the shareholders and by the minister. This is the sale of the whole or any part of the business, rights, credits, effects, and property. We think that the word "undertaking" is really the same as business, rights, credits, and effects. Part of that would really be a sale of part of the company's business activity—for example, a branch in a particular province, or a defined section of its activity—and not the sale of a particular asset, and not the trading of shares in the market.

**The Chairman:** Let us stay with the word "disposal". You are talking about sale, but let us talk about disposal, and what is encompassed by disposal. Would you say that if a company of the kind covered by section 15 was going to mortgage its assets, or issue a debenture creating a floating charge, it would have to obtain the consent of the minister?

**Mr. Humphrys:** I would not so interpret it, Mr. Chairman. I would not think that the pledging of any part of its assets as security for a loan would be interpreted as a disposal of part of the company's undertaking. It might be in one sense, and I would defer to the chairman's knowledge on this. It might be a disposal of part of the company's assets, or a contingent disposal, but I would not interpret it as being a disposal of part of the company's undertaking.

**Senator Cook:** Following up the chairman's question about the sale of part of the undertaking in a province, I should like to ask you whether a sale to a non-resident company which was doing business before October 17, 1969 would be blocked by that section.

**Mr. Humphrys:** It could be blocked by the minister if he wished, or he could approve it if he thought it was acceptable in the circumstances.

**Senator Aird:** I am wondering if my interpretation is correct. You have a percentage or a numerical restriction on the transfer of shares?

**Mr. Humphrys:** Yes.

**Senator Aird:** Therefore, this section goes much further in respect of discretion in that it says "any part thereof". This is the net result of what we are talking about. This is a much wider discretion in the hands of the minister.

**Mr. Humphrys:** It is, senator. It should be recognized, however, that the sale of part of a company's undertak-

ing is not a common transaction. Trading in assets and buying and selling assets, yes, but not the sale of part of the undertaking. It is quite an unusual action for a company to take, so I would not really expect, first, that there would be many problems of this type, or, second, that it would be very hard to determine whether the particular transaction is a sale of the company's undertaking or not. If there is any doubt the, of course, you would have to put it before the minister.

**Senator Aird:** Did you give consideration to a definition of the word "undertaking" then?

**Mr. Humphrys:** We thought a lot about it. We looked at the definition in the Corporations Act, and at the wording in the Loan Companies Act and the Trust Companies Act, in which the counterpart of this section talks about the sale of the business, rights, credits, effects, and property, and we thought that the word "undertaking" standing by itself would really convey the sense intended with sufficient precision to make the section workable.

**The Chairman:** Mr. Humphrys, how much in the way of assets would you have to be proposing to deal with in order that in your opinion it would come under section 15, and be the whole or any part of the undertaking of the company?

**Mr. Humphrys:** I do not think I would make a judgment solely on the proportion of assets that are involved in the transaction. I would want to look at the whole transaction to see if it goes further than the mere sale of assets so that it is really a sale of the undertaking—whether there is something that goes with it such as a part of the business activity that gave rise to the assets.

**The Chairman:** Take my example where a company decides that it does not want to carry on its operations in one particular province of Canada any longer and so, therefore, it negotiates the sale or disposal of the assets that are referable to its operations in that province, and non-resident. The sale may be to a company that is operating legitimately in Canada, but which comes within the non-resident category with a certain percentage of non-resident shareholders. Would you say that in those circumstances those assets being sold or otherwise being disposed of would constitute the whole or any part of the undertaking and that therefore the company would have to apply to the minister?

**Mr. Humphrys:** Not the assets as such, but I would look at the transaction, and if the transaction was one where the sale represents the receivables, if you like, from that area of operation together with the offices and the business contacts, with the intention and expectation that the purchaser is going to carry on the business, then I would say it is part of the sale of the undertaking.

**The Chairman:** Even if the intention is to go out of business in that province, for good and sound business reasons?

**Mr. Humphrys:** Yes, Mr. Chairman, but if the company just closed down its offices and said that it was stopping

business there and that it had a block of receivables which, for one reason or another, it wanted to turn into foreign-owned finance company, or to anybody else, then I would not regard that as a sale of a part of the company's undertaking.

**The Chairman:** Except that a good lawyer at one end or other of the transaction would insist that there be coupled with the purchase of the receivables in that province an undertaking that the company selling them would not for a certain period of time engage in or resume that business operation.

**Mr. Humphrys:** It depends on the purpose of the purchase; he may not be interested in carrying on.

**The Chairman:** I am assuming that he is.

**Mr. Humphrys:** If he is, it is a sale, not only of the assets but of the business connections and the territory for business development. I would regard it as being part of the undertaking of the company.

**The Chairman:** If this were a case of one company intending to discontinue operations in a certain province and another company buying its assets, the first company would give an undertaking in writing not to carry on in competition because the second company makes the purchase in order to continue the business.

**Mr. Hopkins:** That is more than merely the sale of assets.

**Senator Beaubien:** It would be part of the undertaking.

**Mr. Humphrys:** I would so interpret it in that case.

**The Chairman:** The next question is should this cover any part, or should it be a substantial part?

**Senator Aird:** Particularly in the event of a new percentage factor on the shares.

**Mr. Humphrys:** I do not know what a substantial part is. I might have an opinion, but the opinion of others could be different. If our only requirement is to focus on the question, 'is it part of the undertaking', then we know we have to put it before the Minister. However, if we also have to decide if it is a substantial part of the undertaking, there is an additional uncertainty.

I agree that by leaving the word out we may bring more cases before the Minister than otherwise but we would be more definite as to whether a case must be presented to him. I would submit that sale of part of the undertaking of a company is not a common or frequent transaction. Therefore we are not dealing with a great flow of cases which will create a massive problem of interpretation or judgment. In the event of an extra case or two arising, I do not think it would be a serious problem for the company concerned on the administration.

**The Chairman:** I insist on staying with the word disposal; you stay with the word sale. Let us consider the word disposal and the position of creditors in relation to disposal of assets and the creditors' rights to deal with them.

Are you suggesting that a creditor in these circumstances under clause 15, if he were seizing assets, would have obtained the consent of the minister for their disposal?

**Mr. Humphrys:** It is unlikely that a creditor would be seizing the whole business. However, if it were a case where the company was disposing of part of its undertaking it would have to go to the minister. If it is a creditor, whoever the recipient may be, the case would have to be presented for consideration.

**The Chairman:** Would the creation of a debenture issue have to be considered by the minister?

**Mr. Humphrys:** I would not so interpret it. The pledging of assets as security for a loan would not be disposal of part of the undertaking. It might be in legal parlance a contingent disposal of part of the assets. However, it is rare for a company to do more than just pledge some of the assets as security.

**The Chairman:** No, Mr. Humphrys; if I obtain security, I have security on the assets of the company. I may specify certain assets, but you are creating a floating charge on the assets of the company. The business can be carried on in the ordinary manner until there is a default, when the floating charge seizes everything.

**Mr. Humphrys:** But is not the essential transaction a pledge on some or all of the assets of the company as security for the borrowing, rather than the concept of pledging the undertaking? The creditor is really not interested in carrying on the business; he wants security for his loan.

**The Chairman:** I do not think so, because in the same document the company is given the right to make disposals notwithstanding the security that is held by the trustee. There are conditions in connection with those disposals and there are certain monetary limits. If these limits are exceeded the consent of the trustee and the security holders must be obtained and the proceeds paid to the trustee to reduce the amount of the obligation.

**Mr. Humphrys:** Yes, I recognize there are often restrictions on even change of the type of undertaking.

**The Chairman:** That is right.

**Mr. Humphrys:** But I was proposing that it is not in its essential characteristic a pledge of the undertaking of the company as security for the creditors. It is a pledge of the assets with certain conditions, that the company will not change its type of undertaking or dispose of part of its undertaking except pursuant to the conditions laid down.

**Senator Cook:** Is there a similar section in other legislation?

**Mr. Humphrys:** The Loan Companies Act provides that the company may sell and dispose of the whole or any part of the business rights, credits, effects and property



of the company and that no such disposal takes effect until it has been submitted to and approved by the Minister.

**The Chairman:** There it requires the approval of the shareholders, as I would expect in such a transaction.

**Mr. Humphrys:** This type of clause has been contained in the Loan Companies Act, the Insurance Companies Act and the Trust Companies Act for many years. It is very easy to identify the cases where it constitutes the sale of the business, rights or property rather than the sale of the assets.

**The Chairman:** Mr. Humphrys, sometimes 50 years after a statute has been passed, there are instances where the courts have declared such an act to be unconstitutional. We have to rationalize this, which is not achieved by saying it is in another act.

**Mr. Humphrys:** I was not addressing myself to constitutionality but to the administrative problems created by these cases. We have not found it difficult to distinguish between the sale of assets and the sale of the business, rights or property or even part of the business, rights or property.

**The Chairman:** What have you to say about the possibility of conflict?

**Mr. Humphrys:** Constitutional conflict?

**The Chairman:** Yes, part of this will affect creditors' positions.

**Mr. Humphrys:** I regard this type of clause as being a modification of the corporate power of a company, rather than a distinction between...

**The Chairman:** Now, Mr. Humphrys; not really.

**Mr. Humphrys:** Rather than legislating on a private contract.

**The Chairman:** Do you mean that this flows essentially out of the right of the federal authority to incorporate a company and give it authority to create by-laws, the management of its operations and so on?

**Mr. Humphrys:** To give it corporate power or to place limits on its corporate power.

**The Chairman:** Then it must go to the Minister if it wishes to make a disposal of its assets?

**Mr. Humphrys:** I would think that it would be within the scope of the incorporating authority to impose such conditions on the exercise of a company's corporate power.

**Senator Aird:** Is the constitutional question a real reason for the change of the language in the other acts which I believe provide for business, assets and property to the word "undertaking" proposed in this bill?

**Mr. Humphrys:** No, we thought that the word "undertaking" swept in the other words in a really more significant manner.

**The Chairman:** We have had full discussion of this clause and will place it on our list for consideration. We will not come to any conclusions without informing you of our thinking and giving you full opportunity to reply if you wish to add to your comments later. I think there is a question that we have to work through there. What the result will be I am not prepared to say; that is for the committee. That about takes us through the limitation of non-resident shareholding and the methods of dealing with it. Is that not right?

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** I was wondering if you would deal in a particular way with clause 9, which is entitled "Prohibited loans and investments".

**Mr. Humphrys:** The purpose of clause 9 is to prohibit a company from making loans and investments where there may be a conflict of interest. The wording of the clause has not been changed from that in the bill that was previously before you, with the exception of the addition of one subsection, which is intended to prevent an investment company from guaranteeing the obligations of another company where it is prohibited from investing in that company.

**The Chairman:** Which subsection is that?

**Mr. Humphrys:** That is subsection (3) on page 12. In other respects the clause stands as it did earlier.

**The Chairman:** Just so as to have it on the record for your consideration, we had evidence when we were dealing with Bill S-17 on how various companies operate. Some of them have really a holding company at the top, they have a series of manufacturing companies which are their tools for carrying on business, and then they have a financing subsidiary. This is the proposition I want to put to you. It appears to me that clause 9 prohibits the making of investments by way of loans, shares, etc. by an investment company in any other company in which a substantial shareholder of the investment company has a 10 per cent interest.

**Mr. Humphrys:** That is correct.

**The Chairman:** This means that if a company had a Canadian financing subsidiary, and also had a number of Canadian manufacturing subsidiaries, if the purpose of that financing subsidiary was to finance the manufacturing subsidiaries, it would no longer be possible for the financing subsidiary to continue financing the manufacturing subsidiaries after the bill comes into force, because any such financing would involve loans from an investment company—that is from the financing subsidiary—to other companies in which the parent company of the investment company had more than a 10 per cent interest. There must be some way out from under that.

**Mr. Humphrys:** I would refer you to subsection (11) on page 15. This type of case came before the committee when you were considering the bill. This particular instance was, I think, Canadian Pacific Securities. Canadian Pacific Securities is the financing subsidiary of the group and raises money by the sale of securities to



the public, and the funds are used to invest in other companies in the Canadian Pacific group. This particular case was before the committee, and subsection (11) was put in with the idea of dealing with that kind of case. It was first thought that such case should not be exempted, because the public is lending money to the financing company, and if that money is going to be put into a number of other companies in the group, then essentially it is acting as a financial intermediary so that it should be under the bill.

Subsection (11) was put in to take care of this case which the chairman has described, and provides that if the parent guarantees the obligations of the subsidiary, then the subsidiary can make loans to the parent or to any of the sister companies in the group. The only stipulation is that the parent must be either an investment company under this bill or must agree to provide information to the department concerning its financial position.

**The Chairman:** The parent company may not be an investment company.

**Mr. Humphrys:** Then it must file statements. If it is a foreign company, this provision can be withdrawn by a condition in the company's certificate. If the company is raising money in the Canadian market and using the money to finance other related companies, this is the very kind of activity that has given rise to all kinds of difficulty in other cases. It is really making investments where there is not an arms-length relationship. Subsection (11) was put in to say that there would not be a prohibition against lending to the sister companies if the parent company guaranteed the obligations, and if the parent company provided such information as is required of an investment company. If the parent company is not under Canadian jurisdiction, if it is a foreign company pure and simple, then it might not be in the interests of the Canadian investor to have this money going into a whole lot of subsidiaries which themselves are controlled outside Canada, in which case the investing in those sister companies might be prohibited.

**The Chairman:** What I intended to suggest was that I thought you should put in the integration provision that you have in clause 3, subsection (2) (c) (iv), where the minister may grant exemption, if he studies the entire activities and integration and determines if they are in the public interest. That is in clause 3. Why is it not in clause 9?

**Mr. Humphrys:** It is not in clause 9 because we considered the provisions of subsection (11) went as far as we should go in removing the prohibition against investments in those cases where there is not an arms-length relationship. If an exemption is granted under the exemption category, then they are exempt from this restriction in clause 9 also. It does not have to be in both places. If the company is going to be exempted because the extent of the integration of its activities with companies within its family is such that this bill need not apply, then clause 9 would not apply. If it is a case where we think the bill should apply to it, notwithstanding that

its activities are to some extent integrated with its related companies, then I think clause 9 should apply also, unless it falls within the category of subsection (11).

**The Chairman:** Mr. Humphrys, are you saying that under clause 3, which is the power of the minister to grant exemption in the circumstances contained there, he can consider and grant an exemption, whereupon clause 9 has no application?

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** Is that clear?

**Mr. Humphrys:** If the company is exempt from the bill, it is exempt from clause 9.

**The Chairman:** Clause 9 prohibits certain investments to be made by an investing company. The minister's exemption to an investment company is within the confines of clause 3, so then you say that even though it is an investment company, since it has the exemption there is no prohibition. You mentioned arms-length transactions, but even in clause 3, when you are dealing with this integration subsection one of the factors the minister may look at if he is going to exempt is:

the extent of the integration of the company's activities with the activities of its subsidiaries, if any, and with the activities of any corporation of which it is a subsidiary and any other subsidiaries of that corporation.

You are there dealing with situations that are not within the category of arms-length transactions.

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** I thought you had mentioned arm's length, the limitation in clause 9.

**Mr. Humphrys:** Yes. The effect of clause 9 will be that where a company is subject to the act and does not have any exemption, then clause 9 will prevent it from making investments and loans that are within arm's length. Unless...

**The Chairman:** That are not within arm's length. Is that what you said?

**Mr. Humphrys:** I said it will prevent it from making investment and loans that are within arm's length. In other words, it will prevent it from making investments and loans where there may be a conflict of interest.

**The Chairman:** To a subsidiary.

**Mr. Humphrys:** And within its own judgment. Unless it falls within the category of subclause (11), which was put in to recognize that where you have a borrowing subsidiary in the group, then if the parent guarantees the obligations of the subsidiary, it is much the same as if the parent borrowed directly. If the parent borrowed directly, there is no prohibition against its lending or investing in subsidiaries. The prohibition here does not prevent downstream lending or investing, but it does prevent lateral lending or investment and upstream lending or

investment. The reason is that many of the problems that have arisen in recent years have been just exactly that, where the money has been raised from the borrower and fed into associated companies where the people making the investment decision were influenced by other interests and not by the interest of the corporation that did the borrowing.

**The Chairman:** Are there any other questions on this point?

**Mr. Humphrys:** Mr. Chairman, I have a few other points of less important changes, which I would like to mention.

**The Chairman:** Yes, but keep on record somewhere there that I would like you to deal with how you propose to finance the administration. We discussed that at length when we considered the bill before but some aspects of it seemed to develop in the hearings in the committee in the other place.

**Mr. Humphrys:** There are a few items to which I would like to draw your attention. Some of them are quite minor. I will quote the clause and subclause and give a word or two of explanation, so that it will be on the record. If anyone wishes to look up the particular point, it will be easy to do. On page 1, clause 2(1)(b)(ii)(D) and (E), those were changed slightly to clarify the wording. Subparagraph (D) deals with the definition of real estate forming part of the invested assets and makes it clear that it only deals with real estate other than real estate for the company's own occupancy. Subparagraph (E) makes more precise the reference to investment in sales finance paper and other related types of assets.

On page 2, clause 2(1)(g) there is a slight rewording of the exclusion in favour of loan companies. The change is intended to make it clear that small loans companies will be subject to this act. It is a technical point.

**The Chairman:** I thought they were.

**Mr. Humphrys:** It was so intended, but the earlier wording raised some doubt, because the Loan Companies Act does apply in some respect to small loans companies.

On page 3, clause 2(3)(c), the word "solely" is struck out of line 44. This refers to the exemption in favour of securities dealers. The previous bill said that a company that is engaged "solely" in the business of an underwriter of, or broker or dealer in, securities is exempt. Questions arose about the restriction of the word "solely" so it was struck out. The general feeling was that it would be easy to identify really the nature of the business even if they engaged to a minor extent in other activities.

On page 5, in clause 3—we already dealt with that. That deals with the ministerial discretion.

On page 9, clause 5(8)(a)—this deals with the requirement on an investment company to give notice concerning its borrowing or to file a copy of the prospectus. Certain cases may arise, so it was represented, where a borrowing takes place very quickly and the requirement to give notice beforehand might inhibit the transaction.

So the wording was changed to accept the notice within a week following the transaction.

On page 12, clause 9(3)—I already touched upon that. That is a new subclause that prevents an investment company from guaranteeing the obligations of a company if it is prevented from investing in that company.

On page 16, clause 10—I am referring to clauses 10 to 17—we have discussed this. They are the clauses which deal with the limitation on the transfer of shares to non-residents and the making of emergency loans by the CDIC.

On page 34, clause 23(6)—this deals with the right of appeal from a ministerial decision. The wording is changed to remove the previous wording which gave the court the power to prescribe a remedy. This wording enables the court to rescind a decision of the minister on the grounds that the basis for it was improper at law but it does not empower the court to put itself in the position of the minister and say what the company should or should not do.

**The Chairman:** Mr. Humphrys, is the Federal Court Act now become law?

**Mr. Hopkins:** I do not think it has been proclaimed yet.

**Mr. Humphrys:** Yes, not yet, but it does contain provisions that will change these words from exchequer court to the new title.

**Mr. Hopkins:** It has not been proclaimed yet. It is on the statute books and has received Royal Assent.

**The Chairman:** Any bill that receives Royal Assent is law, but if it has not been proclaimed, then it is not in force. I suppose it is a kind of suspended animation.

**Mr. Humphrys:** Mr. Chairman, that act does contain provisions that will effect the change of name of the court; so it is not necessary to make amendments in this bill.

**The Chairman:** I should not like to refer to the words "Exchequer Court", if we had the new name "Federal Court" and the act was operative. At any rate, we have that bill and we will look at it.

**Mr. Humphrys:** I am informed that if the proclamation of the Federal Court Act occurs before the coming-into-force of this act, then these words can be changed in the printing of this bill.

**The Chairman:** On the basis that it is a printing error or something like that?

**Mr. Humphrys:** I think there is a relative clause in the Federal Court Act.

**The Chairman:** Is there anything else?

**Mr. Humphrys:** On page 37, clause 27, subclause (1), there is a change requiring the Superintendent's report to the minister to be tabled in Parliament, and there is also a clause requiring the CDIC to prepare a report on its activities which will be included with the report of the Superintendent.



Clause 28 on the same page deals with the assessment against the companies to cover the administrative expense.

**The Chairman:** I should like to deal with that in detail at our next meeting.

**Mr. Humphrys:** The change brings these assessments into force beginning in the fiscal year 1972-73 so that any expense involved in the fiscal year 1971-72 will not be assessed against the companies concerned. The reason for that change is that with the broadening of ministerial discretion to exempt companies, we think much of the activity in the first year might be studying applications for exemption, and it would not be appropriate to levy the expense of that activity against the companies that remain in the act after that initial activity is completed.

There is also a change on page 38 which has the effect of levying expenses on the basis of a fiscal year rather than a calendar year. That is a technical point.

On page 40, clauses 29, 30 and 31 are related to the financing of loans made by CDIC under the emergency lender of last resort provision.

On page 41 in clause 32 there is a slight change in the wording. It says that the Governor in Council may make regulations to ensure the carrying out of the provisions of this act. The previous wording referred to the proper carrying out of the provisions. The word "proper" was cut out.

**The Chairman:** I question the word "ensure" in that clause. What is the connotation of it? I gather the wording was changed.

**Mr. Humphrys:** The wording was changed, yes. Bill S-17 said that the Governor in Council could make such regulations "not inconsistent with the provisions of this Act as he considers appropriate to insure the proper carrying out of such provisions." It now reads that the Governor in Council may "make regulations to ensure the carrying out of the provisions of this Act."

First of all, the reference to regulations "not inconsistent with the provisions" was cut out because it was thought that the Governor in Council does not have power to make regulations that are inconsistent anyway. Secondly, the reference to the opinion of the Governor in Council was cut out so that his power to make regulations and their validity would be a matter of law rather than his views.

**Senator Cook:** Do you not think it should be "make regulations necessary for the carrying out of the provisions", instead of "to ensure the carrying out of the provisions"?

**The Chairman:** The word "ensure" seems to imply that the regulations are going to guarantee something. We are concerned that the regulations do not empower them to legislate.

**Senator Cook:** It is only necessary for the carrying-out of the act.

**The Chairman:** We will think that over as well.

**Mr. Humphrys:** The only remaining point is on page 43, clause 37, where there were changes made in the penalty clauses, first to give the alternative of a fine to imprisonment in each case—that alternative existed in the Criminal Code, but it is now being spelled out here; and, second, to remove the possibility of imprisonment in the case of negligence in the preparation or approval of an account, document statement or return.

That, Mr. Chairman, is the list of the changes other than very minor changes of wording here and there which would have no effect on the principle.

**The Chairman:** Thank you very much, Mr. Humphrys. There are some questions I should like to ask with respect to the financing of the administration when we meet next Wednesday morning.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 7

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WEDNESDAY, FEBRUARY 3, 1971

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Second Proceedings on Bill C-3,  
intituled:

“An Act respecting investment companies”

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(For list of Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 15, 1970:

"A Message was brought from the House of Commons by their Clerk with a Bill C-3, intituled: "An Act respecting investment companies", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the Affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, February 3, 1971.

(10)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to *further* consider:

Bill C-3, "An Act respecting Investment Companies".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Desruisseaux, Flynn, Gélinas, Hollett, Isnor, Kinley and Macnaughton. (13)

*Present, but not of the Committee:* The Honourable Senator Sullivan. (1)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and Pierre Godbout, Director of Committees, Assistant Law Clerk and Parliamentary Counsel.

*Witnesses:*

*John Labatt Limited:*

Mr. Dean C. Kitts,  
Corporate Counsel and Assistant Secretary.  
Mr. C. F. Brown,  
Vice-President and Treasurer.

*Department of Insurance:*

Mr. R. Humphrys, Superintendent.

*Canadian Institute of Public Real Estate Companies:*

Mr. Maurice W. Wright, Q.C., Counsel.  
Mr. Charles Hay, President.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade And Commerce

## Evidence

Ottawa, February 2, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-3, respecting investment companies, met this day at 9.30 a.m. to give further consideration to the bill.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have two briefs this morning, one from John Labatt Limited and the other from the Canadian Institute of Public Real Estate Companies. Mr. Humphrys, of course, is sitting in at our invitation, and we may have questions to ask him afterwards.

We will hear first from John Labatt Limited, who are represented here this morning by Mr. Dean Kitts, counsel and assistant secretary, and Mr. C. F. Brown, vice-president and treasurer.

Gentlemen, the floor is yours. If your brief is not too long, perhaps the best way to get started would be to read it.

**Mr. Dean C. Kitts, Corporate Counsel and Assistant Secretary, John Labatt Limited:** Honourable senators, first I would like to thank you for the opportunity to speak to you with respect to Bill C-3. As the chairman has noted, the brief is rather short; it deals with a technical point, and if I may I think I would like to read it into the record. I did not monitor very well the progress of this brief, so that the submission was put together rather hastily, with the result that this is the first time you have seen it. Ideally we would have preferred to have the brief in your hands in good time before appearing here and presenting it so that you could have read it. For that reason I would like to read it into the record. The haste with which the brief was put together also explains to a certain extent the fact that although normally it would be presented by Mr. Hardy, our president, or Mr. Carson, our executive vice-president, who signed the brief, they have, I am afraid, prior commitments for today and are unable to attend.

I would now like to present the brief and read it into the record. This is the submission of John Labatt Limited to the Standing Committee on Banking, Trade and Commerce.

John Labatt Limited (hereinafter called "Labatt" or the "Company") is a federally incorporated public company engaged through subsidiary companies in the manufacture, distribution and sale of foods, beverages and a wide range of industrial products. Its shares are listed for trading on the Toronto, Montreal, Winnipeg and Vancouver stock exchanges and are held by over fifteen thousand persons, the vast majority of whom, according to the books of the company, are resident in Canada.

A reorganization of Labatt's operations for administrative purposes in 1964 resulted in the transfer of manufacturing operations previously conducted by the company to indirect or "second level" subsidiaries, that is, to subsidiaries the shares of which are held by a direct or "first level" subsidiary of the company. For example, the brewing operations of Labatt are now completely conducted by provincially based brewing companies which are for all intents and purposes wholly-owned by Labatt Breweries of Canada Limited (hereinafter called "Labatt Breweries"). Labatt Breweries, in turn, is a wholly-owned "first level" subsidiary of the company. This type of organizational structure is essentially duplicated in the more recently established consumer foods and industrial products side of Labatt's business, with many operations being conducted by wholly-owned subsidiaries of the Ogilvie Flour Mills Company, Limited (hereinafter called "Ogilvie"). Ogilvie too is virtually wholly-owned by the company.

A very high proportion of companies within the Labatt group are closely held if not wholly-owned. Reference in this regard is made to the audited consolidated balance sheet of the company and its subsidiaries for the fiscal year ended April 30, 1970 (Exhibit A) where the minority interest is shown to represent only 7.2% of the aggregate of such minority interest and paid-up capital and surplus.

Labatt through its subsidiaries operates ten breweries in seven provinces. It also operates the largest flour milling business in Canada, is the leading domestic supplier of pasta products and is the producer of an outstanding line of confectionery goods. It is also engaged in the manufacture and sale of wines, soups, jams, pickles, milk products, animal and poultry feeds, poultry and meat products, wheat starch and gluten products and organic chemicals and recently entered the food service industry in both Canada and the United States.

The growth of the Labatt organization over recent years is indicated by the increase in gross sales from \$123,492,000 in the 1966 fiscal year to \$388,783,000 in the 1970 fiscal year, and by the increase in net earnings from \$5,616,000 to \$17,626,000 over the same period. The Labatt organization now employs some 10,300 persons as compared to 2,800 in 1966.

**The Chairman:** Of course during that period the acquisition of many of these other operations went on; is that not right?

**Mr. Kitts:** That is right. As a matter of fact, I understand that that 10,300 persons is roughly 12,000 currently, that is, roughly 1,700 more than I have indicated here.



This growth has been facilitated to some extent by the company borrowing funds, from time to time, from the public under its trust deed securing debentures and in accordance with the relevant provisions of federal and provincial companies and securities legislation.

Section 2(1) (b) of Bill C-3 (an Act respecting investment companies, hereinafter called the "Act") defines the expression "business of investment", in part, as follows:

(b) "business of investment" with respect to a corporation means the borrowing of money by the corporation on the security of its bonds, debentures, notes or other evidences of indebtedness and the use of some or all of the proceeds of such borrowing for

(i) the making of loans whether secured or unsecured, or

(ii) the purchase of

(A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,

(B) shares of corporations

...or for the purpose of replacing or retiring earlier borrowings some or all of the proceeds of which have been so used;

It should be noted that the only assets resulting to a company carrying on the business envisaged in the extracted portion of this definition are evidence of indebtedness and shares. For convenience of future reference such assets will hereinafter be called "intangible assets" as contrasted with assets of another type normally encountered in carrying on a commercial or industrial business such as inventories, accounts receivable, lands, building, equipment and the like hereinafter called "tangible assets".

Section 2(1) (g) of Bill C-3 defines "investment company", in part, as follows:

(g) "investment company" means a company ... (ii) that carries on the business of investment.

Such borrowing by Labatt and the use of some or all of the proceeds in the operations of its subsidiaries (usually by way of unsecured advances) would constitute carrying on the "business of investment", and in the absence of some saving provision, labels the company an "investment company" for the purposes of Bill C-3.

The Superintendent of Insurance is given sweeping regulatory powers under Bill C-3. The evidence given before the Standing Committee on Finance, Trade and Economic Affairs by Mr. Humphrys, the present Superintendent of Insurance, must therefore be indicative of the philosophy which will be involved in the application and enforcement of the Act.

It would appear from Mr. Humphry's evidence that the Act is intended to provide means for regulating the activities of companies such as sales finance companies which like banks, mortgage loan companies, trust companies and other financial institutions borrow money from the public for investment in commercial paper and other indebtedness the underlying value over which they exercise no real control. He referred to them as "financial intermediaries". The following excerpts from his evidence will illustrate the point:

(At Volume 1, page 8):

An investment company is defined in substance as a company that carries on the business of investment. Thus the proposed Act would apply to companies that act as financial intermediaries in much the same way as do a number of other financial institutions such as mortgage loan companies, banks, trust companies and, in a different way, insurance companies. (*Emphasis added*)

**Senator Benidickson:** What do you mean by "emphasis added"?

**Mr. Kitts:** That is in relation to the underlining in the brief, sir. The excerpt continues:

(At Volume 1, page 16):

**Mr. Humphrys:** There were two points, Mr. Chairman. The series of events that precipitated action were the financial failures that took place a few years ago. There were three or four of them that are well known, Atlantic Acceptance and Prudential Finance, and this brought sharply to the fore that there was a gap in the supervisory structure relating to financial institutions, both at the federal and provincial level. Then in examining this problem, the gap, it quickly becomes apparent that there is a fairly elaborate structure of governmental supervision for financial intermediaries of all other types that is banks, insurance companies, trust companies, mortgage loan companies—all companies that accept or solicit funds from the public and use the funds for investment purposes, whether on long-term or short-term liabilities, as the case may be.

This particular group of companies of which sales finance companies are one class, act much in the same way—they solicit funds from the public in one fashion or another for investment purposes. But there was no regular source of information and no means of supervising these companies or controlling their actions if they got themselves into financial positions where they could not pay their obligations, and they were still able to solicit funds from the public. The consequence was that some members of the public lost heavily. It was really not a very logical position to have close supervision on all the rest of the field but leave a gap for this particular type of company.

(*Emphasis added*)

(At Volume 1, page 23):

What we were seeking by this measure was to try to draw it in such a way that it would catch companies that were essentially acting as investment intermediaries rather than as trading and manufacturing industrial companies. This is not always a sharp division. It is a question of degree.

(*Emphasis added*)

(At Volume 1, page 25):

**Mr. Walker:** Would you repeat for me once again, then, the main object or the main purpose of this piece of legislation?

**Mr. Humphrys:** The main purpose is to establish a system of reporting and supervision for companies that act in a substantial way as financial intermediaries—attracting funds, soliciting funds from the public and using some or all those funds for investment purposes, as distinct from industrial, commercial, manufacturing purposes—thus completing the general pattern of supervision of financial institutions that exists under federal legislation.

*(Emphasis added)*

In keeping with the philosophy enunciated by Mr. Humphrys "trading and manufacturing industrial companies" should be excluded from the application of the Act. We agree with him on this point. In our view "trading and manufacturing industrial companies" are already sufficiently well regulated through securities, companies, consumer protection and combines legislation, and in some cases by legislation specifically directed to the undertakings with which they are involved. In any event, we doubt that the expertise and experience of the Department of Insurance is such as to enable it to supervise in a meaningful way the operations of a "trading and manufacturing industrial company". Section 2(3)(a) of Bill C-3, reading, in part, as follows, seems designed to bring about this exclusion in that it deems companies not more than 40 per cent of the assets of which are "intangible assets" (for example most manufacturing companies not to be investment companies:

(3) Notwithstanding subparagraph (i) of paragraph (g) of subsection (1), the following companies unless incorporated after the coming into force of this Act primarily for the purpose of carrying on the business of investment, shall be deemed not to be investment companies for the purposes of this Act:

(a) a company not more than forty per cent of the assets of which, valued in accordance with the regulations, at any time during its current and last completed fiscal year consisted of loans or purchases described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1);

The test then of a "manufacturing industrial company" would appear to be whether or not 60 per cent or more of its assets are "tangible assets"—as we have defined them—such as lands, buildings, equipment inventories and the like.

Section 2(4) of Bill C-3, reading as follows, goes one step further in providing that assets of a company represented by evidence of indebtedness and shares of a closely held "first level" subsidiary shall not be considered "intangible assets" of the company for the purposes of Section 2(3)(a) provided, however, not more than 40 per cent of the assets of such subsidiary are "intangible assets":

(4) For the purposes of paragraph (a) of subsection (3), any assets of a company that consist of loans to, shares of or bonds, debentures, notes or other evidences of indebtedness of any subsidiary of such company shall be deemed not to be assets that consist of loans or purchases described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) if

(a) at least seventy-five per cent of the equity shares of such subsidiary are owned by the company; and

(b) not more than forty per cent of the assets of such subsidiary, valued in accordance with the regulations, at any time during its current and its last completed fiscal year consisted of loans or purchases described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1).

Thus, it is permissible in determining the status of a company under the act to look not only to its assets but also to the assets of its subsidiaries. Why one may not go beyond "first level" subsidiaries in making the examination is not easy to understand.

While the reorganization of Labatt in 1964 resulted in considerably more than 40 per cent of the assets of the company being represented by shares and evidence of indebtedness of closely-held subsidiaries, the "tangible assets" of the Labatt group of companies greatly exceeded 60 per cent of the total assets of the group. Reference in this regard is made to the attached audited unconsolidated balance sheet of the company—the corporate balance sheet—as at April 30, 1970, Exhibit B, where shares and indebtedness of closely held subsidiaries are shown to constitute 75 per cent of total assets and to the attached audited consolidated balance sheet of the Company and its subsidiaries as at April 30, 1970, Exhibit A, where consolidated "tangible assets" are shown to represent 85 per cent of total consolidated assets. Moreover, a recent appraisal value of the fixed assets of Labatt and its subsidiaries exceeded the net book value thereof by approximately 180 per cent.

The framers of Bill C-3 must have had in mind exempting companies and closely held groups of companies from the application of the Act if a substantial part of their combined assets (60 per cent or more) are "tangible assets" such as lands, buildings, equipment, inventories and the like used in "industrial, commercial and manufacturing" operations for otherwise unintelligible situations such as the following would exist:

If Labatt's operations were conducted by Labatt itself as they primarily were prior to 1964, rather than by subsidiaries as they are now Labatt would be deemed not to be an "investment company" pursuant to Section 2(3)(a).

If Labatt's operations were conducted through "first level" closely held subsidiaries such as Labatt Breweries and Ogilvie, Labatt would still be deemed not to be an "investment company" pursuant to Section 2(3)(a) as supplemented by Section 2(4).

Since Labatt's operations are now conducted by closely held "first", "second", "third" and even "fourth" level subsidiaries the saving provisions of Section 2(3)(a) and Section 2(4) are not available and Labatt would, by definition, be an "investment company".

There would appear to be little or no logic in, nor any useful purpose served by making Bill C-3 work in this way. What difference does it make for the purposes of the Bill that a company's manufacturing operations rather than being carried on by a closely held "first level" subsidiary are carried on by a closely held subsidiary of such "first level" subsidiary, that is by a "second



level" subsidiary or for that matter by a "third" or "fourth" level subsidiary.

On the basis of the foregoing, Labatt is clearly an "industrial, commercial or manufacturing" company, and for this reason Bill C-3 should not apply to Labatt but it does and to this extent the Company is opposed to the Bill.

Section 2(4) of Bill C-3 is clearly deficient in scope and the reason therefor is apparent upon close examination of the subsection. Subparagraph (a) of the subsection stipulates that the voting shares of the subsidiary must be "owned" by the company in question; in other words, the subsidiary must be a "first level" or directly held subsidiary. The equity shares of a "second level" subsidiary would, of course, not be "owned" by the company in question but would be "owned" by its directly held "first level" subsidiary. Quite apart from the problem with subparagraph (a) of Section 2(4) subparagraph (b) thereof simply ignores the fact that manufacturing operations might be carried on in an organization such as Labatts' by subsidiaries the voting share of which although not being "owned" in the legalistic sense of the word by the company in question are clearly controlled by such company.

If Section 2(4) is really meant to place a closely held group of companies 60 per cent or more of the consolidated assets of which are "tangible assets" in the same position under Section 2(3) (a) as a single company with the same proportion of "tangible assets" the fact that it does not do so is a problem in the drafting of Bill C-3 which must be overcome.

Rewording Section 2(4) along the following lines would appear to offer one solution to the problem:

(4) For the purposes of paragraph (a) of subsection (3), any assets of a company that consist of loans to, shares of or bonds, debentures, notes or other evidences of indebtedness of any subsidiary of such company shall be deemed not to be assets that consist of loans or purchases described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) if upon a consolidation of the financial statements of such company and its subsidiaries prepared in accordance with the regulations

(a) the minority interest in subsidiaries at any time during the current and last completed fiscal year of such company does not exceed twenty-five per cent of the aggregate of such minority interest and the paid-up capital and surplus of such company and its subsidiaries; and

(b) not more than forty per cent of the consolidated assets of such company and its subsidiaries at any time during such company's current and last completed fiscal year consists of loans or purchases described in subparagraphs (i) and (ii) of paragraph (b) of subparagraph (1)."

This provision overcomes the anomaly of companies such as Labatt which are in every sense "industrial, commercial or manufacturing" companies being classified as "investment companies" merely because of their choice of a decentralized organization for administering their operations.

Other solutions to the problem might be found in modifying present Section 2(4) so that it would clearly extend by its terms to subsidiaries beyond the "first level" or by narrowing the definition "business of investment" to embrace only the business of "financial intermediaries" of the type referred to by Mr. Humphrys.

**The Chairman:** If Mr. Brown has nothing to add at this time, we have then reached the stage at which you may ask your questions, honourable senators.

**Senator Benidickson:** Mr. Chairman, for quite a few months, when this committee was dealing with the White Paper on Taxation, we became used to the term "closely-held companies". I assume that the phrase, as used here, is not at all similar in meaning. Is that correct? Labatts is a public company on the stock exchange, and, although it may have the controlling power over subsidiaries at different levels, nevertheless it is by no means a controlled company in the sense in which we used that phrase in previous meetings on taxation. The expression "closely-held" in this case is not the same thing at all.

**Mr. Kitts:** No. What we were trying to do, sir, in using that term was simply to indicate that in a great many instances Labatt companies, or the companies within the Labatt group, are in fact wholly-owned. There are some exceptions. In a number of companies, for example, there are small minorities, and one cannot technically call them wholly-owned subsidiaries, but what we are trying to put forward is the fact that, generally, these companies are extremely closely-held. They are virtually wholly-owned.

**Senator Benidickson:** Did you make these representations to the committee of the House of Commons?

**Mr. Kitts:** No, we did not, sir, as I believe I indicated.

**Senator Benidickson:** So you are coming to us in the first instance.

**Mr. Kitts:** Yes.

**The Chairman:** Would it be fair to say, Mr. Kitts, that all these operating companies are either wholly-owned subsidiaries of John Labatt or are owned in excess of 75 per cent?

**Mr. Kitts:** With very minor exceptions, Mr. Chairman, yes. One is Laura Secord, which is 64 per cent owned. Another is Parkdale Wines. There is a minority interest in there of 40 per cent, which is owned by a wine company in England.

**The Chairman:** If, for a moment, we may just visualize this set-up, you have John Labatt at the top?

**Mr. Kitts:** Yes, that is right.

**The Chairman:** Would you call it the holding company of the entire group?

**Mr. Kitts:** Yes.

**The Chairman:** Then we move down to what you call the first level which, I take it, is a wholly-owned subsidiary of John Labatt?



**Mr. Kitts:** Yes. In the case of Labatt Breweries of Canada it is a wholly-owned subsidiary. In the case of Ogilvie, it is virtually wholly-owned; there is a very small minority.

**The Chairman:** How many of these subsidiaries are subsidiaries of John Labatt, Limited, the top company, as against being a subsidiary of a subsidiary?

**Mr. C. F. Brown, Vice-President and Treasurer, John Labatt Limited:** There is a fair split on that one. For example, Labatt Breweries of Canada is owned by John Labatt, and so is Ogilvie, but Ogilvie owns, for example, Catelli. Labatt Breweries of Canada owns all the provincially operated brewing companies, which are so organized for public purposes. There are many companies at the so-called second level. It is a mixed bag.

**The Chairman:** In the financing, is all the financing generated in John Labatt, or is some of it generated in the first-tier subsidiaries?

**Mr. Brown:** At the time we acquired certain companies, they did have their own financing. Since the acquisition of the companies, our policy is to do all the financing in John Labatt.

**Senator Connolly (Ottawa West):** The shares that you buy on the Exchanges are shares of John Labatt?

**Mr. Brown:** Yes.

**Senator Connolly (Ottawa West):** Not of Ogilvie?

**Senator Benidickson:** Ogilvie is still listed?

**Mr. Brown:** It was recently delisted; the Preferred is still listed.

**Senator Connolly (Ottawa West):** None of the subsidiaries is listed?

**Mr. Brown:** Laura Secord is.

**The Chairman:** They have told us that is 65 per cent owned by John Labatt.

**Mr. Brown:** 64 per cent.

**The Chairman:** And the Parkdale Wines about 40 per cent.

**Mr. Brown:** Yes.

**Mr. Kitts:** No, Mr. Chairman, we have 60 per cent of Parkdale and the minority interest is 40 per cent.

**The Chairman:** Yes, the minority interest is 40 per cent. You say that since all these acquisitions all the financing has been done in the top-level company. Then that money is advanced by way of unsecured loans to the various operating companies, is that right?

**Mr. Kitts:** That is right.

**The Chairman:** Which may be first-tier or second-tier companies?

**Mr. Kitts:** Yes.

**The Chairman:** And I take it that in the ordinary way you take notes or some pieces of paper to evidence this?

**Mr. Brown:** That is right. These subsidiary companies have their own bank lines of credit. When we talk financing, I assume you are referring to our debentures and the long-term stuff.

**The Chairman:** Well, I do not know whether we need to get into what are the policy decisions which dictate that John Labatt will lend money to Ogilvie or to Catelli. That is a policy decision at the level of John Labatt. I take it that Ogilvie or Catelli may do some of their own.

**Mr. Brown:** Many of these first- and second-level companies operate completely independently of John Labatt and they do not require financing from John Labatt. Cases in point would be Ogilvie, Laura Secord and Catelli.

**The Chairman:** When you say "independently," you do not mean all the implications of that word?

**Mr. Brown:** No, I do not.

**Senator Carter:** Does that mean that they generate loans of their own from the public?

**The Chairman:** No, there is no indication of that. I think the suggestion was that they have their own lines of bank credit. Is that correct?

**Mr. Brown:** Yes, and they generate funds themselves too, of course.

**The Chairman:** Through their operations.

**Mr. Brown:** Yes.

**Senator Beaubien:** On page 8 the Labatt brief is suggesting that we amend section 2(4) of Bill C-3. Should we not ask Mr. Humphrys what he thinks of the amendments?

**The Chairman:** I was just wondering whether, instead of doing this piecemeal we should not finish with these witnesses.

**Senator Benedickson:** I quite agree but I think another question might be appropriate at this point. Have you submitted these amendments or have you had discussions with the Department of Insurance on the proposed amendments?

**Mr. Kitts:** No, we have not, sir, again because of the haste with which it was done.

**Senator Benidickson:** This is new ground in coming to us in so far as this proposal is concerned?

**Mr. Kitts:** Yes.

**The Chairman:** Senator Benidickson, I was just wondering this. In the bill which is before us if you look at page 4—and would you look at this as well, Mr. Kitts?—the marginal note is "When corporation a subsidiary", and I notice in subsection (5) it says:

For the purposes of this Act, a corporation is a subsidiary of another corporation only if, —and then, in paragraph (b):

...it is a subsidiary of a subsidiary of that other corporation.

Had you considered the implications of that?

**Mr. Kitts:** Yes, we had, Mr. Chairman.

**The Chairman:** And notwithstanding what the implications might be, you came to us?

**Mr. Kitts:** Yes, we came to you.

**The Chairman:** You think this does not help you?

**Mr. Kitts:** No, we do not think it does.

**The Chairman:** Why?

**Mr. Kitts:** We do not think it does, sir, because paragraph (a) of subsection (4), immediately above it, stipulates that in order for this section to be operative the shares of the subsidiary in question must be owned by the company in question. To take an example to illustrate it, the shares of Labatt's Ontario Breweries Limited are not owned by John Labatt Limited but rather by Labatt Breweries of Canada. So I suspect that perhaps the draftsman of the bill felt that this might have been the salvation for Labatt, but I am afraid, in our view, it does not accomplish that purpose.

**The Chairman:** Let us take names. Your brewing operations are carried on in provincially-owned companies?

**Mr. Kitts:** Provincially-based companies.

**The Chairman:** Do you mean provincially incorporated?

**Mr. Kitts:** No, generally they are federally incorporated.

**The Chairman:** In the case of your brewing operations, they are in companies that are subsidiary to John Labatt (Canada) Limited?

**Mr. Kitts:** Labatt Breweries of Canada.

**The Chairman:** Labatt Breweries of Canada?

**Mr. Kitts:** Yes. Their shares are accordingly owned by that company rather than by Labatt. If we are applying this test to Labatt—and this is the nub of our problem—subsection (4), while I believe it is intended, in keeping with the philosophy enunciated by Mr. Humphrys, to exclude closely-held groups of companies involved in manufacturing operations, this provision unfortunately stops at first-level subsidiaries.

**The Chairman:** Let us see. The question then is as to whether the Labatt Brewery Company, which is owned by Labatt of Canada, is a subsidiary of John Labatt by virtue of this paragraph (b). If it were, as a matter of interpretation, a subsidiary, for the purposes of this act, of John Labatt, then would your problem be solved?

**Mr. Kitts:** I do not believe so, Mr. Chairman. I think there is one key word in subsection (4)(a) that presents a problem to us, and that is the word "owned". In interpreting this provision, with that word in there, rather than "owned or controlled" or "owned by the company or by a subsidiary thereof", they have stipulated, if we are to consider the assets of, let us say, Labatt...

**Senator Benidickson:** What page are you on?

**The Chairman:** On page 4, subsection (4), the one immediately above the one I was dealing with.

**Mr. Kitts:** This provision stipulates that if the assets of Labatt (Ontario) are to be considered in investigating the status of John Labatt Limited under the act, then the shares of that subsidiary must be owned by John Labatt Limited, and they simply are not.

**The Chairman:** Maybe this is a case where we put in two contradictory statements. It may be that we frustrate the meaning that was intended to be given by (b) by what we have put in (a) in subparagraph (4). That may well be, and if that is so—mind you, I am only trying to present something now and we will get Mr. Humphrys' view in due course—it may be that if "company" were broadened in its meaning to include any subsidiary that qualifies under subparagraph (5), that would be enough to remove your objections, Mr. Kitts?

**Mr. Kitts:** I believe so. If in implementing that thought the provision was such that we could examine the assets of subsidiaries beyond the first level in determining the status of John Labatt Limited, and if that definition of "subsidiary" in subparagraph (5) could be imported into this, then I think we could accomplish our objective.

**The Chairman:** It is a neat point. The first thing we have to decide, in my opinion, is whether it was intended to give relief in such cases. Certainly I know when this bill was before us the first time—when we rewrote it—we had in mind the Massey-Ferguson operation. They appeared here and they used all these subsidiary companies as tools to carry on their business and the Massey-Harris Company rides at the top.

**Senator Benidickson:** And I suppose you also have Argus in there somewhere.

**The Chairman:** Oh yes. We certainly had that kind of co-operative setup in mind when we rewrote the bill. Now whether the kind of setup you put forward should be treated in this fashion is something we will have to decide after we have heard from Mr. Humphrys. Is there anything more you would like to add at this time, or is your whole problem the fact that you have a top company and you have subsidiaries of that company and then you have subsidiaries of those subsidiaries? Is that your problem? Is that what creates your problem?

**Mr. Kitts:** That is what creates our problem.

**The Chairman:** And you say the substantial character of all the operations is manufacturing and commercial and the financing is for the purpose of promoting those operations?

**Mr. Kitts:** That is right.

**Senator Connolly (Ottawa West):** Mr. Chairman, I wonder if there is any relief for the company arising out of the discretionary powers of the Minister in clause 3?

**The Chairman:** Yes, on page 5 you will find the exemptions.

**Senator Connolly (Ottawa West):** I have not read the detail of that section, but there is power in the Minister to grant an exemption.



**The Chairman:** It would come under (iv), I would think. The question is whether it is intended that they should have to apply for exemption or whether they should definitely be outside the scope of the act. Paragraph (iv) is worded sufficiently broadly to entitle them to ask and to entitle the Minister to grant exemption.

**Senator Connolly (Ottawa West):** But I think the witness is looking for statutory exemption rather than discretionary exemption.

**Mr. Kitts:** That is right.

**Senator Connolly (Ottawa West):** It might well be that discretionary exemption would in fact be satisfactory in practice if not in theory.

**Senator Beaubien:** But, Mr. Chairman, an exemption by the Minister would not be satisfactory. If you had to get an exemption and then you wanted to do some financing and the conditions change and the Minister would not grant the exemption, you would have to rearrange the whole setup of the company unless you could be assured of having such an exemption.

**The Chairman:** As I read the exemption clause on page 5, once the Minister exercises his discretion and you get an exemption, then I would think it is applicable until such time as he revokes it.

**Senator Beaubien:** But if an underwriter is going to sell \$10 million worth of bonds, he does not want to have the safety of his investment at the discretion of the Minister who may revoke.

**The Chairman:** Well, if necessary, you could deal with that by saying, and I think it logically follows, that everything you do while you are enjoying the exemption is not affected by the subsequent revocation. I should be inclined, if I enjoyed an exemption, not to go and ask the Minister anything about it; I would go ahead and carry out whatever I was attempting to do, because I have no obligation to report to the Minister from time to time here, as I understand it. If I get an exemption, that is it. The Minister can take whatever way he likes and he can make whatever inquiries he wishes to make, but I do not think there is any compulsion on the company that enjoys an exemption to file anything. I think I asked Mr. Humphrys that the other day and I think he agreed.

**Senator Benidickson:** It is rather unusual for a Minister to be retroactive in whatever he does.

**The Chairman:** If there is any doubt about it, we could say for greater certainty that anything that is done while an exemption is in existence is not affected by subsequent revocation.

**Senator Gélinas:** Mr. Chairman, I thought that the suggestion was made at the last meeting that exemptions should be reviewed every year.

**The Chairman:** I don't think that suggestion was made by me.

**Senator Gélinas:** It was by me.

**The Chairman:** By you, yes. My answer deals with that in part, then; why raise an issue in relation to something you enjoy?

**Senator Macnaughton:** Mr. Chairman, if you were lending money on a long-term basis, I am not so sure that you would want to rely on the Minister's discretion for an exemption.

**The Chairman:** I would feel happier if there was a definite declaration in the statute, that is that anything done up until the exemption is revoked is valid and is not affected by the revocation.

**Senator Connolly (Ottawa West):** But that might make it impossible—and here I am not arguing for the Minister, he can do that for himself—but it might make it impossible for the Minister inasmuch as if the company enjoyed the exemption and then proceeded to do something that was clearly within the ambit of the act, once that came to the attention of the Minister I should think he would probably then say "No, the exemption cannot apply in this case," but he would not know until after the event. In this way you might frustrate the purpose of the act.

**The Chairman:** But the exemption to my way of thinking does not mean anything if it is in terms where the Minister is not prepared to exercise the discretion or can interfere at any time and affect anything that is going on. There has to be something definite. Otherwise, as Senator Macnaughton says, in any substantial borrowing, a lawyer who was familiar with this sort of transaction would look at what the statute says and what the transaction is and he would make his own assessment as to whether that would disqualify the person attempting to get the financing from his exemption. If you came to that conclusion you would say, "I want the approval of the minister on this that it does not disturb the exemption." Immediately you are interfering with financing.

**Senator Beaubien:** Why would Mr. Kitts be appearing before us asking for an amendment unless he is afraid that the legislation as it stands does not cover the company?

**The Chairman:** Mr. Kitts has pointed out why in his considered view the present wording of subsections 4 and 5 on page 4 does not provide the protection—namely, if a subsidiary of a subsidiary, being set by statute, be a subsidiary of a number one company. That seems clear; but when we come to the qualifications in subparagraph (4), where the top company must own 75 per cent of the shares of such subsidiaries, this is a stumbling block. It might well be that we will have to consider some rewriting in the paragraph dealing with the 75 per cent.

I am not giving any opinion at this stage because we are merely discussing the point. But if it is the intent that this kind of operation should not be subject to the bill, then we will have to consider a little rewording.

However, we were on another point, that of revocation and its effect on an exemption and how serious it might be in connection with financing. They are two different questions. Are there any other questions?

**Senator Connolly:** I notice that in the brief it refers to industrial, commercial and manufacturing operations. I am wondering whether that language is used anywhere in the act.

**Mr. Kitts:** Not that I am aware of.



**Senator Connolly:** I think it arose from the evidence given by Mr. Humphrys in another place.

**Mr. Kitts:** That is so.

**Senator Isnor:** Mr. Kitts, if you are granted this exemption, would that not tear your main balance sheet to pieces? You could not present a balance sheet as you have today.

**Mr. Kitts:** No, I do not think that would apply.

**Mr. Brown:** What was the question?

**The Chairman:** If the Company were granted the exemption it is seeking, then, in the words of Senator Isnor, would it tear your balance sheet to pieces; would it affect our balance sheet?

**Mr. Brown:** No.

**Senator Isnor:** Consolidated companies are included in your main balance sheet.

**Mr. Brown:** Yes, and there is no exemption in regard to that.

**The Chairman:** The exemption applies only to whether you are subject to the reporting of this bill. It does not affect the makeup of your balance sheet.

**Senator Isnor:** That is the question I am asking: will it?

**Mr. Brown:** No, sir, it will not.

**The Chairman:** Is there anything else that you would like to add, Mr. Kitts?

**Mr. Kitts:** No.

**The Chairman:** Mr. Humphrys, would you like to deal with these points now or at the conclusion of the hearing, or on another day? Perhaps you might want to reflect on what has been said.

**Mr. Humphrys, Superintendent of Insurance:** I will meet the pleasure of the committee. As for the suggested amendments we saw the context of them only this morning, so I would not want to express a complete analysis on them in a few moments. However, if it is the wish of the committee that I should respond to any questions at this moment, I would be happy to do so.

**The Chairman:** Perhaps we might address to you any question that we now have and you can reserve your position on the quality of any amendment. We will be sitting again next week as there are more representations to be made. Mr. Humphrys, would you care to come up here? Have honourable senators any questions to ask of Mr. Humphrys?

**Senator Connolly:** The essential point is whether Mr. Kitts' submission is the right one and whether or not the company will be called upon to comply with the provisions of the act as the act is now written.

**The Chairman:** Senator Connolly, your question is whether, under the provisions of the bill as it now stands, and having regard for the outline and the manner in which Labatt operates, Labatt would enjoy a statutory exemption?

**Senator Connolly:** Yes.

**Mr. Humphrys:** Mr. Chairman, I think that we would not. I believe the interpretation of the application of the act as put forward in the brief is accurate. I should first like to say that I am a little disturbed by the implication contained in some of the questions, that coverage under the provisions of the act would somehow be a threat to the safety of creditors. It was suggested at one point that the company was engaged in borrowing and that were the provisions applicable to the company, that this would somehow be to the disadvantage of creditors.

The purpose of the measure is to try to establish a system that will safeguard the position of creditors. Therefore I cannot see that coverage under the act could ever be a disadvantage to the company's creditors.

**The Chairman:** Mr. Humphrys, I did not take that conclusion from the line of questioning. The suggestion of Senator Macnaughton—and I join him in that conclusion—was that when in the Minister's exercise of discretion, he says that one has an exemption, and then one borrows or undertakes financing, the people offering the money might say, "We want to know that when this transaction is completed the discretionary exemption will not be revoked."

**Senator Macnaughton:** During the period of the loan.

**The Chairman:** Yes.

**Senator Macnaughton:** Particularly when one considers American federal finances.

**Mr. Humphrys:** If there is a ministerial discretion to grant an exemption or to revoke it, then I do not think that is compatible with a provision which binds him not to use that discretion. Secondly, if Parliament decides to grant it, it can be done only on the assumption that it will be exercised in a reasonable way; and that if an exemption is granted and subsequently revoked, the revocation will be linked very strongly with the public interest and that there will be real reason for the exemption to be revoked and that the supervisory provisions contained in this measure will be brought to bear on the matter.

I would hope, and have done so all along, that this measure would be regarded as a protection to creditors, rather than a disadvantage to them. I can see that a company itself may feel happier in some circumstances outside of the measure, because I suppose no one really likes more Government reporting or any more statutory provisions applicable to it. However, I would have hoped that the measures in this bill would not have been judged as disadvantageous to lenders.

There are no provisions in the measure that restrict the kind of investments or the volume of borrowing with relation to capital or surplus, or any of these matters. The only restriction is really one of borrowing, investments and loans where there may be a conflict of interests.

**The Chairman:** Well, Mr. Humphrys, I think there is; it depends on what you mean when you refer to restriction. If I have to register under this bill and furnish certain statements and materials which you examine and report

to the minister, you may conclude that the company is carrying too heavy a load of debt and so report.

You may in certain circumstances move in and take over the operation, or stop it from proceeding into greater liabilities. Now, certainly when I report you are concerned as to how I borrow and the extent and quality of the assets I obtain for the money I borrow from the public. Therefore, inherently there are limitations of that kind; I think those are the teeth that you need in the bill.

**Mr. Humphrys:** Yes, Mr. Chairman; I accept your comments and I agree with them. I really meant to state that there were no statutory limitations on the kind of borrowing or the nature of the use of the borrowed funds.

It is true, as the chairman points out, that there are provisions in the act that allow action to be taken if it is deemed that there is a threat to the safety of the borrowers and that, of course, is the basis of the measure.

I do not believe that it is unreasonable to hold that if a company were granted an exemption under the act any subsequent revocation of that exemption would be retroactive and would attempt to interfere in any way with actions the company had taken while it was exempt from the measure. To do otherwise would involve exactly the same principle that faces legislatures from time to time, retroactive legislation. While retroactive legislation is not impossible, it is almost universally accepted as not being desirable. There was certainly not any thought in connection with this measure that an exemption would be other than a complete exemption. If it were subsequently revoked the measure would apply only from the date that the revocation was made.

**Senator Beaubien:** Mr. Humphrys, if the capital setup of this company were changed it would clearly not come under the act. Therefore does it make sense that simply because it happens to have elected to set up its capital structure in such way that it would come under the act when if the parent company held all the shares of all the subsidiaries there would be no question that it would come under the act?

**The Chairman:** Oh, senator; you know that there may be excellent reasons why Labatt felt in the acquisition of these subsidiaries that they had to maintain the existing setup.

**Senator Beaubien:** I am just saying that another company, of exactly the same type, all the shares being held by the parent company would not come under the act. However, because it has a certain kind of capital setup another company must apply to the minister for his discretion as to whether they are going to come under the act. Surely that is not right?

**Mr. Humphrys:** Mr. Chairman, this points up exactly a class of problems that faced us when the bill was being prepared and faced this committee when it studied the measure two years ago. It also faced the subcommittee in considering amendments to it.

The whole difficulty is that there are not clear-cut classes of cases. You can think of a whole range of cases. A company might be engaged in direct manufacturing in a particular line and for one reason or another change its corporate structure and acquire a number of operating

subsidiaries. An illustration is Massey-Ferguson, which you have studied.

It was generally accepted that that is not an investment type operation, let us say a change in corporate organization. However, suppose a holding company buys shares in this company, that company and another company. At what point does it change from essentially an investment operation, where it raises money and buys shares in a number of different corporations, to an operating organization? I do not believe anyone can answer positively.

Now, we have had an illustration this morning in this brief of a tremendously complex industrial organization with a great range of activities. If this group started out as a brewing company and then bought interests in other types of operation, does that classify them as a milling, wine-making or food-manufacturing operation? Is the test whether they have control of the subsidiary, or a major investment? Where is the point reached at which they become an industrial rather than an investment organization?

This is the difficulty and this was the reason I think that appealed to the committee two years ago and was in our minds. It was thought that one could apply a statutory exemption with a reasonable test for one layer of subsidiary. However, there are many different types of cases that one can think of and even find. We felt that it was really a practical impossibility to write a series of statutory rules that would meet every kind of case and corporate organization that might be conceived.

This was why the statutory exemption went one layer on the subsidiary only and when the bill was studied more recently it was proposed that some broadening of the discretionary exemption should be granted to take care of a case involving a very close integration of the operations of the borrowing company with the subsidiaries.

**Senator Beaubien:** The point is that this bill does provide that if 40 per cent of the assets of the subsidiary are intangible, and if you look at the consolidated balance sheet of Labatt there is no question that 85 per cent of the assets are the tangible kind. There you have the yardstick to judge. The only concern is the wording, "owns the shares." If it is deemed that the parent company owning all the shares of the second company should be deemed to hold all the shares of the third and fourth companies you do not have any problem.

**The Chairman:** In subclause (5) on page 4 we do declare for the purposes of this bill that a corporation is a subsidiary of another corporation only if it is controlled by that other corporation, et cetera.

Then we say "it is a subsidiary of a subsidiary of that other corporation". We therefore recognize in the definition of a subsidiary that for the purposes of this bill it includes a subsidiary of a subsidiary. If we go back to subsection (4) we take away any benefit of that by putting in the limitation "at least 75 per cent of the equity shares of such subsidiary." What subsidiary do they mean there? Do they mean the subsidiary according to the statutory definition we have written? It negatives the whole thing when it says it must be owned by the company. Obviously the shares of a subsidiary of a subsidiary are not and cannot be owned by the top company,



so we have negated in subsection (5) the substantial effectiveness of subsection (4).

**Mr. Humphrys:** The purpose of the definition in subsection (5) was first to provide for the filing of statements of subsidiaries in addition to the statement of the parent company, should that be desired, and was to deal with the question of consolidated statements, which is dealt with in a subsequent subsection having to do with the filing of information, and it was also in relation to possible interpretation of clause 10. When subsection (4) was drafted and amended by this committee, it was deliberately written in the way it is found in this bill, and intended to apply only to a first layer subsidiary, so that I do not feel subsections (4) and (5) are in conflict. Subsection (5) was for a different purpose, and the wording in subsection (4) was intended...

**The Chairman:** Well, it is there, and you can have whatever application in law you can give it.

**Mr. Humphrys:** It was intended to exempt investments in a first layer subsidiary only. I well recall that when the point was discussed here, it was pointed out that if one tried to go down through a whole chain of subsidiaries one could easily accomplish the purpose of having all the assets, or effectively all the assets, in investment type instruments, and still get complete exemption, because by multiplying down you can raise the proportion of assets in investment type to any desired degree. Even with the one layer subsidiary you could have a situation where 64 per cent of the consolidated assets could be investment type assets and the whole enterprise would be exempt. If you put another subsidiary below that you can raise it to 75 per cent, and two more down you can raise it to about 90 per cent. That is why it was found when this working was last studied that this kind of thing should stop at one layer, and then if it was a more complex corporate organization the only thing to do was to look at it as an individual case and see what judgment could be made in the particular circumstances.

**Senator Connolly (Ottawa West):** On that last point, if you look at the individual case, bearing in mind what has been put into this submission, would you say that in this case the company would qualify for exemption?

**Mr. Humphrys:** I think it would be wrong for me to answer that question in the present state of our information about the company concerned and about the policy to be developed in the light of discretionary exemption.

**The Chairman:** I think you can only point out what are the provisions; you cannot go beyond that. We seem to have thrashed this thing back and forth. Mr. Humphrys understands the position of John Labatt; he understands the viewpoints that have been expressed here; and I was wondering if, therefore—because, of course, we are going to see you again and again on this—you would reflect on it, and at a later stage we could have a full and complete consideration of this point.

**Senator Gélinas:** Have you had other representations made directly to you which would be somewhat similar to this problem?

**Mr. Humphrys:** I think the representations made by the Weston company before the House of Commons com-

mittee were on a quite similar point. They were concerned about the activities of the parent company and loans to second and third layer subsidiaries, and whether that kind of investment activity would bring their company within this measure. They also suggested the possibility of amendments that had to do with consolidation. I would be happy to review the proposed amendments made in the Labatt brief and give you more considered comments at a subsequent meeting.

**The Chairman:** I was wondering if, while you are doing that, you would keep in mind, certainly the suggestions by way of amendments that are in the Labatt brief, and also the suggestions that have been thrown up here in the discussion, which may involve a different way of dealing with the situation. I am sure you will do that.

**Mr. Humphrys:** I would be glad to do so, Mr. Chairman.

**The Chairman:** Thank you, very much, Mr. Kitts and Mr. Brown.

Honourable senators, we now have another brief, which is from the Canadian Institute of Public Real Estate Companies. We have here Mr. Maurice W. Wright, counsel, and Mr. Charles Hay, the president.

**Mr. Maurice W. Wright, Q.C., Counsel, Canadian Institute of Public Real Estate Companies:** Mr. Chairman, honourable senators, my name is Maurice Wright, and I appear as counsel of the Canadian Institute of Public Real Estate Companies. I have with me a gentleman who may be known to you in different capacities. I refer to Mr. Charles Hay.

To some of you he may be known as the former president and chief executive officer of Gulf Oil (Canada) Limited. To others he may be known as the president of Hockey Canada. For our immediate purposes, I would ask you to recognize him as the president of the Canadian Institute of Public Real Estate Companies.

**The Chairman:** You might have added on a nice personal note that he is the father of a great hockey player.

**Senator Hollett:** Would it be wiser, Mr. Chairman, to talk about hockey, rather than this subject?

**Mr. Wright:** Although the brief bears the name of my partner, Mr. Soloway, you will be aware of the fact that there was some problem about knowing who would be here this morning.

**The Chairman:** Yes, I was aware of that.

**Mr. Wright:** I claim pride of authorship, and therefore must accept the responsibility of any criticism this brief may invite.

**The Chairman:** If we have any we will make it.

**Mr. Wright:** I am sure.

**The Chairman:** You just go ahead.

**Mr. Wright:** Mr. Chairman and honourable senators, the Canadian Institute of Public Real Estate Companies appreciates being given this opportunity to appear before your committee. We are extremely concerned about Bill C-3. We oppose the proposed legislation to the extent that it seeks to bring real estate companies under its legislative umbrella.



We have already appeared in opposition to the Bill before the Standing Committee of the House of Commons on Finance, Trade and Economic Affairs. We are attaching hereto a copy of the Submission which we presented on that occasion because it sets out with deliberateness our considered position.

Stated very briefly, we fail completely to understand the legislative wisdom which applies identical regulatory standards to real estate companies as it does to sales finance companies. Bill C-3 intends to catch within its legislative net real estate companies by reason of the fact that "some or all of the proceeds" of mon es borrowed by a real estate company is used for the purchase of real property as part of the company's operations.

May I invite your attention to the bill itself. The phrase "business of investment" is defined in clause 2(1), and I would like to extrapolate from the definition:

(b) "business of investment" with respect to a corporation means the borrowing of money by the corporation on the security of its bonds, debentures, notes or other evidences of indebtedness and the use of some or all of the proceeds of such borrowing for

....  
(ii) the purchase of

...

(D) real property other than real property reasonably required for occupation or anticipated occupation by the corporation...

and so on. In that way, if a company has used the proceedings of its borrowing for the purpose of the purchase of real estate, it is by statutory definition involved in the business of investment.

The major portion of Bill C-3 devotes itself to the regulation of sales finance companies. Presumably this portion of the proposed legislation seeks to protect the public against future debacles similar to those which occurred in the case of Atlantic Acceptance and Prudential Finance. We endorse the object of Bill C-3 in attempting to protect an unsuspecting public who might choose to lend money to a company whose principal objective is dealing in commercial paper and in what is generally described as a finance operation. We do not understand, however, why a real estate company should be subject to similar regulation any more than a mining company or a retail grocery business.

A real estate company must borrow in order to survive and to operate. It is simply not possible for a real estate company to finance its operations out of equity capital. Almost all real estate companies obtain their borrowing from the same sources, mainly, through a combination of borrowing from the chartered banks, from trust companies, from life insurance companies, mortgage companies, pension funds and similar sources. In all cases the type of person who lends money to a real estate company is what might be described as a "sophisticated lender".

I am not sure that it is the happiest choice of language, but that is the one I am committed to.

The type of lender who lends to real estate companies simply does not need the protection of the Superintendent of Insurance or any of the legislative safeguards which would be provided for under the proposed Investment Companies Act. Throughout the evidence given by

Mr. Humphrys, the Superintendent of Insurance, to the Commons Standing Committee on Finance, Trade and Economic Affairs, he consistently referred to the companies over which he seeks regulation as "financial intermediaries" or "investment intermediaries." Indeed, each and every specific illustration which he gave related to a sales finance company.

I say that because I have gone through the evidence carefully and it is all documented in the brief which accompanies this document.

We state to you categorically that a real estate company is neither a financial intermediary nor an investment intermediary. We made this point to the Commons Committee and apparently they were impressed by this argument. Unfortunately, when Bill C-3 was reported out to the House of Commons it did not take care of the situation in our respectful view, in a meaningful sense. The committee obviously tried to steer a middle course by introducing an amendment to Section 3, subsection 2, of the bill. The amendment provides that the minister would have the right to grant exemption from the application of the act by taking into account the following factors:

- (i) the persons to whom the company is indebted
- (ii) the amount of the indebtedness
- (iii) the nature of any security given by the Company, and
- (iv) the extent of the integration of the company's activities in the activities of its subsidiaries, if any.

Mr. Chairman, may I take a minute to elaborate on that. I would invite your attention to section 3 of Bill C-3. Section 3(2) did not read, when we appeared before the Commons committee, in the way that it does now. It has been amended by adding to section 3(2)(c) certain provisions. It is provided that the minister may grant exemption, and it is based upon the four factors which are set out in section 3(2)(c). Now, that is an amendment.

The points that we made before the Commons committee all directed themselves to the points which are sought to be covered in the amendment. In other words, why should the superintendent seek to protect people like trust companies? Banks constitute no problem, because they are just not involved in this. But do life insurance companies really need the protection of the superintendent, or mortgage companies, or trust companies, or pension funds?

There are people who, rightly or wrongly, I have described or dubbed here as being "sophisticated lenders".

As to the amount of the indebtedness, the nature of any security given by the company in respect of money they intend to borrow, the extent of the integration of the company's activities, we dealt with that in depth.

Certainly, the first three points which formed the main point of our brief to the Commons committee, were in that direction and there was considerable discussion. But when it was reported to the House of Commons it had what I suggest to you is this middle course type of amendment, giving the minister power to grant exemptions based upon these four criteria.

There is a very interesting aspect to this. The first part of section 3(2) reads:

The Minister may grant exemption from the application of the provisions of this Act, other than the provisions set out in sections 10 to 15...

There is a specific mention of sections 10 to 15. Sections 10 to 15 deal wholly and exclusively with sales finance companies. In other words, there is a dual recognition; it is a give and take situation that is set out in section 3(2). The minister may grant exemptions, but there will be no exemptions at all where anything covered by sections 10 to 15 is concerned, namely, where sales finance companies are concerned—but he will consider giving exemptions where these other factors are involved.

I submit to you that the whole point of this legislation is directed to sales finance companies in the legislation that is before you, but the net is simply too broad, it is too wide, it seeks to catch up into its net people who have no business being there.

I would like to continue now with the brief.

The committee obviously realized that because of the above factors the operations of a real estate company are so different from those of sales finance companies that there might well be justification to exempt real estate companies. Our disagreement with the amendment is that it will probably not serve any useful purpose for the following reasons:

(a) When the subject becomes caught in government controls, the controls do not become easily relaxed. It is simply not in the nature of the civil servant to relax controls.

(b) Though the amendment gives the Minister the right to determine whether he will grant exemption from the Act, it will still be a civil servant who will make the decision, probably the Superintendent of Insurance.

**Senator Beaubien:** Wait until Mr. Humphrys sees this.

**Mr. Wright:** Honourable senators, I hasten at once to add here that there is nothing personal intended so far as Mr. Humphrys is concerned. I am talking about the theory, the principle of the legislation, and nothing more. Nothing personal is involved.

Our principal irritation with the legislation is that it serves absolutely no useful purpose whatever where real estate companies are concerned. It purports to give protection to those who have no need for the protection and whose abilities for determining the financial standing of a company are probably superior to those of the public servant.

If real estate companies should be placed under the jurisdiction of Bill C-3, then it will mean that no person will be able to make any loan to any real estate company unless and until clearance has been obtained from the Superintendent of Insurance so that either a certificate of registry has been issued to the company under section 18 or the company has been exempted from the act.

Section 20 of Bill C-3 provides that, and I quote in part:

An investment company...shall not borrow money on the security of its bonds, debentures, notes or other evidences of indebtedness before the issue of a certificate of registry to it.

Thus, legal counsel acting for a mortgage company, trust company or life insurance company which is lending money to a real estate company, would be imprudent if any mortgage moneys were ever paid to a real estate company without clearance first having been obtained from the Superintendent of Insurance. Indeed, legal counsel would be quite justified in insisting upon obtaining clearance each and every time an advance were to be made by his client under a mortgage.

May I just interrupt my presentation of the brief to say that I would hope for the support here of those members of the committee who are lawyers and who have personal knowledge of the duties which devolve upon the solicitor for a lender. He has to certify title to the lender, and he knows that under section 18, on page 27 of Bill C-3, the minister may, upon application made to him by an investment company, issue a certificate of registry to the company for such term not exceeding one year if he considers it appropriate, and son on, and then at page 29 of Bill C-3 he knows that section 20 provides a prohibition on borrowing by saying that an investment company to which subsection (1) of section 19 applies shall not borrow money on the security of its bonds, debentures, notes or other evidences of indebtedness before the issue of a certificate of registry to it.

Now, Mr. Chairman and honourable senators, if I were acting for a life insurance company as solicitor for the mortgagee, the lender, and, for example the lender was putting out a mortgage of \$2 million payable in several advances of, for instance, \$500,000 each, I would consider myself derelict in my duty to my client, the mortgage lender, if I did not, before each and every advance was paid, check with the Superintendent of Insurance to make sure that the certificate of exemption was still extant, still in existence.

**Senator Macnaughton:** If you were acting for an American lender, you would be in an even tougher position.

**Mr. Wright:** Indeed I would. I know I would. Furthermore, many of these real estate companies, particularly in times of tight money situations—and this is not to derogate from their financial strength—when they need a mortgage advance, need it immediately, because they do not want the money lying around for an unnecessary length of time. So when they need the money they want it right away.

In those circumstances, if I were the solicitor for the lender, I would have to go to the Superintendent of Insurance to get this evidence, and with the greatest personal respect to the public servant, I must say that the sense of urgency might not necessarily be as compelling with him as it is to the borrower and the lender in the private sector. I submit that there is a built-in area of irritation which could very easily develop, and in saying that I do not think I exaggerate the seriousness of the situation.

Now, all of this for what purpose? To protect the life insurance company, trust company, mortgage company or pension fund? We submit that regulation by government ought not to be sought, and ought not to be granted, unless such regulation will advance some public interest. It has yet to be pointed out why public interest will be advanced by placing real estate companies under the type of regulation which is involved in Bill C-3.



Any legislative step which may have the effect of hindering or even slowing down the use of moneys for the purpose of real estate companies is contrary to the public interest. Real estate companies use their borrowings for the purpose of financing the construction and development of residential and commercial building projects. Real estate companies are not financial intermediaries. A real estate company is simply not involved in dealing with commercial paper, and we submit that the inclusion of real estate companies under Bill C-3 will serve no useful purpose.

Mr. Chairman, honourable senators, I am putting it to you quite frankly that the best that can be said for this legislation insofar as real estate companies are concerned is that it will not do them any harm. I think that is the best that can be said for this legislation. I submit that is not sufficient justification for imposing regulations. Under the Interpretations Act all legislation is deemed to be remedial, and I just cannot see the remedial effect of this legislation.

We do not understand why a real estate company ought to be in any different position. Really, without getting too technical about it in terms of the tax language, real estate to a real estate company is really the inventory of that company. Why a company, merely by reason of the fact that it invests in real estate, should be deemed to be in the business of investment, I do not understand.

The whole thrust of what we are saying is that the basic objective of the legislation is to protect the public, and almost all of Bill C-3 directs itself to protecting the public that might be victimized as a result of borrowings from certain types of companies. Real estate companies are just not in that category. We do not see what purpose is going to be served by including real estate companies. It does not make us feel any happier.

The submission which was made in the other place shows the names of the companies that are members of the Canadian Institute of Real Estate Companies. A number of these are federal companies; many of them are provincial companies. But the fees which are going to be paid by the companies in order to finance the operations of Bill C-3 will be based upon the assets of the companies, and we are going to be paying money. We figure that our members are going to be paying to subsidize an operation that is not going to serve any useful purpose at all.

**The Chairman:** Mr. Hay, do you wish to add anything?

**Mr. Charles Hay, President, Canadian Institute of Public Real Estate Companies:** No, I have nothing to add on that, sir.

**The Chairman:** Mr. Wright, if you reduce this to the basics, a real estate company, if it borrows money on the security of its debentures, et cetera, and subsequently uses the money to buy real estate, then it is caught under this bill. You have been talking about life companies, loan companies and trust companies. So far as life companies are concerned, as part of the investigation there is an examination of their real estate transactions by the superintendent. Now if the basic purpose of this bill is to protect the public or the public interest, then it might be that if the borrowings were only from life companies,

trust companies or loan companies, the public interest might not be as seriously concerned as it would be if the range or the market for borrowing is extensive and cuts into all different types of money markets such as pension funds or companies that make a practice of making mortgage loans in this field. If we are talking about life companies as you have been, maybe there is enough protection in that the other end of the transaction, as part of the real estate transactions of the life company, would be examined by the superintendent. But if you are speaking generally, is there not an area where a real estate company borrows money, buys real estate, and then projects a plan for the development of a subdivision or the construction of a series of apartment buildings or supermarkets, and if there is a public interest that is broader than that of life companies et cetera, is there not some element of protection required in that area? Let us suppose that the judgment in the acquisition of this property is too rosy hued and the plans for the development of a supermarket or apartment building may have an extra glow to them, is it not then advisable in such cases to have somewhere a measure of protection—if the real estate company can go anywhere where there is money available and borrow it?

**Mr. Wright:** I really do not think so, sir. I proceed on the theory that all your past bespeaks your future—I do not know who said that originally—and I think back to personal experience and the experiences of others. I am being subjective about it. I cannot think of cases where real estate companies borrow from the public in the sense of the type of situation which created the problems experienced in Toronto a few years ago. A real estate company might buy property and give a mortgage back to the prior owner as part of the purchase price. Even there the vendor would actually be lending money to the real estate company because he would be taking back an evidence of indebtedness, a mortgage, and he would have to go to the superintendent of insurance.

**The Chairman:** Only if he is incorporated.

**Mr. Wright:** If the real estate company is incorporated—and I am only directing my remarks to corporations—I fail to see where the public gets involved; they are private dealings throughout. I have the greatest difficulty in understanding how the superintendent of insurance will be able to give any measure of protection to any of the people involved in real estate operations.

**The Chairman:** Well, Mr. Wright, that is a question we can get some information on from Mr. Humphrys later as to what is his view as to there being a public interest to be served. We can pitch it back and forth and we may have our own views on it, but what we are really concerned about is what lay behind the extension of the provisions of this bill to include real estate companies. I think perhaps the best way of getting that will be from Mr. Humphrys. What I am wondering is this; whether within the scope of the bill there is not the opportunity to operate without being subject to the provisions of the bill. If you had a corporate vehicle for each venture, you might very well come into the category of the statutory exemptions.

**Mr. Wright:** Yes. There is another area I might just mention, Mr. Chairman. There was some discussion on this before the committee of the other place, and that



was the attempt to give some protection to the so-called unsuspecting public by setting out a formula in the legislation that if a real estate company borrowed money from the public in excess of x per cent of its total borrowings, then the act may apply to a situation of that kind. In other words, to try to provide for a formula which would have some practical significance rather than tar them all with the same brush.

**The Chairman:** I think the committee understands what your problem is. I certainly do. You want a statutory exemption and you give reasons in your brief as to why you think you are entitled to it, and the chief reason is that there is no public interest exposed in the operations and relationships of real estate companies which require the protection which this bill proposes to give. Is that a fair statement?

**Mr. Wright:** That is right. If I might clarify that without being too technical about it, I am not suggesting that there should be a statutory exemption *per se*, but rather that the definition of an investment company should be

so stated as to apply only to a particular type of company such as a sales finance company which the legislation appears to have been primarily designed to regulate.

**The Chairman:** We have noted that. Are there any further questions?

We thank you, Mr. Wright, for your presentation. We will weigh it. Thank you also, Mr. Hay.

Now, Mr. Humphrys, we give you a choice. We shall be sitting again next week and if you feel you would like to organize your thinking and deal with the matter then, we are prepared to meet your wishes.

**Mr. Humphrys:** I think it might be better if I waited until next week.

**The Chairman:** In those circumstances the committee will adjourn. At the next hearing we will hear from the sales finance companies and also from CEMP Investments, after which Mr. Humphrys will be in the hot seat.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 8

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WEDNESDAY, FEBRUARY 10, 1971

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Third Proceedings on Bill C-3,

intituled:

“An Act respecting investment companies”

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(For list of Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate,  
December 15, 1970:

"A Message was brought from the House of Commons by their Clerk with a Bill C-3, intituled: "An Act respecting investment companies", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be read the second time now.

After debate, and—

The question being but on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being but on the motion, it was—  
Resolved in the Affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, February 10, 1971  
(12)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10.00 a.m. to *further* consider:

Bill C-3, "An Act respecting investment companies".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Everett, Flynn, Hollett, Isnor, Kinley, Macnaughton and Willis. (15)

*Present but not of the Committee:* The Honourable Senators Lafond and Lefrançois. (2)

*In attendance:* Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel, and Director of Committees.

The Chairman explained to the Committee that the witnesses were unable to attend due to the unavailability of accommodation in Ottawa because of the Conference taking place this week, and he further explained at length the areas of Bill C-3 where possible amendments might be made.

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade And Commerce

## Evidence

Ottawa, Wednesday, February 10, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-3, an act respecting investment companies, met this day at 10 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we were supposed to continue our discussion of Bill C-3 this morning. Representations were to have been made by the Federated Council of Sales Finance Companies and by CEMP Investments Ltd. Representatives of these organizations encountered a practical difficulty in obtaining accommodation in Ottawa, because apparently it is being monopolized by the events which are taking place here. I am sure you have read about this in the newspapers so I do not need to identify them any further. I took the liberty of informing these men that we cannot tell them they must come if there is no room for them at the inn. I told them they may appear next Wednesday if the Senate is sitting; if not they would have a final opportunity to appear on the following Wednesday.

I have discussed the matter with Mr. Humphrys in view of the fact that some really serious points have been developed during the course of our hearings. One of these is that contained in the Labatt brief dealing with what we refer to as second tier subsidiaries—that is with respect to operations of commercial, industrial and manufacturing companies where their corporate setup is such that they operate through first tier subsidiaries and also in some instances have subsidiaries of those subsidiaries. The wording of the bill as it is before us indicates that notwithstanding their commercial manufacturing industrial operations, which is the substance of their business, they might be classified as an investment company by reason of these second tier subsidiaries.

During the interval I have discussed this with some members of the committee and our law clerk. I have also discussed the matter with Mr. Humphrys.

We also had the real estate companies, who presented a brief which required serious consideration. In addition, this morning I received a memorandum from Molson, who are in the same position as Labatt in their operations. They are therefore affected in the same way by this question of second tier subsidiaries.

This appears to me to be a serious question, especially since the aim or thrust of this bill is in connection with certain types of investment, so as to protect the public. However, it was never the intention of the bill that it should extend and make an operation which is commercial, industrial and manufacturing a statutory investment operation.

Mr. Humphrys, our law clerk and I discussed this question in conference this morning. We considered clauses of the bill which might be given consideration for possible change. In collaboration we worked out certain changes which in due course would be presented to the committee. I believe the preferable way of dealing with this would be the way we followed with you previously.

This will mean given Mr. Humphrys a memorandum of our ideas at this stage before the committee becomes firm on how it should proceed. In this way we would get his reaction and perhaps a re-draft in a form acceptable to him, but which will recognize the points we make. I suggested to Mr. Humphrys that I would furnish him with an unofficial memorandum of our views at this time for his comment.

I think it is safe to say that there will have to be some changes in the bill. For instance, Kemp Investments, which is a large operation constructing big, prestige office buildings, etcetera, will probably touch in their brief on the points raised by the real estate companies.

**Senator Connolly:** Are they the people who are coming next week?

**The Chairman:** Yes, CEMP Investments and the Federated Council of Sales Finance Companies. In discussion with their counsel yesterday I inquired whether their concern in the bill is because of the non-resident shareholding limitation. He told me that is not the case but they will be referring to certain other aspects. I was about to inform him that the non-resident provisions being a question of policy it might very well be that we would not be influenced by representations.

In these circumstances I am not sure that any general discussion in the committee or sporadic questioning of Mr. Humphrys would produce much more information. My suggestion, therefore, is that we might adjourn and, whenever our next meeting takes place, make it the conclusion of the hearings and arrive at whatever decisions have to be made. Is that agreeable to the committee?

**Hon. Senators:** Agreed.

**Senator Connolly:** Are we to see the memorandum from Molson?

**The Chairman:** Yes, I will send it around to each member of the committee if you wish.

**Senator Connolly:** I wonder whether you have told us this morning what is in it? I know you have not gone into the detail of the sections, but perhaps that is not necessary.



**The Chairman:** No; it affects points such as the real estate investment and those raised by Labatt, which also concern Molson. It would also identify the sections dealing with the advance of funds by the Canada Deposit Insurance Association and tie that in to the disbursement of these funds, indicating that they can only be disbursed out of moneys advanced and not out of their own funds. They also mention the provision covering the power to make regulations. We think that wording is faulty and that a preferred wording might be necessary for the carrying out of the provisions of the bill.

Then there is a re-wording of the clause 15. Our form of re-wording may not fit in with the scheme of the bill as Mr. Humphrys has it in his mind. We are not wedded to the exact wording, but we are, I think, reasonably wedded to the aim of the bill. That is, it appeared in the form in which clause 15 is drawn that even an expropriation in the circumstances provided in clause 15 could be negated if they did not have the minister's consent.

Then the question was: what is an undertaking? What is the undertaking of the company? This is clause 15.

The thought we had was that instead of saying:

No sale or disposal of the whole or any part of the undertaking of a sales finance company . . . is of any effect unless and until it has been approved by the minister,

if the result would be that whatever was sold or disposed of would pass to a non-resident, we thought it should be approached from a different point of view so that it might generally have a more intelligent application, because the question is: what does "disposal" mean? If you dispose of any part of your undertaking, the Canada Corporations Act says that the undertaking is the business that the company is authorized to do; in other words, whatever the objectives of the corporation are, that is the undertaking. They may not be carrying them all out, of course.

Then there are provisions in the ancillary powers in the Canada Corporations Act under which a very broad additional authority is given to any federal company. The wording of one clause of the ancillary powers is that a company as ancillary to its incorporation under the Canada Corporations Act may sell or dispose of the undertaking of the company, or any part thereof as the company may think fit. We do not want to disturb those authorities more than is necessary to accomplish the purpose the bill has in mind in attempting to give the minister a restraining authority where a company that has non-resident shareholders is attempting to dispose of part of its undertaking, and the sale or disposal would be to a non-resident.

I will read the sort of thing we had come up with in draft form. I do not see any value in debating it now, but if the committee would like to have a copy of this in outline we will send a copy to each member.

**Senator Beaubien:** I think that would be an advantage.

**The Chairman:** This is the wording we came up with:

A sales finance company to or in respect of which sections 11 and 13 apply . . .

These are the limitation of shares held by non-residents . . .

shall not sell or otherwise dispose absolutely . . .

This is to cover the question of mortgaging etc.

of the whole or any substantial part.

We have put in "substantial part" instead of the picking and shedding of bits and pieces of its business.

**Senator Connolly (Ottawa West):** Perhaps even simple assignments of certain paper.

**The Chairman:** Yes.

. . . any substantial part of its undertaking, and the sale or disposal is of no effect, unless and until it has been approved by the Minister, if, in the opinion of the Minister, it would be likely to result directly or indirectly in the acquisition of the whole or any substantial part of the undertaking by a non-resident.

**Senator Connolly (Ottawa West):** It makes it easier in the administration for the Superintendent to have it that way, I should think.

**The Chairman:** Oh yes. It is language in respect of which there must be jurisprudence, because "the whole or any substantial part" is the language found in, I would say, practically every trust deed that has been drawn where the question is: how far can the company go in the disposal of assets that are subject to a deed of trust and mortgage and what steps must you take? Usually in the trust deed the substantial part is put in dollar terms; that is, that you may without getting consent from a trustee dispose of assets which have no further value in use for the company. Then there is provision where the money has to go to the trustee, but if you have spent more money on capital assets you can draft the money back from the trustee into the operations of the company.

We have been trying to harness all that. I think we have moved along a distance and I am sure we will come up with something that makes good sense.

If there are no other general questions, is it agreeable that if the Senate is sitting next week we meet on Wednesday, which will be the concluding meeting, and if it is not sitting next week we will meet the following week, and that will be the concluding meeting? Is that agreeable?

**Hon. Senators:** Agreed.

**Senator Connolly (Ottawa West):** Could I just ask one thing, Mr. Chairman? I know we do our best with these bills, and we go into them in depth. Obviously on this one we have. However, do we know whether any of these questions that you propose to consider at our next meeting were in fact considered in the other place?

**The Chairman:** All I know so far is that Labatts, who appeared before us last week, said they had made no representations to the Commons committee.

**Senator Connolly (Ottawa West):** It may not have been brought before the other committee. I did not read the evidence.

**The Chairman:** Actually I do not think it hit them to that extent until they started to make a particular study of it.

The committee adjourned.









THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 9

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WEDNESDAY, FEBRUARY 10, 1971

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Complete Proceedings on Bill S-10,

intituled:

"An Act respecting La Société des Artisans"

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REPORT OF THE COMMITTEE

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(For list of Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, February 2, 1971:

"Pursuant to the Order of the Day, the Honourable Senator Lefrançois moved, seconded by the Honourable Senator Boucher, that the Bill S-10, intituled: "An Act respecting La Société des Artisans", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lefrançois moved, seconded by the Honourable Senator Boucher, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.

Robert Fortier.  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, February 10, 1971.  
(11)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

Bill S-10, "An Act respecting La Société des Artisans".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Everett, Flynn, Hollett, Isnor, Kinley, Macnaughton and Willis. (15)

*Present but not of the Committee:* The Honourable Senators Lafond and Lefrançois.(2)

*In attendance:* Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel, and Director of Committees.

## WITNESSES:

*Department of Insurance:*

Mr. R. Humphrys, Superintendent.

*La Société des Artisans:*

Mr. Luc Parent, Q.C., Legal Advisor.

Mr. René Paré, Q.C., President.

Upon motion of the Honourable Senator Beaubien it was *Resolved* to report the said Bill without amendment.

At 10.00 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, February 10, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-10, intituled: "An Act respecting La Société des Artisans", has in obedience to the order of reference of February 2, 1971, examined the said bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking Trade and Commerce Evidence

Ottawa, Wednesday, February 10, 1971

[Text]

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-10, an act respecting La Société des Artisans, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I see a quorum and, therefore, call the meeting to order.

We have before us for consideration Bill S-10, respecting La Société des Artisans, and appearing this morning are Mr. Luc Parent, Legal Adviser, and Mr. René Paré, President of La Société des Artisans.

Following our usual practice, we will hear from Mr. Humphrys first, following which the applicants may judge whether they want to supplement what Mr. Humphrys says.

**Senator Desruisseaux:** Mr. Parent, you may speak in French or English, as well as Mr. Paré, when your turn comes.

**Mr. R. Paré, Q.C., President, La Société des Artisans:** As you wish.

**Senator Macnaughton:** You may speak in French.

**The Chairman:** Well, Mr. Humphrys, are you ready to give us your views on Bill S-10?

**Mr. R. Humphrys, Superintendent of Insurance:** Mr. Chairman, honourable senators, the purpose of this bill, as was explained on the motion for its second reading, is to change the status of this organization from that of a fraternal benefit society under our general insurance legislation to that of a mutual life insurance company.

La Société des Artisans is quite an old organization in Canada. It was incorporated in 1876 under the laws of Quebec and later changed to federal status in 1917 when there was a federal corporation formed which took over by agreement the assets and liabilities and membership of the provincial organization.

According to its original formation as a fraternal benefit society, the emphasis was perhaps more on the concept of fraternalism with local lodges and the social and welfare aspects that went with a lodge movement; but it did have insurance as an additional function of the organization to provide for the protection and welfare of the members of the society.

As the years have gone on the insurance aspect of the organization has become more important, and the society has now become really quite a large financial organization, quite a large insurance organization. The latest estimate that we have, which covers the year 1969, shows that the total assets amounted to \$75 million. The society is in good financial position. It has a surplus of assets over liabilities of something in the order of \$5 million. The premium income amounts to something in the order of \$20 million. So that you can see that it is quite a large insurance organization now.

The concept of a fraternal benefit society under the general insurance law is really based on organizations that are primarily fraternal organizations, and it emphasizes the fraternal aspect with insurance being secondary. In a case such as this where the insurance has grown to such a very large extent, it is more appropriate from our point of view that the organization be treated as a mutual life insurance company. Consequently we favour and support the change that is being asked for here. The actual application of the law will not be very different, but there are some differences in the pattern of supervision applicable to insurance companies that do not apply to fraternal benefit societies. On the other hand there are some restrictions on fraternal benefit societies that do not apply to insurance companies.

Perhaps the most significant thing from the point of view of the insurance customer of the fraternal society as compared with an insurance company is that the fraternal benefit society issues the so-called open insurance contract. The by-laws of the organization are part of the contract, and as a consequence the contract can be changed; there can be assessments levied, and there can be other changes. I would hasten to add that there have been no such assessments by fraternal societies for many years in Canada, and although the possibility exists, the fact is that they have maintained themselves in a satisfactory financial condition and they have not had to levy any special assessments of this type on their membership.

That, Mr. Chairman, is a word by way of background. As far as the bill itself is concerned, it does two things; it states that the organization will now be a mutual life insurance company and it provides that all the contracts that have been issued in the past will now be treated as firm contracts, and any right that did exist to levy assessments against them will be removed. It also spells out special provisions relating to the form of government, that is corporate government, that the Society wishes to maintain. As a mutual life insurance company under the general law, each participating policyholder has a vote

and is entitled to attend the annual meeting, and at the annual meeting he elects the directors, and the directors govern the organization.

This organization which has grown up as a fraternal benefit society with a lodge system and a representative form of government, or a delegate form of government, if you will, wishes to become a life insurance company but also wishes to retain the same pattern of corporate government that it had before—that is, a delegate system. They want to retain their local jurisdictions and have those local jurisdictions elect delegates to a regional meeting and then have the regional meeting elect delegates to the general meeting of the organization which would be the counterpart of the annual policyholders' meeting in a life insurance company.

So the real reason that this bill is before you, as distinct from proceeding by way of letters patent as was authorized a year ago, is that this form of corporate government is quite different from that prescribed in the general act for life insurance companies generally, and our legal advisor and the company's legal advisors also considered that there was not enough authority under the letters patent procedure to make changes of this kind which are really contrary to the provisions of the general act. So that the main part of the bill spells out this delegate form of voting.

There is also a slight change in the name, and the other provisions are to insure that there is no break in the continuity of corporate existence. The objects of the Society are spelled out in clause 6. They are just the same as the objects of the life insurance companies that have been incorporated over the years without the additional provisions of paragraph (b) of clause 6 which reads:

(b) to encourage social and educational activities.

So this will continue to be an interest and a function of this organization by way of a continuation of its past interest and activities among its membership.

I should like to add that there is one precedent of this type dating from some 20 years back when another fraternal benefit society having its main operation in the Province of Quebec was changed to a mutual life insurance company. That was done in the late 1940's by the Alliance Nationale. In that case the change was quite similar, except that the Alliance changed over completely to a mutual life insurance company with one vote per policyholder, whereas La Société Des Artisans wishes to retain something quite close to its present form of government.

**Senator Beaubien:** Mr. Humphrys, as Superintendent of Insurance, are you perfectly satisfied to recommend this bill without any reservation?

**Mr. Humphrys:** Yes, senator.

**The Chairman:** There are differences as against the usual government provisions in a bill. I notice that the general meeting is held every four years, so the moment the president and directors are elected, they are in for four years.

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** There may be virtues in that.

**Senator Isnor:** What are they?

**The Chairman:** You do not have to run as often.

**Senator Kinley:** They can kick the president out, if they want to and make him retire?

**The Chairman:** But he is elected for four years.

**Senator Kinley:** He is elected for four years. Does that mean you cannot touch him for four years?

**The Chairman:** Unless he misbehaves.

**Senator Macnaughton:** The executive committee is elected from the Board of Directors, is that right?

**Mr. Humphrys:** Yes.

**Mr. Luc Parent, O.C., Legal Adviser, La Société des Artisans:** But the president is elected at the general meeting, Mr. Chairman.

**Senator Everett:** Do the policyholders then have no representation on the board?

**Mr. Humphrys:** The board will be made up of policyholders; there are no shareholders in this organization. What it consists of is a series of steps leading to the election of the Board of Directors, so that the members meet first in a local jurisdiction and elect delegates to a regional meeting. Then the delegates at the regional meeting elect some of their members to go and form the general meeting of the company, and from the delegates there are elected the directors, so I think it is accurate to say that the policyholders, the individual members, have their will recognized through this series of steps leading to the general meeting at which the delegates elect the Board of Directors who will govern the organization in the intervening period between the general meetings. But, of course, special general meetings can be called in these periods if that is desired.

**Senator Everett:** I am thinking of differentiating as between policyholders who are members of the fraternal society and those policyholders who by virtue of changing this to a mutual life company are not members of the society.

**Mr. Paré:** They have to be members of the Society.

**Mr. Humphrys:** All policyholders both past and future will be members of the organization and will have the same rights. Persons who become policyholders after a change such as this is made will have exactly the same rights as those who were policyholders before the change and therefore will be members of this company.

**Senator Everett:** Why then is the change necessary?

**Mr. Humphrys:** At present the organization is designated under our laws and under its act of incorporation as a fraternal benefit society. As such there are certain restrictions on its operations that do not apply to life



insurance companies. But it has now reached a point of development and volume of insurance that for supervisory purposes and for the purpose of regulation under the Insurance Act we think it is desirable that it be a company, and we from our point of view have no objection to their retaining the kind of internal form of government that they have had in the past and that the membership appears to want to retain under the new regime.

**Senator Everett:** Can you tell us what are the restrictions they presently operate under?

**Mr. Humphrys:** There are certain provisions in the insurance act that require a greater degree of separation of accounts between different groups of membership, different types of business, than applies in the case of insurance companies. There are more restrictions on the extent to which premiums can be used in the financing of the operations and the expenses of the company. There is more formality involved in the government of fraternal benefit societies than in the case of insurance companies, primarily because the laws contemplated small organizations for fraternal societies, with insurance being only a side issue, and it is rather more limited than in the case of life insurance companies. So, there has to be more formality in the segregation of funds and the segregation of accounts, and more formality in the size and amounts of policies that can be issued, and limitations on the extent to which re-insurance arrangements can be made with other corporations, because one has to think always of fraternal membership.

**Senator Everett:** Would you stop there, Mr. Humphrys?

**Mr. Humphrys:** Yes.

**Senator Everett:** On re-insurance, you said there are some restrictions because one has to bear in mind—what?

**Mr. Humphrys:** —the concept of membership. For example, it is common among insurance companies to exchange re-insurance. That is, if you have some big policies, you re-insure the excess with other companies and may take some re-insurance from them on a reciprocal basis; whereas a fraternal society cannot do that because its powers are limited to insuring its members only. So they cannot participate in this exchange of re-insurance.

**Senator Everett:** So at the present time it does not re-insure?

**Mr. Humphrys:** It seeds re-insurance to others, but it does not accept it.

**Senator Everett:** To what level does it re-insure now?

**Mr. Paré:** It varies, depending on the individual case. We go as high as \$60,000; the rest is re-insured.

**Senator Everett:** By virtue of this they will be allowed to exchange re-insurance?

**Mr. Humphrys:** They could do some of this.

**Senator Everett:** Would they propose to go into the re-insurance business?

**Mr. Humphrys:** I would think not so, except in an incidental way. I do not put it forward as a major intention of the organization. There is another aspect, that in becoming a major insurance organization, in competing for business for membership, selling policies in the market, a fraternal society can be at a disadvantage because of the open contract. As a company they can issue a closed contract where the policyholder knows exactly what he has, and if an organization becomes really a major insurance organization, the fraternal concept can be a competitive disadvantage in the market place.

**The Chairman:** Senator Everett, on the question you raised originally, it is covered in section 3(2) and also in section 7(1).

**Senator Everett:** Yes, thank you, Mr. Chairman.

Just to go on, does the company intend to change the nature of its business, that is, the type and amount of policies it is going to issue?

**Mr. Humphrys:** I would not expect any sharp change in its method of operation or policy, senator. I think the change is really in recognition of the development of the organization and that it really fits more appropriately as a company than as a fraternal society.

**Senator Everett:** Has the company filed financial statements with the committee?

**Mr. Humphrys:** I do not think so. We get financial statements, of course, and have for years, from the society, and it has been subject to our supervision.

**Senator Everett:** Do you get interim statements?

**Mr. Humphrys:** No, not as a matter of law. We get the annual statement, and we have the power to call for additional information. We know the organization well and examine it regularly, so we do not feel it necessary to get interim statements.

**Senator Macnaughton:** It is not the custom to file statements with this committee, is it?

**Mr. Humphrys:** No.

**Senator Macnaughton:** It is confidential information.

**The Chairman:** That is the privilege of the people who are applying.

**Senator Everett:** In fact, Mr. Chairman, with respect, I do not think it is confidential; it is published by the Superintendent every year.

**Mr. Humphrys:** The financial statements are published in our annual reports.

**Senator Connolly (Ottawa West):** There are some 350,000 members in this organization and they have a very democratic way of operating—with areas and smaller jurisdictions. How many directors are there?

**Mr. Paré:** We have 19 and the president, which makes 20.



**Senator Connolly (Ottawa West):** How many areas are there?

**Mr. Paré:** We have 18 regional jurisdictions.

**Senator Connolly (Ottawa West):** Just as a matter of interest, do you get a pretty good attendance at local as well as annual meetings?

**Mr. Paré:** Yes. We have 350,000 members. We cannot say that all these members come to these local sessions and the regional ones, but I consider we do pretty well. I would say that, in total, we have something like 10,000 to 15,000 members who are very active in the society, either in the local jurisdiction or the regional ones, so that we do the best we can to have the members take an interest in the society.

**Senator Connolly (Ottawa West):** I think this is very unusual, because normally in the case of an insurance company a small attendance is regarded as the general rule.

**Senator Flynn:** Even with a mutual company?

**Senator Connolly (Ottawa West):** Yes.

**Senator Macnaughton:** That is the reason for the four-year term, is it not? It is really a procedural matter. You cannot go through that expense and confusion every year.

**Mr. Paré:** Yes. We have now, as a fraternal society, the election taking place every four years, with the same system, as the Superintendent has said, and we want to keep it as a mutual company.

**Senator Carier:** What happens when a director dies or resigns during the four-year period?

**Mr. Paré:** He is replaced by the board of directors after consultation with the regional jurisdiction he represents, because every member of the board of directors represents one of the regional jurisdictions.

**Senator Hollett:** When does a member become of age to vote?

**Mr. Paré:** At 21.

**Senator Hollett:** It is not stated in this bill, is it?

**Mr. Parent:** It varies from place to place. We do business also in the United States and in some places it might be 18 years of age.

**Senator Hollett:** That is what I was wondering.

**Senator Flynn:** The French text is clear, because it says "majeur" which means that under our law it would be 21.

**Senator Hollett:** Which section is that?

**Senator Flynn:** Section 7(2). In French it says "majeur," which really means "majority".

**Senator Hollett:** It says it in French, but it does not say it in English.

**Mr. Humphrys:** It says:

Any member who is of age...

**Senator Hollett:** I want to know what you mean by "of age".

**The Chairman:** It is a matter of interpretation, and that would be interpreted as being 21.

**Senator Hollett:** Can a person become a member before he becomes of age?

**The Chairman:** I would expect so, yes.

**Senator Flynn:** I should like to put some questions to Mr. Parent and Mr. Paré in French.

I should like to know how local and regional jurisdictions are determined. Are there any regulations at present?

**Mr. Paré:** It is determined by regulation, the decisions being made by the general assembly, which rules on requests from members in a given region that it be organized into a special region.

**Senator Flynn:** Are you referring to section 11, Mr. Paré? This general assembly would be a meeting in which all members have a right to take part?

**Mr. Paré:** No, they are delegated.

**Senator Flynn:** The general assembly consists only...

**Mr. Paré:** Only of delegates. At this general assembly, there are about seventy-five people.

**Senator Flynn:** Seventy-five people?

**Mr. Paré:** Yes. You see, the members of a local section elect delegates to the regional body, and the regional body elects delegates...

**Senator Flynn:** To the general assembly?

**Mr. Paré:** ...to the general assembly.

**Senator Flynn:** After all, it is the general assembly that holds the same powers as, say, the shareholders of a company or the members of an ordinary mutual insurance company.

**Mr. Paré:** Yes, that is so. The general assembly is the highest authority.

**Senator Connolly (Ottawa West):** From what Senator Flynn has just said, I was wondering whether the company might not find itself restricted somewhat as a result of section 8 which says that a member, even though he is a delegate or a substitute, shall not vote by proxy. There is no proxy voting at the meetings. If attendance at the meetings fell, would the company not be inhibited in its administration and operation without proxy votes? I am wondering why they cannot have proxy votes. Perhaps they do not want them.

**Mr. Parent:** There is a law which provides that when a member cannot attend a meeting he is represented by

another person who is called in French a "suppléant", an alternative.

**Mr. Paré:** When the regional jurisdiction elects delegates to the general meeting, it elects at the same time one or two alternate delegates.

**Senator Desruisseaux:** Mr. Paré, the main aim of the whole organization is to arrange matters so as to increase your members' stake in the company, is it not?

**Mr. Paré:** It is a democratic organization.

**Senator Desruisseaux:** Now, if you had to change it, it would be very difficult, would it not?

**Mr. Paré:** You could say it would be impossible. I am convinced that if a refusal were met with here, then because of the growth of democracy within the Société des Artisans, our members would prefer to continue to operate under the present charter.

**Senator Desruisseaux:** You are writing insurance at present?

**Mr. Paré:** Yes, we are first and foremost an insurance company.

**Senator Desruisseaux:** You are changing the name, but without making any practical changes in the powers—isn't that so? Everything else remains almost the same, except the name?

**Mr. Paré:** But you see, as Mr. Humphrys said just now, there are certain restrictions that affect fraternal societies, which is our present status. So if that were taken away, we would no longer be a fraternal society. For example, as Mr. Humphrys said, we cannot take re-insurance.

There are certain forms of, say, group insurance, that we are unable to write at present. That would disappear with the present system, because we come under the sections that give the mutual and capital stock companies their powers. We would have all the powers those companies now have. This is the principal difference that has led us—it is not just the name change—that has led us to request the changes; we want to have all the powers, without any restrictions, like the capital stock and mutual companies.

**Senator Flynn:** The mutual life insurance companies, that is?

**Mr. Paré:** That is so.

**Senator Flynn:** Now, as stated in your explanatory notes, the system represents...

**Mr. Paré:** Yes. The difference with respect to a mutual company is that we keep the democratic system.

**Senator Desruisseaux:** You also operate outside Quebec?

**Mr. Paré:** We operate chiefly in Quebec, Ontario and New Brunswick, as well as in the five New England states.

**Senator Burchill:** How often does the board of directors meet?

**Mr. Paré:** The board of directors meets every three months, and we can have special meetings if necessary.

**Senator Connolly (Ottawa West):** How many members do you have in the United States?

**Mr. Paré:** In the United States, we have 50,000 members, mostly Franco-Americans.

**Senator Everett:** How do you presently finance the social and educational activities of the organization?

**Mr. Paré:** We have a system which is rather original. Every insurance company pays commissions to agents, and we take a small portion of those commissions and give it to the local jurisdiction. It is sufficient to operate this system.

**Senator Everett:** Do you propose to do that same thing with the new company?

**Mr. Paré:** Yes, we propose to keep that.

**Senator Everett:** Thank you.

**The Chairman:** Are there any other questions?

**Senator Connolly (Ottawa West):** You must have some good parties.

**Mr. Paré:** They do work seriously. At times they may have a good party, but I think we can say seriously that they work very well.

**Senator Macnaughton:** How many times does the executive meet?

**Mr. Paré:** It meets twice a month.

**The Chairman:** Mr. Paré, do you wish to add anything to the discussion before we pass this bill?

**Mr. Paré:** No. I think everything necessary has been said.

**Senator Beaubien:** I move that we report the bill.

**The Chairman:** Is it agreed?

**Hon. Senators:** Agreed.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON

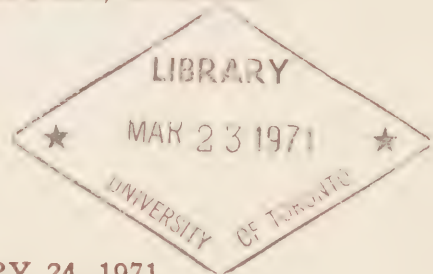
# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

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No. 10

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WEDNESDAY, FEBRUARY 24, 1971

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Fourth Proceedings on Bill C-3,

intituled:

“An Act respecting investment companies”

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(For list of Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin  
(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 15, 1970:

"A Message was brought from the House of Commons by their Clerk with a Bill C-3, intituled: "An Act respecting investment companies", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be read the second time now.

After debate, and—

The question being but on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the Affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, February 24, 1971

(12)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *further* consider:

Bill C-3, "An Act respecting investment companies".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Hollett, Isnor, Kinley, Macnaughton and Martin—(14).

*In attendance:* Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel, and Director of Committees.

WITNESSES:

*Federated Council of Sales Finance Companies:*

J. B. Gregorovich, Ford Motor Credit Company of Canada Limited. Chairman, Legal and Legislative Committee.

W. P. McKeown, Canadian General Electric Credit Limited. Member, Legal and Legislative Committee.

R. A. Roberts, General Motors Acceptance Corporation of Canada, Ltd. Member, Legal and Legislative Committee.

C. H. Bray, Executive Vice-President.

*Department of Insurance:*

R. Humphrys, Superintendent.

*CEMP Investments Ltd.:*

Philip F. Vineberg, Q.C., Secretary and Director.

Rupert B. Carleton, Vice-President and General Counsel.

At 11.10 a.m. the Committee adjourned until Wednesday, March 3, at 9.30 a.m.

ATTEST:

Frank A. Jackson  
*Clerk of the Committee*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, February 24, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-3, respecting investment companies, met this day at 9.30 a.m., to give further consideration to the bill.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Gentlemen, I call the meeting to order.

We have two briefs to deal with this morning; the first is from the Federated Council of Sales Finance Companies, and the second from CEMP Investments Limited.

We are under a little pressure this morning, honourable senators, because Senator Aird has arranged for his committee to sit at 11 o'clock, and the appropriate arrangements have already been made with witnesses in this regard and he wishes to be able to borrow some of the talent we have in this committee for that meeting. Therefore I thought we would try to deal as much as we can with the matters before us, such as hearing the submissions and dealing with whatever amendments we think should be made until 11 o'clock and then we would adjourn so that the other committee might have a quorum. Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Aird:** I am very grateful, Mr. Chairman, for your consideration and I should like to have that observation placed on the record. Thank you very much.

**The Chairman:** I have already referred to the Federated Council of Sales Finance Companies, and from that organization we have as witnesses Mr. J. B. Gregorovich, Mr. W. P. McKeown, Mr. R. A. Roberts and Mr. C. H. Bray. I believe Mr. Gregorovich is going to make the main presentation.

**Mr. J. B. Gregorovich, Chairman, Legal and Legislative Committee, Federated Council of Sales Finance Companies:** Mr. Chairman and honourable senators, we have presented a brief to you which I believe arrived rather late last night because of the transportation difficulties. Therefore, I shall read the introductory statement on the major problems initially and when that has been done we will be very happy to answer any questions you may have or to elaborate on the points raised.

The several points that we have attempted to make clear in the following pages are all important to the members of the Federated Council of Sales Finance Companies. However, from the array of important items, some are obviously more important than others and it is to a few of these that we address ourselves now.

Clause 9 of the bill is the subject of paragraph 7 on page 1 following. The prohibition of "sideways" lending is of such importance to the financing subsidiaries of automo-

bile manufacturers that it is necessary to provide a description of the situation.

Many of us would envision a new car dealer as being the head of a substantial, successful business who, as a person, fulfils a responsible role as a community leader. This recollection is appropriate to a new car dealer in the late 1930's and in the decade or so following the war. The situation today is not the same as it was.

The first-and second-generation auto dealership, having enjoyed real success in the earlier stages, has become exceedingly valuable by reason of re-invested earnings in land, buildings and equipment, as well as in going concern value in earning-power based on a long-lived reputation for service to a large and growing list of customers. The problem arises when the dealership is not going to be bequeathed to a member of the family and needs to be sold. The value of the dealership is such as to eliminate many worthwhile persons from the market of potential and desirable buyers.

Within the last few years, profitability of dealerships has been on a sharp decline as auto sales have been soft. While the current economic situation tends to relieve the first problem marginally, it creates another in the form of other dealerships in financial distress and threatening to close.

The two circumstances—one a longer term development, the other more topical—have been solved, apparently satisfactorily, by automobile manufacturers taking a substantial equity position in such dealerships in partnership with a businessman. In this way, the outlet for the manufacturer's goods is maintained and the availability of products and service to customers is maintained. We submit that the presence of dealerships in which the manufacturers have an interest has been of value to all concerned. The communities, customers of the dealership, and the participating businessmen have been helped, as well as the manufacturers.

Under section 9, the required non-equity financing of the dealership could not be provided by the finance subsidiary of the same manufacturer which has an interest in the dealership.

An automobile dealership requires both equity and non-equity financing to provide the funds necessary to successfully finance the premises, equipment, parts and automobiles to carry on the business of sale and service of automobiles. Normally, the bulk of the financing is non-equity financing. Assuming that the equity invested in the dealership is \$100,000, the non-equity financing required would be: \$100,000 as capital financing of building, equipment and working capital; \$500,000 as inventory financing; \$1,000,000 as retail financing; \$7,510,000 for lease financing.

In the case of an otherwise well-qualified businessman who has exhausted all other sources of capital and still

10 : 5

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Frank A. Jackson  
*Clerk of the Committee*



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**Hon. Senators:** Agreed.

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**The Chairman:** I have already referred to the Federated Council of Sales Finance Companies, and from that organization we have as witnesses Mr. J. B. Gregorovich, Mr. W. P. McKeown, Mr. R. A. Roberts and Mr. C. H. Bray. I believe Mr. Gregorovich is going to make the main presentation.

**Mr. J. B. Gregorovich, Chairman, Legal and Legislative Committee, Federated Council of Sales Finance Companies:** Mr. Chairman and honourable senators, we have presented a brief to you which I believe arrived rather late last night because of the transportation difficulties. Therefore, I shall read the introductory statement on the major problems initially and when that has been done we will be very happy to answer any questions you may have or to elaborate on the points raised.

The several points that we have attempted to make clear in the following pages are all important to the members of the Federated Council of Sales Finance Companies. However, from the array of important items, some are obviously more important than others and it is to a few of these that we address ourselves now.

Clause 9 of the bill is the subject of paragraph 7 on page 4 following. The prohibition of "sideways" lending is of such importance to the financing subsidiaries of automo-

bile manufacturers that it is necessary to provide a description of the situation.

Many of us would envision a new car dealer as being the head of a substantial, successful business who, as a person, fulfils a responsible role as a community leader. This recollection is appropriate to a new car dealer in the late 1930's and in the decade or so following the war. The situation today is not the same as it was.

The first and second-generation auto dealership, having enjoyed real success in the earlier stages, has become exceedingly valuable by reason of re-invested earnings in land, buildings and equipment, as well as in going concern value in earning-power based on a long-lived reputation for service to a large and growing list of customers. The problem arises when the dealership is not going to be bequeathed to a member of the family and needs to be sold. The value of the dealership is such as to eliminate many worthwhile persons from the market of potential and desirable buyers.

Within the last few years, profitability of dealerships has been on a sharp decline as auto sales have been soft. While the current economic situation tends to relieve the first problem marginally, it creates another in the form of other dealerships in financial distress and threatening to close.

The two circumstances—one a longer term development, the other more topical—have been solved, apparently satisfactorily, by automobile manufacturers taking a substantial equity position in such dealerships in partnership with a businessman. In this way, the outlet for the manufacturer's goods is maintained and the availability of products and service to customers is maintained. We submit that the presence of dealerships in which the manufacturers have an interest has been of value to all concerned. The communities, customers of the dealership, and the participating businessmen have been helped, as well as the manufacturers.

Under section 9, the required non-equity financing of the dealership could not be provided by the finance subsidiary of the same manufacturer which has an interest in the dealership.

An automobile dealership requires both equity and non-equity financing to provide the funds necessary to successfully finance the premises, equipment, parts and automobiles to carry on the business of sale and service of automobiles. Normally, the bulk of the financing is non-equity financing. Assuming that the equity invested in the dealership is \$100,000, the non-equity financing required would be: \$100,000 as capital financing of building, equipment and working capital; \$500,000 as inventory financing; \$1,000,000 as retail financing; \$7,510,000 for lease financing.

In the case of an otherwise well-qualified businessman who has exhausted all other sources of capital and still

lacks the equity required to undertake the dealership, the manufacturer may provide a substantial or major part of the equity investment. For example, of \$100,000 equity needed, the applicant may be required to invest \$20,000 and the manufacturer will invest the remaining \$80,000. The equity will be investment in shares, common and preferred, in the corporation doing business as an automobile sales and service dealer. The businessman manages the dealership and will, as his financial standing improves, purchase the shares of the manufacturer until he attains complete ownership.

It has been normal for the non-equity financing to come from a finance company which is related to the manufacturer. The non-equity financing by the finance company will be on the same terms and conditions as investment in any dealership it finances.

To assist in estimating the size of the problem created by section 9, the Federated Council submits the following data compiled from the records of:

General Motors Acceptance Corporation of Canada Limited, Ford Motor Credit Company of Canada Limited, Chrysler Credit Canada Ltd.

As at December 31, 1970, 179 Canadian auto dealerships of these companies had manufacturer equity participation. The credit extended these by the finance company subsidiaries of the manufacturers totalled \$83.7 million composed of \$5.5 million in capital loans, \$21.3 million in lease financing, and \$56.9 million in inventory financing.

If I may interject at this point, the last sentence refers to the financing extended to auto dealerships with manufacturer equity participation. Of the 179 that do have manufacturer equity participation credit is extended by finance subsidiaries to 102, so that 102 of the 179 dealerships receive financing from the three factory subsidiaries noted above.

**The Chairman:** That will be the finance subsidiaries of the manufacturer?

**Mr. Gregorovich:** Yes, Mr. Chairman.

Under section 9, not only will the combination of equity and non-equity financing services be prohibited, but subsection (2) would require that all such holdings be disposed of—to whom, at what price, and at what subsequent loss to dealers, communities and manufacturers, no one can predict.

In view of the severity of the consequences on existing and future dealerships, these companies will probably seek exemption under subsection (5). The grounds for granting an exemption are now very narrow. We respectfully submit that the grounds for exemption should be broadened so as to give the minister a reasonable area of discretion. Further, we are interested in the comments of the members of the committee as to the likelihood of such exemptions being granted if applied for.

**Senator Isnor:** What do you mean by that—that we should express our views, and that the minister would grant them?

**Mr. Gregorovich:** We would ask that you express your views as to whether in these circumstances you would expect that the minister would exercise his discretion. It is

not a direction, but what we are asking is for an interpretation of the prohibition of section 9 as being one which would not exclude this type of financing which has been normally carried on over quite a number of years and which has, as we suggest, advantages.

**The Chairman:** Senator Isnor, in subsection (5), which Mr. Gregorovich has been talking about, the authority is given to the minister to make an order, and what they are in effect saying is, "We would like, on the basis of our operations, to have these operations covered in these situations"—in other words, if the minister would exercise his discretion on certain sets of facts.

**Senator Hollett:** Of course, ministers change, Mr. Chairman.

**The Chairman:** Yes, they have a way of doing that, do they not?

**Senator Beaubien:** Not often enough.

**The Chairman:** Nor completely enough.

**Mr. Gregorovich:** We would hope that this would be guidance not only to the Minister of Finance today but for the future as well, since this would be the background.

If I may interject, the minister's discretion to permit this could also be exercised under section 3(2), and it might well be that that might be a more appropriate section to apply under. In seeking the advice of this committee our hope would be that the views would apply to an application under either section.

**The Chairman:** Honourable senators, the restriction in subsection (5) that the witness is talking about is one that I would doubt the companies concerned could meet, because the language is that the minister can make an order of exemption

if he is satisfied that the decision of the investment company to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that person or group and does not involve in any significant way the interests of that person or group, apart from their interests as a shareholder of the investment company.

**The Chairman:** It is pretty hard to say, in the relationship of a manufacturer who has subscribed for the substantial part of the capital of the dealership, that the investor, being the manufacturer, is not likely to be influenced in a significant way in the matter of decisions; and therefore I think the witness has quite properly said that there is great opportunity for the exercise of discretion by the minister under section 3, and, as I understand it, you are presenting that as your second point.

Mr. Gregorovich, is the language of section 3, on page 5 of the bill, broad enough, in the different reasons that I enumerated, that you can rest a case for ministerial discretion, or do you think that any enlargement of language is necessary?

**Mr. Gregorovich:** We believe that the language of subsection (2) (c) and subsection (4) suggests that a factor which may be considered is the extent of the integration of the company's activities with the activities of its subsidiaries,



and having regard for the purposes of this act it is not necessary in the public interest that this act apply.

**The Chairman:** I am trying to get this in a nutshell. What you are saying is that under subsection (5), which is part of section 9, you could not hope for the exercise of discretion, having regard for the limitations that operate on the minister in making such an order, but you feel that under section 3 on page 5 of the bill, where the minister may exempt from the application of the act any particular investment, there is enough elbow room in the present language to deal with your situation if there is the will to deal with it. However, we cannot very well write the will into the bill.

**Mr. Gregorovich:** No, Mr. Chairman.

**The Chairman:** Then within the scope of the present bill you are covered if you can persuade the minister to act.

**Mr. Gregorovich:** We believe we would be. However, we have asked in the brief, and we are asking, that members of the committee concur in our view that the type of lending to which we are referring is not the type of lending which was intended to be prevented by section 9 which we believe has specific reference to certain types of companies—what I would call fraudulent transactions in certain companies. I would not call them finance companies because the type of lending that they did was not sales finance. The sales finance lending that they did, in fact, caused no losses. It was the other types of lending to other types of activity that caused the losses.

We believe that the intention of section 9 is to prevent that type of fraudulent loss; but we suggest it was not intended that it meant the continuance of what is a very worthwhile form of lending carried on by subsidiaries.

**The Chairman:** Mr. Gregorovich, you have two escape clauses, one under section 3 and one under subsection (5) of section 9. It would not appear that subsection (5) of section 9 might be of much help to you?

**Mr. Gregorovich:** That is true.

**The Chairman:** But you think that subsection (3), in the reasons that the minister has to find for acting, may be of much help to you?

**Mr. Gregorovich:** Yes, Mr. Chairman.

**The Chairman:** What do you want us to do?

**Mr. Gregorovich:** We have requested the comments of the members of the committee. As I have said, as a guide for ministerial action and to the intent of the act, we seek concurrence in our view that ministerial discretion would be expected to be exercised in the type of application that we would make.

**The Chairman:** You understand, Mr. Gregorovich, that while the members of the committee may express views in committee, they either approve of the bill in its present form or make amendments if necessary.

I would suggest that if Mr. Humphrys is ready to express a view at this time in relation to section 3—I do not wish to anticipate him—and on the approach that might be fol-

lowed in relation to section 3, he might like to make a statement now?

**Mr. Humphrys:** Yes, Mr. Chairman; if it is the wish of the committee I would be glad to make a comment on the particular point that is under discussion.

I would suggest, Mr. Chairman, that the terms of section 3, where the minister would be granted some discretion to exempt companies under certain conditions, would not likely permit an exemption of a company of the type that is described by Mr. Gregorovich.

The point that he referred to, the extent of the integration of the company's activities and the activities of its subsidiaries, if any, with the activities of the corporation of which it is a subsidiary and any other subsidiaries of that corporation, was intended to permit examination and special consideration of the case where a sales finance company dealt only with other companies in the family; but this case, if I understand the presentation correctly, is one where some part of the activities of the sales finance company, but a minor part, is involved with sister companies, but the main part of the business of the sales finance company is buying conditional sales contracts from any of the others that are independent corporations and not subsidiaries of either the sales finance company or its parent.

So my own reaction would be that this is not the kind of case where the operations of the company are so deeply integrated with other companies in the family that it should be exempted from the act completely. So I would not have thought that section 3 would really be a likely channel to solve this particular problem.

**The Chairman:** Mr. Humphrys, you see where that viewpoint puts the case?

**Mr. Humphrys:** Yes, I do.

**The Chairman:** It puts the case, in relation to where you have subsidiaries and not the main part of the business with independent dealers, that these manufacturers may no longer assist these dealers.

**Mr. Humphrys:** I think it puts the case back into section 9.

**The Chairman:** Yes.

**Mr. Humphrys:** . . . and the question of the minister's discretion under section 9. As you have pointed out, Mr. Chairman, the discretion proposed under clause 9 would permit the minister to exempt that particular investment, or investments of a particular class, if two conditions obtain; one being if the minister is satisfied that the decision to make a holding investment is not significantly influenced by the substantial shareholder; and the second, that the interests of the substantial shareholder are not significantly affected by the investment.

When this particular situation was drawn to our attention some time ago we thought that it might well be that it would fit within those categories. As we understood it, the financing of the automobile dealership by the acceptance company was carried out really in the same pattern as applied to all other automobile dealerships. There was no special consideration given to a particular company where the parent of the acceptance company had an equity inter-



est. If that is the case and the equity interest of the parent company is really an incidental transaction designed to ease the transfer of ownership of the dealership or to make it possible to establish the new dealership, then the equity interest taken by the parent company is not really as an investment as such; it is rather an incidental transaction to establish the dealership and, hopefully, to place it in the hands of an independent businessman who will run it.

We thought that those two points would permit us to give really fair consideration to an application for exemption under that clause.

The next point, also in clause 9, is that an investment or loan is not prohibited if it is ancillary to the main business of the acceptance company.

**The Chairman:** Would you illustrate that?

**Mr. Humphrys:** In some cases the financing of a dealership by the acceptance company may involve a loan for capital purposes, expansion of the building or addition of new facilities. In such case the transaction would be incidental, auxiliary or ancillary to the main business of the acceptance company, which is financing the sale of cars. A capital loan to permit a dealer to expand his facilities could well be considered as ancillary to the main business.

There is a further consideration that we think merits study. A good portion of the financing of a dealership by the acceptance company is in the form of what is commonly known as wholesale financing. It is a loan to enable the dealership to obtain its inventory of automobiles from the manufacturer. They are passed to him, sold by the dealer to individuals and a new conditional sales contract then is created. If that transaction of wholesale financing takes place in the form of a conditional sale from the manufacturer to the dealer which is sold by the manufacturer to the acceptance company, it may well be that that is not an investment or loan falling within the prescription of prohibition under clause 9. Therefore we have to examine all these aspects.

We also felt in studying this that an important consideration in deciding the problem of an application for exemption would be the volume of this kind of business in relation to the other activities of an acceptance company.

**The Chairman:** Even in the example you gave a moment ago, if the wholesale end of this business in relation to all the other business operations of the finance company and the manufacturer was relatively small in the ratio, would you consider that to be a factor under which the minister would feel he should refuse an exemption?

**Mr. Humphrys:** We would look at the importance of the particular transaction under study in relation to the total business of the acceptance company.

**The Chairman:** Have you any figures with regard to the relationship of the wholesale end to the leasing?

**Mr. Humphrys:** No, I have not, Mr. Chairman.

**Senator Connolly:** Mr. Chairman, did you say relationship to the leasing?

**The Chairman:** Leasing is one aspect of the business, which has to be financed somehow.

**Senator Connolly:** I see.

**Mr. Humphrys:** Financing of dealerships falls into three main categories: loans for capital development; wholesale financing; and lease financing. I hope you will correct me if I am wrong in saying that the lease financing, as I understand it, would be advancing money in order to permit the dealer to acquire a stock of cars for leasing purposes.

**Mr. Gregorovich:** Yes.

**Mr. Humphrys:** So that, Mr. Chairman, is the extent of our study of this particular point. However, I must say that when it was presented to us some months ago it was not drawn to our attention that there was as much as \$70 million to \$80 million involved. I am not absolutely sure whether that \$80 million includes all the wholesale financing carried out by these three companies in relation to dealerships where the manufacturer has equity interest.

**The Chairman:** Did I understand you to say that in your view the effect of subclause (5) of clause 9 is that if the manufacturer who invests in the equity and is a shareholder behaves only as a shareholder and it does not appear from anything he has done that he is using his shareholder position to influence the direction of the operations of the dealer, that that would be the kind of significant action on the part of the investor that would make the minister refuse to give an exemption under subclause (5)?

**Mr. Humphrys:** It would not be so much his participation in the managership of the dealer company. If we felt that the manufacturer, the parent, was using his special relationship to the two companies to influence the acceptance company to make a loan merely because the manufacturer had an equity interest, we would suggest that there was a conflict of interest which would raise this question.

Our point of concern is that there are always cases where a transaction such as this can be justified and seems to be good. Our fear is that in an attempt to accommodate the kind of transaction that Mr. Gregorovich has described we may weaken the application of clause 9 to the point that it would not have the effect I think all of us, including the present witnesses, wish. So we felt that we could at least give a fair study under clause 9 to an application for exemption of these transactions.

Obviously, I am not in a position to say how the minister would decide, but I have attempted to explain our approach to the application of this clause and the concepts that would be taken into account in considering an application for exemption. I am quite free to say that we would not be searching for a way to destroy a pattern of operation that seems to be beneficial and has been useful in the past. Neither will we want to be in the position of having a particular transaction act as a precedent to force us into setting clause 9 aside in circumstances where it should not be.

**The Chairman:** Mr. Humphrys, would you now deal with this. The effect may well be that a manufacturer of cars with a finance company in which it has a substantial investment, and also having a share interest in a dealership, provides a set up that would come right under clause 9.

**Mr. Humphrys:** Yes.

**The Chairman:** That would mean, in those circumstances, unless you could show that in the writing of business as between the finance company and the dealer there was no pressure from the manufacturer exerted because of their share interest, the finance company would have to rid themselves of any of the loans etc., any of the apercus they may have taken from the dealer.

**Mr. Humphrys:** I think I made a note of that, and I would like to correct it. We do not think that anything that was done prior to the coming into force of this act would have to be unallowed, so I think the comment in the brief suggesting that all the loans on the books would have to be disposed of is not our interpretation.

**The Chairman:** Under subsection (2):

No investment company shall knowingly hold an investment made after the coming into force of this Act.

So with respect to what they already have on the books, they work themselves out.

**Mr. Humphrys:** There is no problem.

**The Chairman:** There are two avenues open for the dealership in that kind of set-up: either they get an exemption from the minister to carry on as they have done, or they cannot buy any more of the dealership paper. Is that right?

**Mr. Humphrys:** That is correct, Mr. Chairman. That is my interpretation. I think I have said and I can say about the present form of subsection (5) of clause 9. It has been suggested in the brief that the minister's discretion be broadened in order to permit him to consider this case more precisely. It is difficult to find an approach that would broaden the minister's discretion without really converting clause 9 into one of completely ministerial judgment, and we did not think that was a proper thing to do, either from the point of view of asking Parliament to give that broader discretion or from the point of view of the problem of dealing with a large number.

**The Chairman:** The finding that the minister would have to make under clause 9(5) and in relation to the facts to which he must address himself, is pretty clearly put in subsection (5)?

**Mr. Humphrys:** Yes.

**The Chairman:** The only thing that is not put there is how he will jump.

**Mr. Humphrys:** That is right.

**The Chairman:** That will be a matter of his assessment of the facts.

**Mr. Humphrys:** The only possible alternate course we have been able to conceive in thinking about this is that, starting from the premise that the equity interest of the manufacturer in the dealership is an incidental or temporary kind of transaction, intended to promote the dealership and get it into private hands, in that case it might be possible to create another area of ministerial discretion

where he is satisfied that the interest of the substantial shareholder in another corporation is incidental and temporary.

**The Chairman:** Suppose what was done was that the shares were put in trust, or an agreement was made in relation to the voting of the shares, so that the voting would not be related necessarily to any business decisions of the finance company or the manufacturer.

**Mr. Humphrys:** I think that would be a circumstance that could well be taken into account. A more direct and more simple method of avoiding the whole problem from the point of view of the manufacturer would be to have the acceptance company advance the equity investment itself, and then the dealership is a subsidiary of the acceptance company.

**The Chairman:** That is right.

**Mr. Humphrys:** There is no prohibition there. I do not know what problems that would throw up for the companies concerned, but it would certainly be a fairly simple method technically of solving this problem, because as I understand this presentation—the equity financing is quite a minor part of the whole financing package. Even within that the voting of these equity shares, as you say, could be regulated by subsidiary agreements. That would be the most direct method.

**The Chairman:** Thank you very much, Mr. Humphrys.

Now, Mr. Gregorovich, I think we have got the amplification of the possible effect of the clause, how it may be applied and what the circumstances are. Have you any language that you want to suggest to us to deal with this?

**Mr. Gregorovich:** Mr. Chairman, I have to advise that we do not have any language we can submit at this point, but we would be pleased to do so at a later date.

**The Chairman:** "A later date" will have some limitations. You could not expect that "a later date" might be longer than another week.

**Mr. Gregorovich:** We appreciate that, Mr. Chairman, but we are not prepared to submit alternative language for this.

**Senator Connolly (Ottawa West):** At all? You mean you are not prepared at all?

**Mr. Gregorovich:** No, I am sorry. At this point.

**Senator Connolly (Ottawa West):** Today?

**Mr. Gregorovich:** Yes, today.

**The Chairman:** We have covered the main thrust of your brief, have we not?

**Mr. Gregorovich:** Yes, Mr. Chairman. There is another clause, clause 5, on which I would like to complete my presentation.

The objectives of clause 5(8) are commendable in the case of long-term borrowings. However, we believe that the requirements in the clause for filing information with the Superintendent within seven days of borrowing are both costly and unnecessary for short-term borrowings, as



many companies are borrowing daily and would therefore be required to report to the Superintendent every business day of the year. It would seem that the objective of the act to protect investors would be served if the offering memorandum of the borrowing company was filed with the Superintendent within seven days of the initial borrowing, and thereafter, on a monthly basis, a statement was filed setting out the nature and purpose of the borrowing in such form and detail as may be required by him. The Superintendent could be given direction to require filing on a more frequent basis if he was not satisfied with the company's financial position.

**The Chairman:** Is there any other point?

**Mr. Gregorovich:** At this point, Mr. Chairman, I would wish to conclude by saying that we of the Federated Council believe that, should the powers provided for in the bill be used, the expertise resident in the companies in the industry will be of value to the Superintendent; and we now afford our assistance to him and to his officers.

I would want to conclude with our thanks to you, Mr. Chairman, and to the committee, for permitting us to present the brief and to speak on it.

**The Chairman:** Honourable senators, we have another brief this morning. It is from Cemp Investments Limited. With us we have Mr. Philip F. Vineberg, Q.C., who is known to all honourable senators from his previous appearances here in other matters.

**Mr. Philip F. Vineberg, Q.C., Counsel, Cemp Investments Limited:** Mr. Chairman and honourable senators, I am very grateful to you for the opportunity of being allowed to make a representation. With me is Mr. Rupert B. Carleton, Vice-President of Cemp Investments Limited. We have not done very well in our homework, as it is only this morning that I am submitting the brief to you. I am in doubt as to whether you would like the brief to be read, or whether we should simply comment on it.

**The Chairman:** Having heard you before, I would prefer that you comment.

**Mr. Vineberg:** In that case, I will not read the brief but I will tell you what prompts us to submit it. It might at first be thought that we had no business here, and I should say frankly at the outset that Cemp Investments Limited is neither a company either contemplated under the Investment Companies Act nor a company which is likely, under ordinary circumstances, to be under the Investment Companies Act.

We are a company which does not go to the general public, in the ordinary sense of the term, but we have investments in a large number of other companies, some of which may be covered by the act. In our examination of the act, we have found that it appears to be much broader than would appear to be the case on the surface, and that there are some circumstances where companies of the order of Cemp Investments Limited, which are ordinary investment companies with a pool of resources already there, which would find they would come under the Investment Companies Act.

Let me give one or two illustrations. Before doing so, I should say that we made our views known to Mr. Humph-

rys, the Superintendent of Insurance, who was very cordial and receptive. I think Mr. Humphrys confirmed that a company of the type of Cemp Investments Limited is not intended to be within the umbrella of the act. The types of recommendations that are advanced are reflected in the exemption clause. We acknowledge that the exemption clause is a great improvement on section 3(1)(c), taking out the number of companies that may be eliminated from the application of the act. But, by the same token, we feel that it is much more effective, much more appropriate, if this is to be done by statute—by specific provision.

After all, the minister is obliged to exercise his exemption having regard to the purposes of this act.

I was very interested in the colloquy this morning when one of the potential parties which might be subject to an exemption was asked for an expression of opinion as to whether or not exemption would be granted, and the rather natural reaction was: "Who knows?" The act is supposed to tell you, and yet it is difficult to find, within the spirit of the act, exactly what is meant by the intention or purposes of the act.

So, as I say, the exemption would burden the department with a great deal of work. Many companies would have to be analyzed. There would be long line-ups in front of the minister's or the superintendent's office. We feel that the burdening of the department with all this work will reduce its efficiency in dealing with the kinds of abuses intended to be covered by the legislation. So, the act itself should pinpoint the problem, instead of trying to cover all cases. As Mr. Humphrys said in an earlier meeting, all companies borrow, all companies invest, or nearly all—so, instead of being burdened with nearly all, we would suggest a cut down. There are specific ways in which we suggest that.

One of the illustrations is drawn from the experience in a company in which we have a 50 per cent interest. It is a company which put up the Toronto Dominion Centre in Toronto. In it Cemp has 50 per cent and the bank has the remaining 50 per cent. That is a company which did not seek funds from the general public. I might add that its 100 per cent equity is owned by Canadian interests. It has received its financing from large banking institutions in New York, or in the United States generally. There are very large issues by well established banking institutions.

**Senator Connolly (Ottawa West):** Debt financing.

**Senator Benidickson:** With a guarantee from the Bank of Canada.

**Mr. Vineberg:** Yes. The act provides, in the definition part, that one can ignore borrowings from Canadian banks—on the assumption, presumably, that Canadian banks can protect themselves. I would respectfully submit that the New York banks can protect themselves just as well, that they are bigger, better organized or just as well organized; and that simply because we have returned to external financing that is no reason for projecting the shadow of the investment company regulation on an operation of this type. Generally speaking, it would be desirable to exclude not only banks—and there is good reason why they would be excluded—but those types of institutions which are normally excluded in the drafting of security laws, so that



possibly trust companies, investment dealers, and other types of creditors, might be excluded.

As an alternative, and using a guide which is sometimes resorted to in securities law, we suggest they should possibly be excluded on a quantum basis, so that a creditor who has advanced \$100,000 or more should not be regarded as a poor widow who requires the type of protection intended by this law. That is to say, the large investor will be guided by his own advisers, he will have his own lawyers and accountants; he will make his own investigation. We feel the attention of the minister should be directed to the unprotected.

**The Chairman:** The poor widows were not the ones most seriously affected by Atlantic Acceptance.

**Mr. Vineberg:** Admittedly.

**Senator Beaubien:** Or the pension fund of the U.S. Steel Corporation.

**Mr. Vineberg:** The question is, if these laws which are made by organizations in the United States and elsewhere were not able to do something about the situation, can the Minister of Finance, or the Superintendent of Insurance?

Is there not a desire to protect in those areas where it is necessary for the Government to intervene in the interests of the investor—and the poor widow is a typical illustration? I quite acknowledge, of course, that there are many institutions where there can be large losses, but I do not think that it is necessary to apply the legislation in this case. Mr. Humphrys was talking this morning about a "conflict of interest". There is a conflict of approach, and a justifiable conflict of approach. The Superintendent of Insurance is cautious—he should be, he must be; he must be prudent.

If I may put it this way. We represent companies that want to accelerate, but we are interested in economic growth. We are ready in all cases to take risks. We cannot anticipate the failure to take that risk at the same time as the brakes are applied to the economic development that we see. We feel that the restriction to be imposed by a ministerial surveillance should be reserved for those cases where it is necessary; and that reasonable freedom should be afforded in those cases where it is not likely to affect anyone.

I might say that I would anticipate that the minister would, in any event, grant an exemption, but I think it would be more desirable if the exemption were granted as a matter of statutory right. As I say, we are not dealing only with our own situation. We have advanced some recommendations here that have nothing to do with Cemp. We advanced those as a corporate citizen. For example, there are many small family companies that are thinly incorporated.

**Senator Benidickson:** What do you mean by "thinly incorporated"?

**Mr. Vineberg:** They have a very small amount of paid-up capital. Very often they are incorporated to hold a family investment of portfolio securities. By definition they cannot have very much paid-up capital, being thinly incorporated, and they cannot, at least in the beginning, have very much in the way of surplus. Such a company very

often borrows from a member of the family of a shareholder; very often borrows from the father, where the children alone have the shares.

It has been estimated that 90 companies would be covered by this, but when the law is introduced, we think—and I am speaking not so much for Cemp but rather as someone who has had some legal experience in this connection—we think that literally hundreds or thousands of companies would be covered by this that were never intended to be covered. Possibly it would be desirable, in dealing with the exemptions that are available in the case of loans from substantial shareholders, to have this include the family of substantial shareholders; and the members of the family might be defined somewhat as they are defined in the Income Tax Act dealing with personal corporations.

You will find an explanation of that on pages 6 and 7 of the brief.

When clause 2 (3) makes a reference to section 9 (3)(b) we presume that that is a clerical error and that the matter is really dealing with section 9 (4)(b). It says that it is quite all right if a substantial shareholder lends the money, but it is not all right if a member of the family of a substantial shareholder lends the money, if he is not himself a substantial shareholder.

**Senator Benidickson:** Do you mean the family as a group or a member of the group?

**Mr. Vineberg:** A member of the group who is not himself a shareholder: two brothers, two young people or two trusts own the shares of a company, the father lends them \$50,000 and they buy shares on the market. Such a company is an investment company under this clause, because the loan that comes from the father is not a loan from the substantial shareholder. We think it was never intended and it would save a lot of bother for a lot of people if the statute was amended to include loans from the immediate members of the family—the father, the spouse, the children—in relationship to substantial shareholders.

**The Chairman:** In looking at that kind of set-up it is quite obvious that it is a family enterprise or undertaking and that they do not all enter into it on the same basis. Some of them put their money in and some take a share interest, and there are purposes to be served by doing so.

**Mr. Vineberg:** Yes, one of the reasons why the father very often does not take a share interest in this is because of the rules on personal corporations. So he is ready to lend his money to the company, but he does not want to be a shareholder. All of a sudden these companies which are not intended to be embraced will come within the ambit, and I think both the parties concerned and the department will be harassed by the need of processing them through the Investment Companies Act, when it is clearly not intended.

**Senator Benidickson:** And they will probably be exempted in the end, in any event, as a matter of discretion.

**Mr. Vineberg:** Oh, yes, I presume so, but it would take a long time.

**The Chairman:** The point is that the exemption would be what could only be called a discretionary exemption; it

would not be a statutory exemption. There is a big difference.

**Mr. Vineberg:** It also troubles me that many of them would break the law in ignorance of the fact that the law could possibly apply to them and unless their legal advisers were to study the matter carefully it would not even occur to them. I would suggest that it did not even occur to the department when they gave you the estimate of 90 companies that might be subject to this legislation. So it would be disturbing to contemplate a law which through ignorance rather than through intention would be defied in practice by so many companies not intended to be covered.

We also suggest, and perhaps you will concede that we have no selfish interest in the matter, that there might be some kind of a *de minimis* clause in this to eliminate companies whose borrowings are no more than, say, \$50,000. That is to say, very small companies where there is just a certain amount of borrowing—maybe not from a substantial shareholder but borrowing of a very private nature where no great amount of money is involved one way or another. To require again that they submit to the act might be unfair.

**The Chairman:** In view of the value of money today, Mr. Vineberg, when you refer to \$50,000 do you really think that is a reasonable figure?

**Mr. Vineberg:** I was trying to be extremely modest. Perhaps \$100,000 would be more appropriate. Perhaps the amount could be \$100,000, if it comes from one or two people, which would be different from the situation of \$100,000 coming from 100 different people giving \$1,000 each. There might be limits on both the number of creditors and the aggregate amount. A combination of the two might be of interest. So long as they were not borrowing from three different sources or borrowing more than \$100,000, there might perhaps be an exemption so as again not to bother with the small companies which operate and which are not intended to be covered by this act.

**The Chairman:** It would seem that this bill springs from the experience with Atlantic Acceptance Corporation and Prudential Trust, where the public was hurt by the machinations of those who were operating the company after having obtained public money.

**Senator Connolly (Ottawa West):** Those in the industry.

**The Chairman:** When you look at real estate companies who borrow money, the interest of the public is more likely to be affected seriously as the operations continue rather than as arising out of the initial impact of the borrowing and construction. Maybe that is the purpose of having the registering and reporting of investment companies—so that you can see from year to year how they are handling the public moneys which they have secured by way of investment.

**Mr. Vineberg:** I question, Mr. Chairman, whether that is the appropriate way to do it. First of all, so far as equity in the real estate companies is concerned, it is not often marketed. There are very few companies of that type that have gone public, although somewhat more recently they have increased. But they are covered by securities legisla-

tion, and I think that that is the proper way to have them covered. The securities commission should deal with the distribution of these shares to the public.

So far as financing is concerned, it is unheard of, I would think, to finance real estate by borrowing from the general public in an unsecured way. It is only done either by institutional mortgages or else by securities in the form of bonds and debentures, which are equally governed by security regulations.

It seems to me that this is the proper place and that it is the appropriate medium for the regulation of the distribution of securities of real estate companies, whether in equity or credited form. After all, the Superintendent of Insurance, by examination of a lot of financial statements which give figures based on historic cost, is not going to be in the position to police this matter very well. He is imposing burdens upon himself—or at least he is accepting burdens which Parliament will be imposing upon him, which are not likely to be discharged satisfactorily.

This should be handled as part of securities law, and if securities law is inadequate, it should be expanded, and I think it is being dealt with that way. But what I understand this measure to deal with is the situation where there is a great deal of borrowing equivalent to near-banking. That is, that some individual will deposit or advance sums of money to various financial companies who are intermediaries to use that money for investment elsewhere.

And there is understandable regulation as to how they may invest it and permission for the minister to look at it. I do not think that the real estate company is typically the kind of company subject to appropriate legislation in this manner. It should be more closely regulated than it is regulated by security legislation.

**Senator Connolly (Ottawa West):** Is Cemp subject to the securities legislation in the provinces?

**Mr. Vineberg:** Well, we are a private company. We do not issue any securities. In that sense we are not subject to securities legislation. However, we do have an interest in certain real estate companies, and there we are subject to securities legislation. That is, the subsidiary companies are subject to the various provincial securities legislation.

I do not want to trespass on matters already covered by this committee, but we heartily endorse the observations already submitted in the other briefs, and I refer to the Labatt brief dealing with consolidation. We feel that great improvement could be achieved if the formulae embodied in section 2—the ratio to liability and assets and so forth—could be dealt with on a consolidated basis.

After all, there are many important companies that are purely holding companies in their structure but their purpose is to operate manufacturing subsidiaries. If you look at the holding company itself, the test or the criteria would not be appropriate. Now, as the Labatt brief pointed out, the Act takes cognizance of this, but the draughtsman, understandably, gets tired after one tier of subsidiaries; it is awfully hard to calculate how there should be additional tiers. I think the recommendation that it should all be done on a consolidated basis as per the Canada Corporations Act would be the easiest way of dealing with it, and not limit it.



**Senator Connolly (Ottawa West):** Are you familiar with the submission made by Molson's on the same point?

**Mr. Vineberg:** I have not seen that.

**The Chairman:** Well, there is nothing new in Molson's submission as against Labatt. It is the same point.

**Mr. Vineberg:** You are speaking now of their submissions.

**The Chairman:** Oh, yes.

**Mr. Vineberg:** You are not speaking of their products.

**The Chairman:** Oh, no. I would not do that here.

**Mr. Vineberg:** In any event, I do not want to repeat what is already before the committee, but it seems to us that a great deal of useful simplification could be achieved by a consolidation test. There may be arguments as to whether it should be a 70 per cent subsidiary or a 50 per cent subsidiary with provision for minority interests but the application of consolidation would greatly reduce the difficulties in the determination of those companies which are exempted.

**The Chairman:** Mr. Vineberg, I can tell you that on that point the committee is fully aware that there has been a real problem in relation to Labatt's and Molson's and many companies of that kind where you have second and third tier companies. I can also say that Mr. Humphrys is very much concerned, and the Chairman and Mr. Humphrys have gone to the extent of attempting to put something on paper which would deal with the Labatt and Molson situation, but which would avoid what might be pitfalls arising out of the kind of language that might be used. We think we have something, and in due course we will submit it to the committee, and we would appreciate your judgment on it at that time, and if you think it is alright, why, tell us.

**Mr. Vineberg:** Thank you very much. We will certainly try to be helpful in any way we can. We too, and companies in which we have an interest, know of many situations of third, fourth and even fifth tier subsidiaries that arise through accident or through historic reasons.

The second part of our brief, Mr. Chairman, after we deal with the very cardinal question as to who is covered and who is not, relates to the detailed technical provisions of the Act, and here we are bold enough to suggest for your consideration the possibility of some clarification here and there of a technical nature. We have said to you that we do not believe that we are covered, and we also believe that if we were to be initially covered we would be likely to obtain an exemption. But nonetheless we feel in reading the Act on these points that we are duty-bound to express our views on them. Some of them are of a technical nature; for example, in clause 3(2) there is provision for the revocation of an exemption. The question could be raised as to whether it could ever be reinstituted, and it is a lawyer's delight to debate that point. There is the intimation of the contrary in clause 3(3) by saying that hereafter it is an investment company. Does that mean that the Minister ceases to have the right to exercise the exemption, if he has already exercised it once and then revoked it? Or does it mean, as is more logically likely to have been

intended, that he can exempt, revoke the exemption and then should the circumstances later warrant certain changes that he would then reinstitute the exemptions? I think he would be desirous of reinstituting the exemption, but the language perhaps would not permit it, or would be debatable as to whether it would permit it. I think it might be better to have that point clarified.

Then we talk about standards of reporting under clauses 5 and 9 and suggest that it might be matched against the Canada Corporations Act. We also make a comment on something in respect of which you have already had submissions.

**Senator Connolly (Ottawa West):** You are simply complaining of clauses 5 and 9 with reference to timing?

**Mr. Vineberg:** To timing. When Parliament considered how long it takes certain accountants to get these things ready, they settled very recently on the time element in the Canada Corporations Act, and here the same accountants are being told they have to get it ready earlier. We think the time limit for one is the same as the time limit for the other, because the Canada Corporations Act report is equally for the protection of the third-party public.

On loans to officers of the company, we quite understand the outright prohibitions, but again if you look at section 15(2) of the Canada Corporations Act, there are some exceptions, and we wonder if there should not be similar exceptions in this instance. Let us suppose a company is following a policy of granting a loan to employees who may also be shareholders of the company in order to buy a home or loans in order to buy shares in the company, is it fair that because a person is an officer of the company, he cannot participate along with the other employees? He is disqualified.

**Senator Connolly (Ottawa West):** Which section are you dealing with now?

**Mr. Vineberg:** Well, we are pinpointing clause 9 in relationship to section 15 of the Companies Act. Clause 9 says:

- 9.(1) No investment company shall knowingly make an investment
  - (a) by way of a loan to
  - (i) . . . or officer of the company . . .

That is on page 11 of the bill, clause 9.1(1) (a)—so that the company cannot make a loan to an officer of the company. We quite understand that that should be so, but let us suppose a situation where the company has a policy of helping employees buy homes—many companies do—or, for incentive purposes, helping an employee buy shares, and they apply that to all their employees. Now some of the employees are officers, and in this situation a man who is being promoted to be an officer will be disqualified from participating in the home-purchase plan or fringe benefits of that kind.

**Senator Connolly (Ottawa West):** It would not be likely to be serious for the home purchaser but it might be serious for the stock purchaser.

**Mr. Vineberg:** Well, there are many hierarchies of officers. There is a second assistant secretary who is perhaps



just one stage ahead of somebody else and perhaps not earning very much more. The point we are making is that the Canada Corporations Act reflects thinking on this score which has had an historic past, and Parliament has said "Yes, but we must make an exception for these situations; they are logical exceptions." We think that the Investment Companies Act should make the same exceptions. You will find in the Canada Corporations Act, "no loans to shareholders," but there are exceptions—if you have a policy of loans to buy homes and loans in the ordinary course of business. Now we did not repeat in our brief that third point which is perhaps a more contentious one. Maybe a lending company ought not to lend to an officer, so we did not repeat that because we thought it might be debatable. But the absence of the home and the shares we think is an oversight, and if thought were given to it, it would be probable that Parliament would agree that the same kind of exception that is available generally under the Companies Act should equally be available to investment companies.

**Senator Connolly (Ottawa West):** Would you be satisfied to have it legislated by way of reference to section 15 of the Canada Corporations Act?

**Mr. Vineberg:** Yes, except that I would draw the attention of the committee to the fact that we are not raising the debatable point as to whether a lending company which is in the business of making loans should make loans to officers of the company. We could see reasons why in that case they ought not to make such loans generally to officers, although it might be argued that an officer of Company A which is in the lending business could be rather hard put if he were expected to go to company B for a loan for personal purposes, because it means he has to go to a competitor. As I say, that is a debatable point, but we were not entering into that because we were dealing more with technical problems.

Then we make the suggestion that there ought to be some statement in clause 18 (2)(b) of the purpose of the imposition of conditions and limitations imposed by the Minister. This is on pages 27 and 28. He may impose any conditions or limitations relating to the carrying on of the business. We do not think that he would consider this at the moment, but supposing at some time he says, "You must only invest in province A or city B" or, "You must not invest in district C"? Those are the types of conditions or limitations that surely Parliament would not have intended to impose. We think what is intended here is something to do with the qualitative type of the investment: "You must only invest in companies that have had a regular dividend record for five years."

**Senator Connolly (Ottawa West):** Do you think, Mr. Vineberg, that the minister or the Superintendent would get down to that kind of detail? That is really exercising control over the company.

**Mr. Vineberg:** I would rather if the act said, "Impose any conditions or limitations for the protection of the creditors relating to the carrying on of the business." Have it qualified in some way as to the purpose.

**Senator Benidickson:** Obvious intervention, curiosity and action.

**Mr. Vineberg:** Yes.

**The Chairman:** I do not think the desire is to have the Superintendent of Insurance be the official selector of investments, or the settler of investment policy.

**Senator Connolly (Ottawa West):** It is stretching it rather far, I would think, Mr. Chairman—and I will raise the point directly with Mr. Vineberg, since he is here—to think, to use your illustration, that the minister or Superintendent would go to that extent.

**Mr. Vineberg:** Yes.

**Senator Connolly (Ottawa West):** Even if the language seems to include that. What I think we have is a free economy and a free society, and with that interpretation of the section at the top of page 28—which is section 18(2)(b)—you are really saying that the Superintendent and the minister can dictate the type of investments that a company shall make.

**The Chairman:** If you look at paragraph (b), on page 28, I am not sure it goes that far. It says: "impose any conditions or limitations relating to the carrying on of the business..."

I can see the intention. It might, when a company is applying for registration, look at the nature of the operation and the manner in which they have been carrying on the business, and the experience of the Superintendent, et cetera, may be such that he thinks there is danger in the direction, unless you put some conditions and limitations as to how they will operate.

**Senator Connolly (Ottawa West):** I was just using Mr. Vineberg's illustration.

**The Chairman:** Yes, but the language is general, and it might be advisable—and I am not saying that we should—to put some limitation, so that you are not getting them directly in all cases into the area of investment policy.

**Mr. Vineberg:** That is what we had in mind, some guide or clue. I am not going through all of the detailed ones because I think mostly they are self-explanatory.

We also submit that the administrative discretion is so broad that perhaps some consideration might be given to judicial review—not so much because we believe that there will be frequent occasion for judicial review but, rather, that ministerial discretion may be exercised more carefully if there would be the right of resort to judicial review.

**The Chairman:** You mean, what I would call "one-shot" judicial review?

**Mr. Vineberg:** Yes.

**The Chairman:** And no appeals beyond that.

**Mr. Vineberg:** Well, I do not know that we have thought that through. We realize that by the time you got to court the issue would be over in most situations. We were not thinking so much of that, but rather that it would be helpful if the minister's authority were subject to review in the courts.

**Senator Benidickson:** By whom?

**Mr. Vineberg:** By the courts.

**Senator Benidickson:** Which one?

**Mr. Vineberg:** So that we believe it would have an impact and it would be a form of guide in the future if the court said, "Well, the minister did not really understand the law. It means thus "and so, rather than this or that."

**Senator Connolly (Ottawa West):** Would you be in the usual difficulty you are in when appealing from discretionary decisions?

**The Chairman:** Yes, you would be.

**Senator Macnaughton:** You make that point in your last paragraph on page 10.

**Mr. Vineberg:** Yes.

**Senator Macnaughton:** It is quite clear:

We would also submit that consideration should be given to provide for judicial review of the exercise of discretion which is provided to the Minister and the Superintendent.

If the minister has given reasons, you can examine them to see whether those reasons amount to an exercise of discretion at all, or whether he has been arbitrary.

**Senator Connolly (Ottawa West):** But if there are no reasons, the appeal would be a very difficult thing to argue.

**The Chairman:** I wonder how you argue it if he just makes a decision.

**Mr. Vineberg:** It depends on the degree of discretion given in the act. You could say, "Subject to the decision..."—you could have some right of recourse, as under section 138A, for example, of the Income Tax Act. It is a limited right of recourse, but it is some right of recourse.

**Senator Connolly (Ottawa West):** I think you yourself would be in great difficulty if you were appealing a decision of the minister if no reasons were given, to take the example of the Chairman, and it was discretionary. How do we know—and perhaps he has good reasons for doing it but they are not given and he has statutory authority to use his discretion.

**Mr. Vineberg:** That is the situation now, because there is no right of recourse. You can always go to court, but if you went to court you would be met exactly with the line of argument that you mention. But it seems that if the law said that the decision of the minister would be subject to judicial review under certain circumstances, then you would have the right to go to court.

**The Chairman:** It seems to me, Senator Connolly, that what Mr. Vineberg is saying might have particular reference to section 3.

**Mr. Vineberg:** Yes, on exemptions.

**The Chairman:** Section 3, on page 5, is where the minister may give an exemption, and in paragraph (c):

having regard to any one or more of the following factors, namely: . . .

Therefore, in giving an exemption he would have to fit or justify his exemption under one of these headings or reasons. Therefore, you are not faced with the situation where the minister does not give reasons. It would appear that under section 3 he is going to have to give reasons.

**Mr. Vineberg:** Yes, and that would afford an opportunity for some jurisprudence to evolve to make the law clearer in the future.

**Mr. Humphrys:** Mr. Chairman, I would just like to add this and draw your attention to the fact that there is a provision in the bill for review by the court of ministerial decisions in the really important issues. That is, where there is a report made by the Superintendent that the ability of the company to meet its obligations is not adequately secured, the minister can hear the company, and if he agrees with the Superintendent he has the choice of a number of decisions, but any of his decisions—if he makes any such decisions—are reviewable by the courts.

**Senator Connolly (Ottawa West):** What section is that, Mr. Humphrys?

**Mr. Humphrys:** That is on page 34 of the bill.

**The Chairman:** But we were not talking in that area at the moment, Mr. Humphrys. We were talking in the area of discretion such as under section 3.

**Mr. Vineberg:** We would like to apply that principle to the entire act, wherever the minister may exercise discretion—not that we anticipate that there would be many cases in court, but rather that it would be a desirable thing to have that protection.

**The Chairman:** Are there any other items there, Mr. Vineberg?

**Mr. Vineberg:** Section 18, for example, is an area where ministerial discretion might be granted.

**The Chairman:** Yes.

**Senator Connolly (Ottawa West):** Section 23(6) is pretty broad.

**Mr. Vineberg:** Yes, but that is limited to section 22 which is a very extreme case. I think it is one of those that Mr. Humphrys was speaking of.

**Senator Macnaughton:** I presume you have not the time, Mr. Vineberg, but I did want to ask you to explain your last paragraph on page 2:

The economy is not stimulated by needless or unjustifiable curtailments on the freedom of growth-oriented companies to borrow.

If there is time I should like you also to explain page 4, which refers to Canadian companies being at a disadvantage.

**Mr. Vineberg:** This is a matter about which we have been concerned in several connections. As I say, a company like Cemp is not currently under the Investment Companies Act; but a company of this type, if it might be interested in the acquisition of an important Canadian company would always have to go into borrowing of substantial financing,



and that need for quick financing might make it temporarily an investment company under the bill. Admittedly it is not precluded from borrowing because it will be entitled to be dealt with in a subsequent period, but the cloud that is created by the Investment Companies Act, whether or not a certificate of exemption is going to be granted, whether or not creditors feel it will be renewed, whether or not security will be affected, whether or not a company would like to be under the Investment Companies Act. All of this discourages a delicate quick decision that has to be made as to (a) should we buy this company or (b) should we borrow the money to buy this company, because one always has to borrow money to buy companies; so that restriction of borrowing is a very serious matter. A great deal of economic growth is based on credit. Foreign companies, American companies, do not have to go through these restrictions. They can make a lightning decision, they can borrow money, they have certain tax exemptions in comparison with Canadian companies, and if the borrowing can be done quickly by a competitor and one has to consider all the ramifications of the Investment Companies Act, one is still busy with one's analysis when one finds that somebody else has bought the company, or one is discouraged from buying the company. While this may not be a crucial factor, it breaks that growth, and I do not think there should be this restraint unless it is necessary in areas where there is a crying need for it.

**Senator Macnaughton:** You mean this restraint on Canadian companies as distinct from American companies for example?

**Senator Connolly (Ottawa West):** A company like Cemp, from what I understand of it, knows all about borrowing, American borrowing, because they have been doing it.

**Mr. Vineberg:** That is right. American companies can borrow on the Canadian market without the Investment Companies Act restrictions.

**The Chairman:** If the suggestion that you made at the outset, that American banks be added to the banks mentioned in this bill, were followed, the problem that you are talking about would not arise because it would be an exempt transaction.

**Mr. Vineberg:** That is right. Not just banks, but institutions of a certain type.

**Senator Macnaughton:** That would again restrict economic development, slowing it up all the time.

**The Chairman:** No, it would not.

**Mr. Vineberg:** If you enlarge the area of borrowing it would not throw a company under this bill. You are not putting a brake on economic development. A Canadian company can always stay away from the bill by borrowing from a Canadian bank; but if the matter is of sufficient magnitude, Canadian banks may not be in a position to finance it.

**Senator Connolly (Ottawa West):** Was there any element of borrowing from American sources in the two bankruptcies that gave rise to this bill?

**Mr. Vineberg:** There was a great deal with Atlantic Acceptance of borrowing from world sources.

**Senator Connolly (Ottawa West):** I do not think Canada or the industry benefited by those bankruptcies, particularly insofar as access to American funds was concerned.

**Mr. Vineberg:** I agree.

**Senator Cook:** If a company borrowed from both Canadian and American banks they would not be exempt, but where it borrowed from Canadian banks only it would be exempt.

**Mr. Vineberg:** I agree that a situation of that kind was very harmful to Canada's reputation and harmful to Canadian economy. The real problem is how to correct it. It is admitted in the bill that if there is borrowing from Canadian banks, then that is not covered because the banks may be protected through other sources. That is already admitted. Canadian banks perhaps lost very heavily over Atlantic Acceptance just as much as did American banks. It is not suggested on that account that all companies should be policed in any particular way, but each in its own place.

**Senator Cook:** It is not the banks that we are worried about. It is the general public that we are insuring, not the banks.

**Senator Connolly (Ottawa West):** I think too that the institutional lenders are a matter of concern, particularly foreign investors, because if they feel that the loss of control over companies of this kind in Canada is valid then there is a feeling of security about lending.

**The Chairman:** That is the purpose of the securities legislation.

**Senator Connolly (Ottawa West):** Yes, it is the purpose of the securities legislation; but here I gather we are trying to add to the protection provided by the securities legislation.

**The Chairman:** We have to ask ourselves the question: is it necessary?

**Senator Connolly (Ottawa West):** Yes, of course.

**The Chairman:** Thank you very much, Mr. Vineberg. At the last meeting it was intended that we would close out and deal with the bill today. However, I think there have been some things said today about which Mr. Humphrys might wish to comment and about which I would like to ask him some questions. I feel that we should adjourn. I believe we should do so in view of my commitment to Senator Aird and his committee that we would adjourn at 11 a.m. to permit him to have a quorum, because we are in difficult circumstances today. A number of senators have not been able to get to Ottawa.

**Senator Connolly (Ottawa West):** Some Ottawa senators had difficulty in getting to the Senate.

**The Chairman:** I left Toronto by train yesterday evening at 5:10 and I got into the Chateau Laurier this morning at 5 o'clock.

**Senator Cook:** We can repeat that experience from Montreal to Ottawa.

**Senator Connolly (Ottawa West):** Mr. Chairman, let me congratulate you for appearing here this morning.



**The Chairman:** I told the operator to ring the telephone very hard. Mr. Humphrys, would you be available next Wednesday for the purpose of questioning and also to discuss amendments which we seem to have agreed upon although the exact wording may still be a matter of settlement. We have agreed to them in principle. Would this be satisfactory to you?

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** Then it is understood that we deal with the hearing of Mr. Humphrys on all that has been said today, and also with the proposed amendments. We shall close out our consideration of the bill next week.

**Mr. Vineberg:** Do you wish Mr. Carleton and I to be present next Wednesday?

**The Chairman:** If you feel, in going over the range of subject matter that we shall deal with Mr. Humphrys that

there might be something on which you wish to comment, I would say, yes, by all means.

**Mr. Vineberg:** I am thinking only that you may wish us to comment further on some of the points raised dealing with matter on which Mr. Humphrys has not yet had an opportunity of commenting. In the event you desire further comments from us, we would certainly be glad to be available.

**The Chairman:** I will communicate with you before next Wednesday as to the direction the questioning may take; then you can decide.

**Mr. Vineberg:** Mr. Chairman, the reason I am lighthearted about this is that I will be at the Seignior Club attending a Canadian Bar meeting anyway.

**The Chairman:** Thank you very much.  
The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 11

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WEDNESDAY, MARCH 3, 1971

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Fifth and Final Proceedings on Bill C-3,  
intituled:

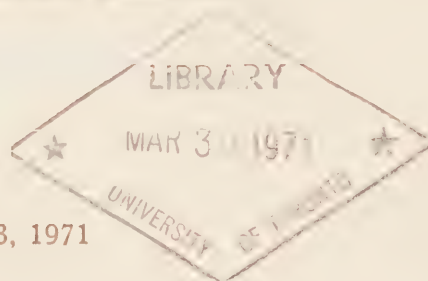
“An Act respecting investment companies”

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REPORT OF THE COMMITTEE

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(For name of witness—see Minutes of Proceedings)





THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 15, 1970:

"A Message was brought from the House of Commons by their Clerk with a Bill C-3, intituled: "An Act respecting investment companies", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, March 3, 1971

(13)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to *further* consider:

Bill C-3, "An Act respecting investment companies".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Everett, Flynn, Gélinas, Hays, Hollett, Kinley, Macnaughton, Walker and Welch—(17).

*Present, but not of the Committee:* The Honourable Senators Lafond, Sullivan and Urquhart—(3).

*In attendance:* Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESS:

*Department of Insurance:*

Mr. R. Humphrys, Superintendent.

After discussion and upon motion amendments were made to pages 1, 2, 3, 4, 10, 14, 26 and 41 of the said Bill.

*NOTE:* The full text of the amendments appears by reference to the Report of Committee immediately following these MINUTES.

Upon motion it was Resolved to report the said Bill as amended.

At 11:40 a.m. the Committee proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*



# Report of the Committee

Wednesday, March 3, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-3, intituled: "An Act respecting investment companies", has in obedience to the order of reference of December 15, 1970, examined the said Bill and now reports the same with the following amendments:

1. *Pages 1 and 2:* Strike out lines 11 to 31, inclusive, on page 1 and lines 1 to 12, inclusive, on page 2 and substitute therefor the following:

"(b) "business of investment" with respect to a corporation means the borrowing of money by the corporation on the security of its bonds, debentures, notes or other evidences of indebtedness and the use of some or all of the proceeds of such borrowing for

(i) the making of loans whether secured or unsecured,

(ii) the purchase of

(A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,

(B) shares of corporations,

(C) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or a municipality, or

(D) conditional sales of contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange or other obligations representing part or all of the sale price of merchandise or services, or

(iii) the purchase or improvement of real property other than real property reasonably required for occupation or anticipated occupation by the corporation, or any corporation referred to in subsection (4), in the transaction of its business,

or for the purpose of replacing or retiring earlier borrowings some or all of the proceeds of which have been so used;"

2. *Page 3:* Strike out lines 11 to 13, inclusive and substitute therefor the following:

"ness and has subsequently made loans, purchases or improvements as described in subparagraphs (i) to (iii) of paragraph (b) of subsection".

3. *Page 3:* Strike out lines 29 to 33, inclusive, and substitute therefor the following:

"time during its last completed fiscal year and the elapsed portion of its current fiscal year consisted of loans, purchases or improvements described in subparagraphs (i) to (iii) of paragraph (b) of subsection (1),

whether made with the proceeds of a borrowing or otherwise;"

4. *Page 3:* Strike out lines 38 and 39 and substitute therefor the following:

"its last completed fiscal year and the elapsed portion of its current fiscal year exceed twenty-five per cent of the".

5. *Pages 3 and 4:* Strike out lines 49 to 51, inclusive, on page 3 and lines 1 to 8, inclusive, on page 4 and substitute therefor the following:

"(d a company that was not at any time during its last completed fiscal year and the elapsed portion of its current fiscal year indebted in respect of money borrowed by it other than to a person who was at that time

(i) a substantial shareholder of the company within the meaning of paragraph (b) of subsection (4) of section 9; or

(ii) the spouse, child, father, mother, brother or sister of a substantial shareholder of the company within the meaning of paragraph (b) of subsection (4) of section 9; and"

6. *Page 4:* Strike out lines 21 to 31, inclusive, and substitute therefor the following:

"(a) at least seventy-five per cent of the equity shares of such subsidiary are owned or are deemed to be owned by the company; and

(b) either

(i) not more than forty per cent of the assets of such subsidiary, or

(ii) not more than forty per cent of the consolidated assets of such subsidiary and of all its subsidiaries, if any, at least seventy-five per cent of the equity shares of which are owned or are deemed to be owned by the company,

at any time during the last completed fiscal year of such subsidiary and the elapsed portion of its current fiscal year consisted of loans, purchases or improvements described in subparagraphs (i) to (iii) of paragraph (b) of subsection (1), whether made with the proceeds of a borrowing or otherwise."

7. *Page 4:* Renumber subclause (5) as subclause (6) and insert the following as new subclause (5):

"(5) For the purposes of subsection (4),

(a) any valuation or consolidation of assets shall be made in accordance with the regulations; and

(b) where a company owns or pursuant to this subsection is deemed to own equity shares of a corpora-

tion, the company shall be deemed to own a proportion of the equity shares of any other corporation that are owned by the first mentioned corporation which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned or that pursuant to this subsection are deemed to be owned by the company.”.

8. *Page 10:* Immediately after line 41 insert the following as new subclause (6):

“6) Any auditor who has acted in good faith and due care is not subject to any liability that might otherwise result from a report made under subsection (5).”.

9. *Page 14:* Strike out lines 11 to 18, inclusive, and substitute therefor the following:

“(a) the decision of the investment company to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that person or group and does not involve in any significant way the interests of that person or group, apart from their interests as a shareholder of the investment company; or

(b) any investment so exempted would be in a corporation in which the significant interest of the substantial shareholder is temporary and incidental to the principal business carried on by the substantial shareholder.”.

10. *Page 26:* Strike out clause 15 and substitute therefor the following:

“15. A sales finance company to or in respect of which sections 11 to 13 apply shall not sell or otherwise dispose absolutely of the whole or any substantial part of its undertaking, and the sale or disposal is of no effect, unless and until it has been approved by the Minister, if, in the opinion of the Minister, it would be likely to result directly or indirectly in the acquisition of the whole or any substantial part of the undertaking by a non-resident.”.

11. *Page 26:* Strike out line 18 and substitute therefor the following:

“may, out of amounts advanced to the Corporation pursuant to section 29, make short term loans to the sales”.

12. *Page 41:* Strike out clause 32 and substitute therefor the following:

“32. The Governor in Council may make regulations necessary for the carrying out of the provisions of this Act.”.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, March 3, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-3, respecting investment companies, met this day at 9.30 a.m. to give further consideration to the bill.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** I call the meeting to order. Honourable senators, we have before us this morning the continuation of our consideration of Bill C-3. We are at the stage of considering what, if any, amendments shall be made. We have two other bills on the order paper which, after concluding our consideration of Bill C-3, we will proceed to deal with. I think they are fairly straightforward and may not take very long.

I have a suggestion to make in connection with what I call the proposals put forward by Labatt and Molson dealing with second and third tier subsidiary companies. I have been co-operating for a while now with Mr. Humphrys on language that would accomplish that purpose and yet would not open the door to a situation that would give Mr. Humphrys some concern. We have now arrived at language which we think deals with that situation, and I will have Mr. Humphrys indicate his agreement.

Our first consideration concerns page 4 of the bill, subsection (4), where we have this question of subsidiary companies. The committee will recall the situation that developed with Labatt in the acquisition of properties or operations which represented a diversification; for instance, when the company acquired the Ogilvy Company and then it developed that the Ogilvy Company had subsidiaries. We immediately had the situation where Labatt was at the top and we had the first tier of subsidiary, namely, the Ogilvy Company. Underneath that we had the various subsidiaries of Ogilvy which were wholly owned by Ogilvy.

If the section to which I have referred remains, notwithstanding the fact that Labatt is a strictly commercial and industrial operation, when we get down to the second and third tiers of subsidiaries it would develop into the category of an investment company and would be subject to the reporting procedures embodied in the act. This is what we seek to change.

The other change is one to clarify the situation as to when the decision is made that a particular company is not an investment company for purposes of this act.

This becomes very important when we have an underwriter about to do some financing for an investment

company. Under the bill as it is drawn, whatever the determination might be at the time the underwriter came into the picture, one would still have to look in the bill at what the situation would be at the end of the current fiscal year of the company, and there might be a reverse effect. We have therefore changed the wording.

I have not sufficient copies of this to hand around, but I could read it and then have Mr. Humphrys give his explanation.

**Senator Connolly** (*Ottawa West*): Mr. Chairman, if you wish everyone to have it, I am sure the messenger could have sufficient copies run off downstairs.

**The Chairman:** I think we can deal with it this way. Will you please turn to page 4, subsection (4)? The proposal is to repeal subsection (4), add new subsections (4) and (5) and renumber present subsection (5) to subsection (6). The new subsection (4), as far down as paragraph (a), is changed only slightly, reading as follows:

(4) For the purposes of paragraph (a) of subsection (3) any assets of a company that consist of loans to, shares of or bonds, debentures, notes or other evidences of indebtedness of any subsidiary of such company shall be deemed not to be assets that consist of loans or purchases described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) if

(a) at least 75% of the equity shares of such subsidiary are owned...

Now the new words:

...or are deemed to be owned by the company, and

(b) either

(i) not more than 40% of the assets of such subsidiary, or

(ii) not more than 40% of the consolidated assets of such subsidiary and of all its subsidiaries, if any, at least 75% of the equity shares of which are owned or are deemed to be owned by the company, at any time during the last completed fiscal year of such subsidiary and the elapsed portion of its current fiscal year consisted of loans, purchases or improvements described in subparagraphs (i), (ii) and (iii) of paragraph (b) of subsection (1).

We have accomplished two things there. We have moved down into the second and third tier subsidiaries, and also provided a terminal date. Were an underwriter to move in, there would be a date at which time a deter-



mination would be made as to whether the company was an investment company or entitled to exemption. The phrase "the elapsed portion of its current fiscal year" is intended to deal with that situation.

Since we have used the expression "shall be deemed not to be assets", in subsection (4), provision has to be made for that. Therefore, in subsection (5) we say:

(5) For the purposes of subsection (4),

- (a) any valuation or consolidation of assets shall be made in accordance with the regulations; and
- (b) where a company owns or pursuant to this subsection is deemed to own equity shares of another corporation, that company shall be deemed to own a proportion of the equity shares of any other corporation that are owned by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned or that pursuant to this subsection are deemed to be owned by the company.

It is simply that a company which has a percentage of ownership in the first company down, then its percentage of ownership in the second subsidiary shall be a percentage in relation to its holding in the first tier.

**Senator G  linas:** Have there been any consultations with the interested parties regarding these suggested amendments?

**The Chairman:** Yes; there were conversations. I hesitated because you used the word "consultations". There were conversations, and we heard no further objection. The conversations were with respect to this proposed language.

**Senator Macnaughton:** This would cover the case of Labatt, Molson and the Investment Dealers.

**The Chairman:** Yes, it covers the situations of that kind and it does not permit the open door situations that might be somewhat akin to some of the sad experiences in these areas during the last number of years.

**Senator Connolly (Ottawa West):** When this bill was before us two years ago, among others a brief was presented by Canadian Pacific Investments. They found themselves between a parent company and second and third tier subsidiaries. There may have been others. I take it that this amendment would not disaffect the submissions they made?

**The Chairman:** We dealt with that situation in the bill as we originally wrote it. It is to recognize situations similar to the financing situation in CPR, where somewhere down the line of subsidiaries there is a financing company which borrows and provides the money to the other companies in the chain. We have not disturbed that; is that not right, Mr. Humphrys?

**Mr. R. Humphrys, Superintendent of Insurance:** That is correct, Mr. Chairman.

**The Chairman:** The additions cover situations of the character of Labatt, Molson and others. Have you anything to add, other than that this language is agreeable to you, Mr. Humphrys?

**Mr. Humphrys:** No, Mr. Chairman. Perhaps I might comment that there was a brief submitted to the House of Commons committee in this connection and we gave consideration to the representations. One of the reasons for expanding the area of discretionary exemption was to permit special consideration to be given to cases involving a substantial integration of the operations of the company with those of its subsidiaries. The proposed amendment, which has been read to you by the chairman, we consider to be within the area that would justify an exemption from the application of the act in any event, so we would be satisfied with this statutory provision.

**The Chairman:** Were you following as I read this? I think the language of the proposed subsections as I have it is in agreement with yours. Did you detect any differences?

**Mr. Humphrys:** No; I think it is identical, Mr. Chairman. I should say, however, that there is one point where this wording links into a possible change in another section. It might perhaps be better if the formal motion to make this amendment awaited the discussion of the other point. This refers to the introduction of the word "improvements", which depends upon the acceptance of another change.

**The Chairman:** Yes; I should say that we have introduced one word in this new draft of subsection (4) on page 4, "improvements". We have said "loans, purchases or improvements".

In determining what is an investment company under subsection (1), the definition is the kind of company that borrows money on the security of its bonds, debentures, et cetera, and proceeds to use the borrowed moneys for making loans with or without security, or the purchase of bonds, debentures, et cetera; the shares of corporations, then in (D) of subparagraph (ii):

(D) real property other than real property reasonably required for occupation or anticipated occupation by the corporation, or any corporation referred to in subsection (4), in the transaction of its business,...

I raised a question with Mr. Humphrys with respect to using the borrowed money to purchase undeveloped real estate. Money borrowed for the purposes of financing improvements would not be covered by this section. I asked him if that was his intention. I am not sure that he accepted my interpretation of it 100 per cent. However, I think he was disturbed sufficiently by it that he has suggested that we put in, in addition to real property, the words "and improvements"; is that correct?

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** That is why we have the use of the word in this amendment. We not only say "loans and

purchases", but "or improvements". It is therefore proposed that we add the word "improvements" in (D) of subparagraph (ii). I think the committee should decide whether it wishes to do that now, before we leave the word "improvements" in the amendment of a later section. Are there any questions with respect to that aspect?

**Senator Connolly (Ottawa West):** Not after the way you have explained it.

**The Chairman:** I was not advocating; I was just explaining.

**Senator Connolly (Ottawa West):** I did not say advocating; I said explaining.

**Senator Macnaughton:** Do you want a motion on that?

**The Chairman:** Have you anything to add, Mr. Humphrys?

**Mr. Humphrys:** No, Mr. Chairman.

**The Chairman:** Then could we have a motion?

**Senator Macnaughton:** I so move.

**The Chairman:** Mr. Humphrys, you would like to add after "real estate"...

**Mr. Humphrys:** It would require a reversal of two paragraphs, but the effect is exactly as you have described, Mr. Chairman.

**The Chairman:** What you are proposing will do what?

**Mr. Humphrys:** It will take out the present paragraph (b) and replace it with a reversal of order of paragraphs (D) and (E). It requires a consequential change in subsection (2). The effect is exactly as you have described it.

**The Chairman:** Instead of having piecemeal amendments of the clause, where you bring back three-quarters of what you had before the preferred way for drafting is to repeal the whole clause and re-write it. In the re-writing we have retained in subparagraph (ii) substantial parts of paragraph (B). We end up with (i), (ii), (iii) in order to deal with the question of improvements. When we come to improvements we say "the purchase or improvement of real property". That is the substantial change.

**Mr. Humphrys:** That is the only substantial change. There is a consequential change in subsection (2).

**The Chairman:** Is that a sufficient explanation, or are there any questions? First of all, I am satisfied that what is proposed makes only the changes that are necessary to add "improvements" in connection with real estate, and to make a consequential change in subsection (2) of clause 2, and for no other purpose. What I contemplate doing, subject to what the committee may say, is that after we have gone through this bill and made all the amendments we think should be made, we could then present it to the assistant law clerk, and ask him to read it and indicate whether he agrees with what we have done before we finalize it and report the bill. I think that

is the proper procedure for us to follow, although I am satisfied with what we have been told by Mr. Humphrys who, with his advisers in the Department of Justice, has been over it.

Is it the wish of the committee that we strike out lines 11 to 31 on page 1 of the bill, and lines 1 to 12 on page 2, and make the substitution. We repeat everything in what we have stricken out, but we add provisions in relation to improvements, and we also add a consequential amendment in subsection (2). Is that agreeable?

**Hon. Senators:** Agreed.

**The Chairman:** Now we are in a position in which we can deal with the new subsections (4) and (5), which I read to you, and the converting of the present subsection (5) on page 4 into subsection (6). I read it to you, Mr. Humphrys has given his explanation, and the intent is to permit second and third tier subsidiaries to qualify under this subsection in cases such as we have had presented by Labatt and Molson, and I know there are others. Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** We then go back to page 3. If you look at subsection (3), paragraphs (a), (b) and (d), you see that we have to deal with the same kind of situation so as to facilitate any matter of underwriting to have a definite time when the determination is made; that is, if there is an underwriting proposed during the fiscal year of the company and a determination is made at that time as to whether the company qualifies as an investment company or is exempt, that decision is final and is a decision upon which the underwriters can proceed. If it is an investment company it must be registered, and if it is not an investment company the underwriter is protected. That involves changing the language in paragraphs (a), (b) and (d). Paragraph (a) says:

a company not more than forty per cent of the assets of which, valued in accordance with the regulations, at any time.

I think what we propose to add right there is the language we have already put in subsections (4) and (5), namely:

...at any time during its last completed fiscal year and the elapsed portion of its current fiscal year.

In other words, we are going to strike out lines 28, 29 and 30. In line 30 we add:

...consisted of loans, purchases or improvements described in subparagraphs (i) to (iii) of paragraph (b) of subsection (1), whether made with the proceeds of a borrowing or otherwise.

That is what we propose to add.

In other words, we strike out in paragraph (a) all the words following the words in line 28 "at any time" and substitute the language I have just read. The sole purpose of it is to crystallize the time when effective determination can be made, that either it is an investment company or it is not, and then pick up the word "improvement" which we put in a few minutes ago into clause 2 in



connection with real estate. We have added those words. May I repeat it so that you are sure. We stop at the words "at any time" and then the rest of the paragraph reads as follows:

...during its last completed fiscal year and the elapsed portion of its current fiscal year consisted of loans, purchases or improvements described in subparagraphs (i) to (iii) of paragraph (b) of subsection (1), whether made with the proceeds of a borrowing or otherwise.

Is that agreeable? I have explained the purpose of it.

**Hon. Senators:** Agreed.

**The Chairman:** In paragraph (b), we strike out lines 38 and 39 and substitute:

...its last completed fiscal year and the elapsed portion of its current fiscal year exceed twenty-five per cent of the.

Then the subsection carries on. The sole design, as I have said before, is in order to have a point in time during the year in which the determination can be made whether this is or is not an investment company for the purposes of any proposed underwriting.

**Senator Connolly (Ottawa West):** The words are "the elapsed portion of the fiscal year"?

**The Chairman:** Yes, "and the elapsed portion of its current fiscal year." That means that, if you are proposing an underwriting in an acceptance company, half way through the year the underwriter, for his purpose, will want to know whether this is or is not an investment company right at this moment. If it is, it must be registered. He wants that determination to be final, conclusive and binding. Whereas, in the way the language is in the bill at the present time, there is still another test, which would be at the end of the current fiscal year.

**Senator Connolly (Ottawa West):** You say "and/or"?

**Mr. Humphrys:** It is the total period, the last completed fiscal year, plus the elapsed portion.

**Senator Flynn:** Suppose there were an investment company during the last fiscal year and it had ceased to be an investment company, according to the statement, for the elapsed period of the current fiscal year, what would be the position?

**Mr. Humphrys:** If it has ceased to be, at the present moment, then it would have to apply for an exemption, because if it had become an investment company in the previous fiscal year, it would be obligated to apply for a certificate, within 60 days of the close of that fiscal year; and if within that 60 day period the circumstances changed and it said "Now, we are no longer an investment company", then it would have to say "We want an exemption" and if the circumstances had been temporary they would get an exemption and that would close it.

In the applications, the main consideration would always be given on the basis of the financial statement at

the end of the fiscal year and we would always be looking at the previous fiscal year.

**Senator Flynn:** Would it not be better to say "or"?

**Senator Connolly (Ottawa West):** I think you need the accumulated period.

**Mr. Humphrys:** We think we need it. We thought it would put us into an absurd position if the company was not an investment company in the previous fiscal year, but we looked at it now and it is; yet we could not do anything about it until the rest of the year had elapsed.

**Senator Flynn:** You could safely say "or".

**The Chairman:** You would achieve an entirely different meaning from what Mr. Humphrys is looking for. What Mr. Humphrys is saying is that, if you had been an investment company in your last fiscal year and then you move into the next year and your operations are such that you are not then in investment company, you have to remove yourself from that investment classification by some step or other, and the step, as I take it, would be to go to the administrator, or to the minister, for an exemption.

**Senator Flynn:** That is right.

**Mr. Humphrys:** I am not sure that it really makes any difference.

**Senator Flynn:** As far as the company that was an investment company in the previous year is concerned, it would be covered for the following year unless it was given an exemption.

**The Chairman:** That is right.

**Senator Flynn:** Then if it did become an investment company, it has to be registered.

**The Chairman:** That is right.

**Senator Flynn:** That is why I say "or" and not "and".

**Mr. Humphrys:** I think the effect is exactly the same.

**The Chairman:** I would think the effect is the same.

**Senator Flynn:** If the legal brains are satisfied, I am.

**The Chairman:** I do not know whether Mr. Humphrys would object to the "and/or".

**Mr. Humphrys:** I think it would cause heart attacks in the Department of Justice if you put "and/or".

**Senator Connolly (Ottawa West):** It seems very poor draftsmanship to use "and/or".

**Senator Flynn:** I did not say "and/or". I would say "or". It is one or the other. It does not need to be the two.

**Senator Connolly (Ottawa West):** I do not think it makes much difference.

**Senator Carter:** What would be the mechanism if a company had a statutory exemption in the previous year



and in the elapsed portion of the current year, and then became an investment company after that? Who checks up on that? What is the mechanism? Are they obliged by law to report this, or do they wait until someone checks up and catches them? What is the mechanics of that?

**Mr. Humphrys:** If it is a ministerial exemption, then the company remains exempt regardless of what it does or what happens to it, until that exemption is withdrawn. But if it is a statutory exemption, the statutory exemption applies to the company only so long as it remains in the situation defined by the statute. Once it departs from that situation, it will become subject to the act; and the act would require it to apply for a certificate of registry within 60 days of the close of the fiscal year within which it moved out of the exempt category. So the statutory obligation is on the company to apply.

**The Chairman:** Senator Flynn, what we are dealing with in this subsection (3) is really a statutory exemption; and if you look at it in that light, it seems that the "and" is the proper word there.

**Senator Flynn:** If you are satisfied that it covers the point I wanted to make, I am satisfied.

**The Chairman:** Is that amendment agreed to?

**Hon. Senators:** Agreed.

**The Chairman:** We move now to the amendment in paragraph (b) which I have just read, and that is that we strike out lines 38 and 39 on page 3 and substitute the following:

...its last completed fiscal year and the elapsed portion of its current fiscal year exceed 25 per cent of the...

That is inserted in paragraph (b) in those two lines, in the language which I have read.

We come now to paragraph (d) which raises the very same question so, to be consistent, we must make the same amendment. But it raises a number of other questions in the proposal which Mr. Humphrys now has.

In that connection, may I recall to you that we had Mr. Vineberg before us last week not only as a witness representing Cemp Investments, but also, as he said, as a good citizen presenting a viewpoint on various sections of the bill. When we came to this particular section which, on the next page, declares as part of this subsection (d) that if the lender to this investment company is a bank, or substantial shareholders of the company, within the meaning of paragraph (b) of subsection (3) of section 9, then those borrowings, to use colloquial language, do not count for the purpose of determining whether the company is or is not an investment company.

Mr. Vineberg made these suggestions and he indicated how the financing of CEMP has been done in a number of situations, like the Toronto Dominion Tower building in Toronto, where I think the borrowing was from a consortium of non-resident or non-Canadian banks. He had suggested that the bank lenders should not be limited to Canadian banks. Then he made a further sugges-

tion having regard to many of the companies that are created nowadays and where the real interest is internal. For instance, you may have an investment company set up by the father of a family for his children and they are the owners of the equity, the father has no share position, but he may loan money to the company. Mr. Vineberg felt that, instead of limiting and excluding the lenders, where they are substantial shareholders of the company, which is an investment company, we should also exclude a member of the family of such substantial shareholders, even if he is not a shareholder.

With that in mind, Mr. Humphrys has prepared certain proposed changes. He does not go along with the suggestion that we enlarge the area so far as banks are concerned. We can discuss that with him in a minute or two, but he does go along with the other suggestion, that is, in addition to subparagraph (ii) of paragraph (d) of subclause (3) on page 4, where we have the words:

(ii) substantial shareholders of the company within the meaning of paragraph (b) of subsection (3) of section 9;

he then goes on and says:

(iii) the spouse, child, parent, brother or sister of a substantial shareholder of the company within the meaning of paragraph (b) of subsection (4) of section 9;

So he is recognizing the merit of expanding this provision to deal with that kind of situation in relation to substantial shareholders. He has not accepted the suggestion with relation to enlarging those who shall be included in the word "bank".

If you have any questions, now is the time to raise the issue with Mr. Humphrys as to why he feels that the lending by banks—in respect to which the company would not, because of that borrowing, become an investment company—should be limited to Canada.

Perhaps I can start the questioning off myself, Mr. Humphrys. Why is it that you have not accepted this proposal?

**Mr. Humphrys:** Mr. Chairman, honourable senators, the purpose of putting a reference to chartered banks in this paragraph and creating the situation that, if a company borrowed only from chartered banks it would not be considered to be an investment company, was in recognition of the fact that nearly every company borrows from its bankers from time to time for one purpose or another. In order to avoid a massive job that would result from including so many companies and then exempting them because it turned out that the borrowing was really only for their ordinary operating functions or manufacturing functions, it was thought appropriate to propose this arrangement whereby borrowing from banks would not bring a company within the scope of that act.

It was recognized that this had the overtone of perhaps leaving out of the scope of the act some companies that are really investment companies on the basis of moneys that they borrow from banks, but it was thought better to accept that possibility than to sweep in a great many companies in order only to exempt them.

It was thought that this approach could be accepted because it was recognized that the banks in this country are strong and well established and that there was no great risk in really leaving the banks to make their own judgements in this connection.

However, the provision was not put in there primarily from the concept that the banks are sophisticated lenders and, therefore, nobody needs to worry about them. We did not think that would be a logical position, because there are many other financial institutions that are also sophisticated lenders. But when one attempts to classify them or to describe a category, it becomes very difficult. On the other hand, the Canadian chartered banks are a class quite easy to describe and do fit quite well into this whole financial transaction. But when you go beyond that you get a tremendous range of financial institutions.

Insurance companies may be big or small; they may be sophisticated or they may be really only moderately skillful in investment. Trust companies also may be big and may have highly sophisticated investment divisions; but trust companies may also be quite small, having only limited facilities. Moreover, if you go abroad, the very problem of defining what is a bank becomes difficult, because in other countries the financial institutions may be set up in a way that is different from the way they are organized in Canada. So that it is difficult to describe even banks under foreign jurisdictions.

If you think about American banks, then why not German banks, Swiss banks, British banks or banks in other countries?

So we thought it better to deal with this problem through the mechanism of giving the minister power to look at a particular situation on the basis of finding out to whom the investment company is indebted for moneys borrowed by it. So you could look at it in a particular case and see where the money came from and, if it was a case such as Mr. Vineberg described, where it is a company put together to finance a big office building and they get a loan from a consortium of banks in one country or another, then you might very well look at it and say that that is the kind of case where the public interest does not demand that company be subject to this act so that it could be exempted. But we felt, really, that we were not in a position to put forward a category of sophisticated investors with enough confidence and enough clarity of definition to make it appropriate for this kind of measure.

So I recognize the point Mr. Vineberg makes, but we think we should be able to deal with it by looking at the particular cases rather than trying to define the categories of sophisticated investors.

**Senator Macnaughton:** What would happen to a subsidiary investment company owned by a bank? You would knock them out.

**Mr. Humphys:** Not as such, senator, no. There is nothing in this act that would let a company out merely on the ground of who owns the shares. But if that company borrowed money only from its parent, then it would fall within the category of an exemption because it borrows only from a substantial shareholder.

**Senator Macnaughton:** Are you not giving a sweet little monopoly to the banks?

**The Chairman:** You mean to Canadian banks? Well, I suppose that is one way of looking at it. The other way of looking at it is that you are providing some measure of protection for these who lend money in Canada—non-residents who lend money in Canada. Whether that is advisable or not is a question of policy, and, on balance, it strikes me as not being unreasonable.

Of course, the Canadian banks are subject to their own inspection provisions in the Bank Act, where they are examined very closely.

**Senator Flynn:** The same thing holds for a trust company. It seems to me that the point raised by Senator Macnaughton is valid. The banks would be in a better position to continue to finance investment companies. Investment companies would not have to register if they borrowed from a bank, although they would have to register if they borrowed from a trust company.

**The Chairman:** You are right in raising that point, Senator Flynn. I should have added a point that Mr. Vineberg raised last week. He thought this area should be enlarged by including in this category of lenders not only the banks but what he called institutional lenders, which would be life companies, trust companies and loan companies.

**Senator Macnaughton:** And possibly subsidiary investment companies. Mr. Vineberg made the point that we should not limit the economic opportunities to expand business in Canada by getting too exclusive. In other words, by giving complete monopoly to the banks in this section. If this country is going to expand, it needs reasonable control, but not exclusive control in the hands of a few.

**The Chairman:** Well, Senator Macnaughton, with respect to exclusive monopoly being given to the banks, first of all banks do not have an exclusive monopoly. Anybody can apply for a bank charter.

**Senator Macnaughton:** That is quite true. Anybody can apply; whether he will get the charter or not is another question.

**The Chairman:** All of those who applied at the last revision of the Bank Act got their charter, but there is only one of them that went anywhere. This, I think, indicates it is a difficult field in which to operate.

**Senator Flynn:** It seems to me that if the argument given by Mr. Humphys for exempting the borrowing from banks is a valid one, it is only from an administrative point of view, and it seems to me to be unfair to give this advantage to the chartered banks since it gives them what I might call a monopoly or an advantage over other lending institutions.

**The Chairman:** Well, senator, let us put it in its proper perspective. There is nothing in this bill that limits or restricts the lending function of banks or institutional lenders. All it says here is that if a bank is a lender to an



investment company, or to a company that you are trying to decide as to whether it is or is not an investment company, you do not look at the bank borrowings.

**Senator Flynn:** You do not have to register as an investment company.

**The Chairman:** That is right.

**Senator Flynn:** But if you borrow from another institution, you have to. Therefore to avoid the burden of registering you will be inclined to borrow from the bank rather than from another lending institution.

**The Chairman:** But you must remember there are some statutory exemptions in this bill on the relationship of assets and ownership of shares.

**Senator Flynn:** But that is a very narrow point.

**The Chairman:** So these investment companies may still, even with their institutional borrowing, fit into the statutory exemptions. That is correct, is it not, Mr. Humphrys?

**Mr. Humphrys:** Yes.

**Senator Flynn:** You may be able to get an exemption, and I am aware of that, but you will have to go through the process of obtaining the exemption.

**The Chairman:** Not the statutory exemption. The statutory exemption is something you are entitled to as of right and you can make that determination yourself.

**Senator Flynn:** That was the point raised by Mr. Humphrys. He said that you might as well exempt the bank because in most cases the borrowings are made for the ordinary day-to-day operation of the company and therefore they would qualify it for exemption. But he also said that he realized that by putting this exemption there he would also be exempting investment companies from registration. I can very well imagine the case of a company which always has \$1 million margin in the bank to make mortgage loans and so on and so forth.

**The Chairman:** Well, then the question would appear to be—do we take out Canadian banks or do we enlarge the area?

**Senator Flynn:** Well, if you do not enlarge it, I think we should take it out.

**The Chairman:** As to institutional lenders, and by that I think we mean life companies, trust companies and loan companies, what comment have you to make, Mr. Humphrys, about the inclusion of such institutions in this particular subsection in addition to banks?

**Mr. Humphrys:** Mr. Chairman, if the subsection were expanded that far, I think it would so narrow the application of the bill that there would be hardly anybody left in it. Senator Flynn's analysis is quite accurate that the purpose of this reference to the chartered banks is primarily an administrative one, and not really intending in principle to exempt companies that were invest-

ment companies, but rather accepting that possibility as something that went along with the desire to avoid having to grant exemptions for a great number of companies or having to study a great number of companies that really only do financing from their banks. I should like to make one point in case there is any misunderstanding of it. As we conceive this and the way it is set up, if a company borrowed only from the bank, then, as this is set up, it would be exempt. But if it borrowed anything from outside the bank, then the whole borrowings are taken into account including the bank loans. We do not measure only the borrowings outside. We measure whether the company is in or not, and if it is in then we measure all the borrowings.

**The Chairman:** You mean if it borrowed a dollar then the total borrowings would have to be counted in the determination as to whether it was or was not an investment company?

**Senator Flynn:** You are suggesting that an exemption will apply only if you borrow exclusively.

**The Chairman:** That is right.

**Senator Flynn:** Otherwise, if you borrow, say, \$10,000 from a trust company and \$1 million from the bank, then the total borrowings come within the formula here. I do not know if that reinforces my argument or not.

**Mr. Humphrys:** For the purpose of the measure I believe it would be preferable to strike out the reference to banks than to expand it to include the whole range of financial institutions.

**The Chairman:** Well, if you analyse that for a moment, the kind of bank borrowings which you mentioned and which you said or suggested should provide this exemption or exclusion—the ordinary borrowings by a company from its bank would be in connection with the day-to-day operations of the company, and that kind of a company using the borrowed moneys for that purpose would not read on this definition section of the business of investment in any event. So that for the purpose of ordinary bank borrowings it does not matter whether this exclusion is in there or not.

**Senator Flynn:** Well, then, why not take it out?

**The Chairman:** Well, I have great respect for Mr. Humphrys and I do not like to emasculate his child without good cause. What would you say, Mr. Humphrys, as to taking that provision out?

**Mr. Humphrys:** Well, Mr. Chairman, I think that the statutory exclusions have been considerably expanded since the bill was originally introduced. That provision relating to chartered banks was a provision in the measure as it was introduced and you will probably recall that at that time the scope was considerably wider than it is now. For example, a company which had 25 per cent of its assets in investment-type assets would come under the measure. Now that was changed to 40 per cent and then there was this whole series of statutory exemptions put in by the committee. So I think that the kind of



problem that concerned us when we proposed that exemption for companies that borrowed exclusively from banks is perhaps less urgent or less important than it was in the original concept of the measure.

**The Chairman:** On balance then you suggest that we leave it. Is that right?

**Mr. Humphrys:** I would still leave it, but I recognize the point that Senator Flynn makes. We have not felt through this measure that being subject to the act is going to be such a burden to a company as to create a special field of business for the banks on the part of companies that are desperately trying to avoid this measure. But if the senators thought that that would be the case, I would say that it was not the intention in putting forward this measure to create a specially preferred field of business for banks as compared with other financial institutions.

**Senator Connolly (Ottawa West):** What about the protective element for the public? By having this in, it gives the public a little more protection, does it not?

**Mr. Humphrys:** No, I would say that by striking it out you are giving more protection. On that particular point it gives the banks more protection.

**Senator Macnaughton:** But you can also kill expansion with so much protection. How would you describe a merchant bank?

**Mr. Humphrys:** Well, I suppose it is a matter of anybody's own feeling about it. I would think that a merchant bank is one whose prime function is financing the development of industry as compared to its day-to-day operations.

I recall that in Mr. Vineberg's comments he was making the point that he feared this measure would be hampering to companies. We have not approached it from that point of view. We did not contemplate that the kind of supervision exercised here would be such as to limit or hamper the normal activities of the company but, rather, that it would work in such a way that it could be useful to the companies and it would be useful to all well managed companies by having some way of controlling the companies that get into really bad difficulties that damage everybody. But it was certainly not our intention, as administrators, to sit at the board table of every one of these companies or to ask them to clear every possible move with us. I think fears of that type just would not prove to be so.

**Senator Macnaughton:** I think it is fair to say that no one has any fear as long as you are there, Mr. Humphrys, but who can tell in 25 years?

**Mr. Humphrys:** I can only say, Mr. Chairman, that our department has been in business a long time, there have been various Superintendents in charge, and I think throughout the history of the department the companies that have worked with it and that have been supervised by it have not felt that the application of the supervision has been hampering or restrictive. I think they rather

feel that over the years, the way it has been run, they have gained a good deal from it as well as being subject to the supervision of it.

**The Chairman:** We are down to the question as to whether we leave in or take out the provision in relation to Canadian banks. Then there is the secondary question, as to whether we expand by adding institutional lenders in this category. Mr. Humphrys' answer to the second point is that we do considerable emasculation of the bill by adding institutional lenders.

On the banks, the only situation that would be covered by striking out the reference to banks would be that if a company which was really an investment company borrowed money from the banks, not for day-to-day commercial or industrial operations but for investment purposes, and then went out and used that money in various directions...

**Senator Flynn:** I think that is fair. They are like any other investment company.

**The Chairman:** Yes.

**Mr. Humphrys:** In that connection, if a bank had a subsidiary company which was a mortgage loan company within the meaning of the Loan Companies Act, it would be subject to all the degree of supervision applicable to any other loan company, whether it got its money from the bank or any other source.

**Senator Macnaughton:** And if it was an investment company, the same thing?

**Mr. Humphrys:** Well, as the bill now is, an investment company would not be subject, but if this was struck out it would be in the same position.

**Senator Flynn:** It creates inequalities.

**Senator Macnaughton:** Must the borrowing be only from Canadian banks?

**The Chairman:** That is right.

**Mr. Humphrys:** Yes, the way the bill is set up.

**The Chairman:** If they have a dollar of debt from any other borrowing, then all their borrowings must be brought into the calculation of the formula.

**Senator Desruisseaux:** Will we be creating a preferential situation for co-operatives?

**Mr. Humphrys:** I do not think so, senator.

**Senator Desruisseaux:** If four or five investment companies formed a co-operative to do their work, what would happen then?

**Mr. Humphrys:** Only in the situation if you had four or five co-operatives which formed an investment company, each having more than 10 per cent of the stock, and the investment company got its money only from the co-operatives, then it would not be under this bill because it would be borrowing only from substantial shareholders. But that would not be a course that is available exclusively to co-operatives. It would be available to any

group of corporations or individuals who put together a company on that basis.

**The Chairman:** Is the committee ready to decide?

**Senator Hollett:** I have one question, Mr. Chairman. At the top of the page it states:

(ii) substantial shareholders of the company within the meaning of paragraph (b) of subsection (3) section 9;

I have looked at subsection (3) of section 9, and I cannot find any paragraph (b).

**Mr. Humphrys:** It should be "paragraph (b) of subsection (4)", senator. There was a new subsection put in there, and this subsection was not corrected.

**Senator Hollett:** It should be subsection (4), should it?

**Mr. Humphrys:** Yes.

**The Chairman:** What is the view of the committee? Shall we leave the provision in relation to banks?

**Senator Flynn:** I would move that we delete it.

**The Chairman:** Deleting it would mean striking out subparagraph (i) on page 4. Otherwise the section would remain in its present form, plus the amendment in relation to substantial shareholder and members of family.

**Senator Connolly (Ottawa West):** I know we have been thrashing it back and forth, but is Mr. Humphrys satisfied that the deletion of the words in question still makes this bill effective?

**Mr. Humphrys:** Yes, Mr. Chairman. The deletion of those words would not reduce the effectiveness of the measure.

**The Chairman:** As a matter of fact, it might bring into your administration situations in relation to investment companies that it might be advisable to have in—the situation you mentioned, where the money is borrowed from the bank and those borrowings are used for investment purposes, and that may not be very wisely used.

**Mr. Humphrys:** It would bring more companies under the bill rather than the other. It would probably bring a lot more companies in for examination to see whether they are under the bill, and probably would require more study of exemptions, but it is hard to measure that. I do not think the number would be as great as under the original concept.

**Senator Macnaughton:** It would give you a great deal more experience, which is all to the benefit of the public.

**Mr. Humphrys:** Yes.

**The Chairman:** Are you ready for the question? Shall we strike out subparagraph (i), which deals with companies to which the Bank Act applies?

**Hon. Senators:** Agreed.

**The Chairman:** Those who support the deletion?

**Senator Carter:** I am not quite sure if Mr. Humphrys is agreeable to this.

**The Chairman:** Yes.

**Senator Connolly (Ottawa West):** Yes, he is.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

Then, what we have done is, in paragraph (d), on page 4, we have struck out subparagraph (i), which reads:

(i) companies to which the *Bank Act* applies;

Then there is the other aspect where we enlarge. Subparagraph (ii) then becomes subparagraph (i), and we enlarge the area of borrowing that is not to be included in the determination of whether it is an investment company, to include the language I have read, which become subparagraph (iii):

The spouse, child, parent, brother or sister of a substantial shareholder of the company...

**Senator Flynn:** Does "parent" mean father and mother?

**The Chairman:** Yes. We say:  
the spouse, child, parent...

**Senator Flynn:** In French "parent" includes the whole family. In English "parent" would mean only the father and mother? "Parent" in French includes everybody in the family.

**The Chairman:** But if we say "father and mother", we are getting down to specifics.

**Senator Flynn:** First degree?

**The Chairman:** Yes. In the French translation we have "father and mother". We might as well put it in the English. In this amendment, of which I take it the honourable senator approves, we are striking Roman numeral I on page 4.

**Senator Desruisseaux:** Sub-paragraph (i) does not affect what we do here. It does not exclude a company to which the Bank Act applies.

**Senator Flynn:** A company that borrows from a bank may be an investment company.

**The Chairman:** It is the borrowing and the person who borrows who may not be an investment company.

We have struck out sub-paragraph (i) on page 5 of subsection (d), and (ii) becomes (i). That remains as is, except that we change subsection (3) to subsection (r). Then we have sub-paragraph (ii) which refers to the word "parent". I do not think there is any difficulty in interpreting the word "parent" in English. In the French translation we have used the words "father and mother"; so there would be no need to change the word "parent" in the English text.

**Senator Flynn:** I merely wanted to be sure that it meant only that.



**The Chairman:** Sub-paragraph (ii) which we are adding would then read:

spouse, child, parent or sister of a substantial shareholder of the company within the meaning of paragraph (b) of subsection (4) of subsection 9 and

Does the committee agree to that addition?

**Hon. Senators:** Agreed.

**Senator Connolly (Ottawa West):** Instead of using the word "parent", in order that the English and the French versions should be completely in harmony, perhaps we might use the words "father and mother".

**The Chairman:** In English the words "father and mother" mean parents.

**Senator Flynn:** The only argument in favour of Senator Connolly's suggestion is if somebody wanted to interpret the word "parent" in French.

**Senator Carter:** Would not the word "parent" in English mean also foster parents?

**The Chairman:** Do not let us spend too much time on this item. If we wish to use specific language, let us use "father and mother".

**Senator Connolly (Ottawa West):** We get into the problem of who is the father and who is the parent.

**The Chairman:** We will use the words "father and mother". Of course, if foster parents can be described as parents in law, then they are parents; but ordinarily that is not so. Is it agreed that instead of the word "parent" we use the words "father, mother, brother or sister"? Does that meet all the viewpoints that have been raised? Very well, that is agreed.

Now, Mr. Humphrys, we move on. The next provision to be dealt with, and in connection with which we had questions raised is in section 9. I draw the committee's attention to page 10 of the bill, subparagraph (5) down towards the bottom of the page. It deals with the duty of auditors and the obligation that is imposed on them:

It is the duty of an auditor of an investment company to report in writing to the chief executive officer and the directors of the company any transactions or conditions affecting the wellbeing of the company that in his opinion are not satisfactory and require rectification; and the auditor shall, at the time any report under this subsection is transmitted to the chief executive officer and the directors of the company, furnish a copy thereof to the Minister.

We have had a submission from the Canadian Institute of Chartered Accountants calling attention to that section. They are concerned about this provision because it broadens the auditor's responsibility to a degree which could subject him to all manner of legal action.

They say:

We would prefer to see the section withdrawn; but failing this we believe that as a minimum an auditor

who follows the course of action contemplated by subsection (5) should be able to do so without incurring liability if he is acting in good faith.

They attached a draft which I have submitted to Mr. Humphrys for his consideration. I understand he has no objection to this. I further understand that the auditors have been in touch with him also.

The suggestion is that we add another subparagraph (6), which would read as follows:

Any auditor who has acted in good faith and with due care is not subject to any liability that might otherwise result from a report made under subsection (5).

**Senator Beaubien:** How could an auditor be responsible under subsection (5) if he acted in good faith? It is pretty hard to imagine any circumstance where, having written to the minister, one could claim damages.

**The Chairman:** He may have acted in good faith and even with due care, but his judgment and his assessment of the transaction...

**Senator Beaubien:** Judgment cannot hurt a company unless the minister concurs.

**The Chairman:** But the minister, as a result of this report, may take some action which would adversely affect the company.

**Senator Beaubien:** The minister might?

**The Chairman:** He could. What has spurred it is the fact that the auditor's report in the long run might turn out to be a bad assessment—not a deliberately bad assessment, but a bad assessment—of the situation.

**Senator Macnaughton:** A situation in the United States is developing where auditors can be sued almost on sight, even if they have acted in the best of faith, or anything else. This provision from their professional point of view is therefore very important. As members know, even if one is a director today one can be sued if one has not given the ultimate in good care and studied a question.

**The Chairman:** You know, it is becoming almost as bad in Canada now to be a director.

**Senator Beaubien:** The trouble is we have far too many lawyers. I do not see how the auditor, if he is doing what he is told to do in subsection (5), can be sued by the company. If the minister takes action, surely it is his decision.

**Senator Flynn:** Maybe it sounded superfluous because of the reasons given by Senator Connolly to support it. It says "in his opinion". Of course, it presupposes that he has done what the law requires him to do, and he should not be liable for it. If he gives his opinion that such a transaction should be drawn to the attention of the directors, very well; if it is his opinion that it should not, he should not be liable.



**Senator Connolly (Ottawa West):** Directors are inclined to be in this respect dependent upon the viewpoint of the auditor. If this section does not water down the responsibility of the auditor and tend to make him careless in his work, I would think that it is a proper addition and clarifies the contents of subsection (5).

**Senator Carier:** Does the fact that the auditor is required to send the report to the minister create trouble? Why not have the chief executive officer do that? Why impose the responsibility on the auditor? He has discharged his duty when he has reported it to the company officials.

**Senator Flynn:** It is because the minister wishes to have an independent report; the auditor as such has to be neutral.

**Senator Connolly (Ottawa West):** The auditor is actually appointed by the shareholders. The chief administrative officer, or the officers of the company do not appoint him. He is appointed to arbitrate, presumably, in the case of dispute between the shareholders and the executive.

**Senator Carier:** As long as the minister receives the report of the auditor, why should it make any difference whether he gets it from the auditor or from the chief executive officer?

**Senator Beaubien:** If the chief executive officer is doing something he should not do, he may not send the report. That is why we want an independent man to send it.

**Senator Connolly (Ottawa West):** I think the auditor would prefer to see this provision, because it confirms his position as a representative of the shareholders, rather than of the executive.

**Senator Gelinas:** If Mr. Humphrys is satisfied, I would move that subsection (6) be added.

**Mr. Humphrys:** I have no objection.

**The Chairman:** Are you satisfied with the wording?

**Mr. Humphrys:** Yes.

**Senator Macnaughton:** It is an important trend to establish.

**The Chairman:** This trend is found also in other directions. It has been duly moved and approved that subsection (6) be added to section 6 of the bill on page 10 and that it shall read as follows:

Any auditor who has acted in good faith and with due care is not subject to any liability that might otherwise result from a report made under subsection (5).

**Senator Hollett:** Who is going to decide that?

**The Chairman:** The court may ultimately have to decide it.

**Senator Hollett:** But is there a danger that the company may, without taking action, dismiss the auditor?

**Senator Connolly (Ottawa West):** The shareholders are the only people who control the auditor; they appoint him.

**The Chairman:** The directors cannot dismiss the auditor; this can only be done by the shareholders.

**Senator Connolly (Ottawa West):** He is there for their protection.

**The Chairman:** Yes; I think it is a measure of reflection. It may avoid a lot of rash litigation. This is carried.

Mr. Humphrys, we move now to section 9, at the bottom of page 11 and proceeding to page 12. The Federated Council of Sales Finance Companies appeared. They had a problem arising from the fact of the manner in which this business, the financing of cars, is carried on. There are the manufacturers, acceptance or investment companies and the dealers. In connection with dealers, the going trend as I understand it has been that there are many tied dealers. That means that the manufacturing company may provide a substantial part of the capital for the dealer, then the acceptance company, which is an investment company which buys the paper of the dealer, may also be owned substantially or entirely by the manufacturing company.

In those circumstances under section 9 as it now reads, the loans that might be made between the manufacturing company and the investment company or the investment company and the dealer would be prohibited. That is correct, is it not, Mr. Humphrys?

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** An effort to relieve that situation somewhat is contained in subsection (5) on page 14. The opportunity for exemption is provided in this language:

(5) Where any person or group of persons is a substantial shareholder of an investment company...

In this case let us say an acceptance company.

...and, as a consequence thereof and of the application of this section, certain investments are prohibited for the investment company, the Minister may, by order, on application by the investment company, exempt from such prohibition any particular investment or investments of any particular class if he is satisfied that the decision of the investment company to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that person or group and does not involve in any significant way the interests of that person or group, apart from their interests as a shareholder of the investment company.

The representations which were made to us were to the effect that in the circumstances of the method of operation in this car business it could not be stated that the decision of the investment company to make or hold any investment or exemption has not been and is not likely to be influenced in any significant way by the fact that they have an investment. Representations have also been made to Mr. Humphrys.

We have had discussions with Mr. Humphrys, resulting in his production of a draft of a proposed paragraph (b) to be added to subsection (5), making the first part paragraph (a). I will give you that in a moment, but the effective part would be this:

Any investment so exempted would be in a corporation in which the significant interest of the substantial shareholder is temporary and incidental to the principal business carried on by the substantial shareholder.

**Senator Flynn:** Do you intend a restriction of the exemption?

**The Chairman:** No, this is a restriction of the prohibition. It is an expansion of the exempting power. First of all in this clause you have a prohibition in those relationships.

**Senator Connolly (Ottawa West):** Could we use an illustration? Let us use names, simply for the sake of argument. Everyone knows of the company called General Motors Acceptance Corporation, which presumably is owned by General Motors. The business of General Motors is manufacturing automobiles, presumably. What you are discussing here are cases where General Motors finance dealerships and take an equity position, or even a debt position, in the financing of the set-up of the dealer. Is that the position?

**The Chairman:** Yes.

**Senator Connolly (Ottawa West):** That is literally what you are talking about?

**The Chairman:** That is right. We have stated that. Mr. Gregorovich, you were here representing the Federated Council of Sales Finance Companies last time. Have we correctly stated the position?

**Mr. J. B. Gregorovich, Chairman, Legal and Legislative Committee, Federated Council of Sales Finance Companies:** Yes, the position is correctly stated. In the case the honourable senator mentioned, the finance company would provide the finance for the automobile dealer.

**The Chairman:** Is the language of the amendment I read satisfactory to relieve the prohibition so far as the operations you have described are concerned?

**Mr. Gregorovich:** Yes, Mr. Chairman, we are satisfied they would provide the minister with a discretion that would relieve the situation.

**The Chairman:** All we are doing is providing a basis for the exercise of discretion by the minister. We are not compelling him to grant the exemption in the exercise of his discretion; we are only providing guidelines that he may use, if he determines that the interest of a substantial shareholder is temporary and incidental to the principal business—and I think in the circumstances as you related them to us last time it might well be said that it is incidental to the principal business. It may be neces-

sary to finance the dealer, but that is incidental to the main purpose, which is to sell cars and finance the paper.

**Senator Connolly (Ottawa West):** And make cars.

**The Chairman:** Yes.

Mr. Humphrys, we have been doing all the talking, but this bill has your sponsorship. What have you to say about this?

**Mr. Humphrys:** As the case was put before this committee and to us, the equity position taken by the manufacturer in a dealership was, as we understood it, incidental to the main business of the manufacturer, which was making and selling cars. It was a temporary position, in the sense that the manufacturer did not contemplate that as a permanent way of distributing his product. We recognize that the word "temporary" is not a very precise word, and we can conceive of cases where the equity position in a dealership might last quite a while. It might happen that the dealer did not do as well as he thought he would and he could not buy out the manufacturer as quickly as he should, or he might die and another man might have to be put in. The concept is that it is not permanent; at least, it is not intended as a permanent way of financing. Within that concept we think the way should be open to consider the case and grant an exemption if it is a legitimate method of operating.

**The Chairman:** Is it agreed?

**Hon. Senators:** Agreed.

**Senator Flynn:** I may be touching on another point, but I was wondering about this power of exemption in subsection (5), whether it would apply to the obligation described in subsection (2) for an investment company to divest itself of any investment after the coming into force of the act which is contrary to the provisions of clause 1. It may not be easy to divest itself of an investment, especially if it is a term investment. You might lose money, and it does not seem to me the power of exemption as described in subsection (5) would apply to a specific case like that.

**Mr. Humphrys:** I think that point is dealt with in subsection (7).

**Senator Flynn:** I see.

**The Chairman:** Are you satisfied?

**Senator Flynn:** Yes.

**The Chairman:** This is the way subsection (5) would read, for the purposes of the record. We would strike out lines 11 to 18 on page 14 and substitute the following in paragraphs (a) and (b):

(a) the decision of the investment company to make or hold any investment so exempted has been and is not likely to be influenced in any significant way by that person or group and does not involve in any significant way the interests of that person or group, apart from their interests as a shareholder of the investment company.



That is pretty much the language in the clause at the present time. Then we say "or" and add paragraph (b), which is the new part, which reads:

any investment so exempted would be a corporation in which the significant interest of the substantial shareholder is temporary and incidental to the principal business carried on by the substantial shareholder.

Is the committee agreed that we so amend subsection (5)?

**Hon. Senators:** Agreed.

**The Chairman:** We have passed over a question raised by Mr. Vineberg last week concerning page 5, in clause 3, where guidelines are given as to the basis on which the minister may exercise his discretion and grant exemption. Mr. Vineberg raised the question whether there should or should not be provision for a judicial review of the exercise of that discretion, because in another context in the bill there is provision for judicial review where, because of the kind of operations a company is carrying on, the Superintendent moves in and may, under direction of the minister, take certain steps in relation to the continued operation of that company etc. There is provision in the bill for judicial review there.

This question of judicial review in relation to this kind of discretion is a different sort of thing. First of all, if for any of the reasons stated, or, to put it more broadly, if for any reason at all, the minister finally decides under clause 3 that he can grant an exemption—and he may read some of the guidelines very broadly in order to do that—where will there be any demand for review? Certainly not from the person who gets his exemption; he will be very happy. The situation whether or not there should be judicial review would, I take it, only arise if the minister says, "No".

**Senator Flynn:** Revoking.

**The Chairman:** No. If he says "No, I will not grant an exemption".

**Senator Flynn:** If he revokes the exemption.

**The Chairman:** Yes. If he says, "No", what is the position now? I think the position now under the law, if I might suggest it, is that if the minister has exercised his discretion—in other words in coming to a decision has acted reasonably—then the courts will not review it. If he has not acted reasonably the courts, on the basis of the legal decisions there are, will conclude that he has not exercised his discretion, and they will tell him to go back and try it again. That is the famous Pioneer Laundry case.

**Senator Flynn:** I think the new federal court would have the jurisdiction to deal with a case like that.

**The Chairman:** Yes. You remember the Pioneer Laundry case where the deputy minister of national revenue for taxation was concerned.

**Senator Flynn:** It could be dealt with in the federal court.

**The Chairman:** My own feeling in the matter is that I think there is protection in section 3, having regard to the general law, for any person who is dissatisfied with the exercise or so-called exercise of discretion and that it would be cumbersome. It might defeat the purposes of the act even, to contemplate a specific provision in this bill providing for judicial review. I would not want to have to draft it, I would want somebody else to draft it.

**Senator Connolly (Ottawa West):** I think that Mr. Vineberg agreed last week, with that reasoning, that you have just stated.

**The Chairman:** Yes. I mentioned it. He raised this. So I thought we should indicate that we have had a good look at it. I have expressed my view and I think that is your view, too, Mr. Humphrys?

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** This is for the committee to decide. Shall we leave it the way it is, under the state of the law as it is? Is that agreeable?

**Hon. Senators:** Agreed.

**The Chairman:** Now we move on. Under section 15 of the bill, you remember, on the first time round, we had quite a discussion with Mr. Humphrys. Section 15 on page 26 deals with a power which is given to the minister in connection with finance companies that have not resident shareholders, that is, finance companies that are under Canadian control, of course. We had quite some discussion, first of all, whether such a provision giving the minister the right, that he must consent to a sale or disposal of the whole or any part of the undertaking, or in these circumstances you cannot make a sale or disposal without his consent.

We have wrestled with this for some time, Mr. Humphrys and myself, and we have finally come up with this wording.

There was some concern about "any part of the undertaking" and I think the feeling we had was that rather than that language, it should be "a substantial part". We were concerned about the word "disposal", as to how broad the word "disposal" was, and we finally thought that if we delimited it by saying "disposing absolutely" we would cover that situation which we were contemplating—that is, if you were going to borrow, going to have an underwriting and charge the assets, that is a kind of disposal, and I do not think that was the kind intended. So we put in the word "absolutely" there. As changed, this is the way it would read. Instead of having this in the form of really a prohibition, "no sale or disposal shall take place", we would say:

A sales finance company to or in respect of which sections 11 to 13 apply...

Those are what I call the non-resident sections.

shall not sell or otherwise dispose absolutely of the whole or any substantial part of its undertaking, and the sale or disposal is of no effect unless or until it has been approved by the minister if, in the opinion of the minister, it would be likely to result directly



or indirectly in the acquisition of the whole or any substantial part of the undertaking by a non-resident.

We preserve the principal purpose of the section but I think it is a more satisfactory form and it is clearer now. I believe I am not misquoting Mr. Humphrys to say that this changed form of section 15 would be acceptable to him.

**Mr. Humphrys:** I would like to say, Mr. Chairman, that that is correct, that it would be acceptable. I must say that I still prefer the original form because I think the introduction of the word "substantial" raises another form of uncertainty. But, as you have said, Mr. Chairman, if the revised word appeals to the committee I do not think we would object to it.

**Senator Connolly:** I wonder if there could be an answer on this point. Suppose, for the sake of argument, there are several offices of the federal sales finance companies and one of them decides that it is not profitable to keep that office open as it is not doing enough business and it proposes to transfer its paper to another sales finance company with an office in that community, in that case the transferee is foregoing? I take it that in that case that would be ruled to be a transaction in the ordinary course of business, if they sought directions from the Superintendent, and that it would not be a case to be covered?

**Mr. Humphrys:** We would have to look at the particular case, Senator Connolly. If it was the sale of a branch of the company with all the business connections of the whole territorial business, we would look at it as a sale of part of the company's undertaking. If it were a sale of only receivables arising from a particular area, without any discussion about the sale of the business or business connections, then it would probably be a sale of assets. It would take a bit of judgment in each particular case.

**Senator Connolly (Ottawa West):** I do not go quite so far as the segregation. I simply talk about the disposal of paper and the closing of the office.

**Mr. Humphrys:** I think that would probably not be a sale of part of the undertaking, it would simply be disposing of some of the assets.

**Senator Connolly (Ottawa West):** Thank you.

**The Chairman:** Is this amendment agreed to, to section 15?

**Hon. Senators:** Agreed.

**The Chairman:** We turn now to section 16 of the bill, which is on page 26. If you remember, we wanted to be sure in regard to the Canadian Deposit Insurance Corporation. There is provision there where that deposit insurance company may make loans to a sales finance company. We wanted to be sure that they did not use their money, which they had collected from the various banks who have to contribute to this deposit insurance fund, for purposes of making these loans. While it appears subse-

quently in the statute that this money is to be provided specifically out of the Consolidated Revenue Fund, we felt that there should be a tie-in between the authority for making loans and the reference to the Consolidated Revenue Fund. Therefore, we suggest that subclause (1) of clause 16 of Bill C-3 be amended by striking out line 18 on page 26 and substituting the following:

'may, out of amounts advanced to the Corporation pursuant to section 29, make short term loans to the sales'

That is, to the sales finance company.

Now, this removes any doubt there might be that the Deposit Insurance Corporation might be using moneys other than moneys specifically advanced out of the Consolidated Revenue Fund. Mr. Humphrys approves of that.

**Senator Connolly (Ottawa West):** Mr. Chairman, I am afraid I did not quite follow you there. Does this mean that the only moneys available to correct the situation in which the Deposit Insurance Corporation has to intervene must be moneys contributed by way of premiums paid by the company that is in difficulty which brings the Deposit Insurance Corporation in?

**The Chairman:** This means that the revenue of the Deposit Insurance Corporation which it gathers under the authority in that statute shall not be used for purposes of this act to make loans to sales finance companies. On page 40 clause 29 (1) reads as follows:

Subject to subsection (2), out of the Consolidated Revenue Fund, the Minister

(a) may, on terms and conditions approved by the Governor in Council, authorize advances to the Canada Deposit Insurance Corporation (in this section and section 30 and 31 referred to as the "Corporation") of amounts required for the purpose of making loans under section 16;

All we are saying in clause 16 is that the moneys that you use for purposes of those loans can only be the moneys that are so advanced out of the Consolidated Revenue Fund. In other words, we are tying in both of these clauses which deal with this money that goes to the Canada Deposit Insurance Corporation.

Mr. Humphrys, this carries your approval?

**Mr. Humphrys:** Yes, sir.

**The Chairman:** Are there any questions? Is it approved?

**Hon. Senators:** Carried.

**Senator Connolly (Ottawa West):** Perhaps I should not be asking a question on this now that the committee has approved it, but this does not in any way limit the kind of back-up that was contemplated when the act was written, when these sections were inserted in the act to support the position of the Canadian sales finance company that might be in difficulty?

**Mr. Humphrys:** No, Senator Connolly. The concept in the bill was that the Canada Deposit Insurance Corporation would act as an agency for the purpose of making

loans to sales finance companies that are under Canadian control, if the loans are necessary for liquidity purposes. The insertion of the words just referred to only served to confirm in specific language the intention that the CDIC would act as an agency and would not use its deposit insurance funds for this purpose, because its deposit insurance operations are quite separate from this kind of thing.

**Senator Connolly (Ottawa West):** Yes, I can see that.

**The Chairman:** If you will remember, on the first round when we were dealing with this bill, we got into some discussions about the language that is used in the provision for regulations, and the wording of clause 32 on page 41 of the bill is as follows:

32. The Governor in Council may make regulations to ensure the carrying out of the provisions of this Act.

The committee at that time had a view that the word "ensure" was an unfortunate word to use in that connection. What does it mean? Does it mean guarantee?

**Senator Flynn:** It is not a new expression.

**The Chairman:** No. Well, in some connotations it is, yes, but not here.

At any rate, we have come up with a suggested rewording of clause 32 of which Mr. Humphrys approves. We suggest that Bill C-3 be amended by striking out clause 32 on page 41 and substituting the following:

The Governor in Council may make regulations necessary for the carrying out of the provisions of this Act.

So we are not writing in any assurance or any guarantee or anything else. Of course you know what we are still on the hunt for all the time: we do not want under the guise of regulations something approaching legislation—in other words, substantially altering or adding to the provisions of the bill. So we have this as "necessary for the carrying out of the provisions of this Act." And that certainly keeps it away from so legislating.

**Senator Flynn:** "Necessary"? If the section is badly worded, it would be necessary to adopt regulations to ensure the carrying out of this act.

**The Chairman:** Well, however badly worded or however well worded the section may be, senator...

**Senator Flynn:** I think it means the same thing, Mr. Chairman, with all due respect.

**The Chairman:** It cannot mean the same thing as "ensure".

**Senator Connolly (Ottawa West):** Would the word "required" be any better?

**The Chairman:** The word "necessary" is one word that is used at times in this connotation.

**Senator Connolly (Ottawa West):** I think we should stick with words that have been used because they have been before the courts.

**The Chairman:** Mr. Humphrys is prepared to accept this change. He feels it is not going to embarrass him.

**Senator Macnaughton:** The burden is on Mr. Humphrys to show the necessity. Under "ensure" he interprets.

**The Chairman:** Well, if Mr. Humphrys is ready to become an interpreter...

**Senator Macnaughton:** No, I was arguing that I think the word "necessary" is a much better word. It is a much fairer word than the word "ensure". The word "ensure" implies compulsion.

**Mr. Humphrys:** I think that is probably a fair comment, Mr. Chairman.

**Senator Flynn:** In my opinion it gives full discretion to the Governor in Council to adopt any kind of regulation under this act, and amend it, add to it and subtract from it. I think we have always been very critical in the Senate and in this committee of giving the Governor in Council such wide powers of regulation. Usually we say that the Governor in Council may make regulations to do this, that and the other thing, having to do with certain provisions of the act.

**The Chairman:** You are overlooking something, Senator Flynn. The authority the Governor in Council has is to make regulations necessary for the carrying out of the provisions of the act. He cannot add to the provisions of the act. He can just provide machinery for the effective operation of the act.

**Senator Connolly (Ottawa West):** He has to act within the provisions of the act.

**The Chairman:** That is right.

**Senator Connolly (Ottawa West):** He cannot go beyond that.

**The Chairman:** If the act is badly drawn, he has to get an amendment. He cannot amend it by regulation.

**Senator Flynn:** I think if you had a wording such as this, "the Governor in Council may make regulations to ensure the proper administration of the provisions of this act", there would then be some limitation upon him. But simply having it as, "necessary for the carrying out of the provisions of the act", would not be good enough. It may be the intention that the Governor in Council find in the wording...

**The Chairman:** With all due respect, Senator Flynn, I do not see it that way. First of all, I shudder at the word "ensure".

**Senator Flynn:** If you would say "the administration of the provisions of this act" you would know where you were going.

**Senator Connolly (Ottawa West):** I do not often disagree with Senator Flynn, but I do now.

**Senator Flynn:** You do occasionally.



**The Chairman:** Well, Senator Flynn, we have to bow in the direction of Mr. Humphrys because he is going to be working on these regulations and I am not at all sure that he would like to have that language "for the purposes of the administration of the Act".

**Senator Flynn:** Well, if you do not accept my suggestion, I will not be offended, but I wanted to be on record about it. I think that this wording gives too wide powers to the Governor in Council.

**The Chairman:** Well, Mr. Humphrys has said that the wording is satisfactory to him and that the word "necessary" may be more apt than the word "ensure".

**Senator Flynn:** Of course Mr. Humphrys is bound to take this attitude because he does not want to have his hands tied. In any event I think this wording which we find too often in our legislation is too wide and the provision to make powers under the regulations should be defined and should be more precise and should not go as far as to suggest that the Governor in Council may add to or subtract from them.

**The Chairman:** Do not the words "for carrying out the provisions of this Act" mean for the purposes of administering the Act?

**Senator Flynn:** Well if you say, "the intention was to do this and therefore in order to clarify certain sections I have to adopt the regulations", then it is up to the concerned party to go to Court and contest the decision of the Governor in Council and that could be quite a task. Anyway, having registered my objection, I will leave it at that.

**The Chairman:** Then, what is the view of the committee, that we should strike out present section 32 and insert the one which I have read, that is:

The Governor in Council may make regulations necessary for the carrying out of the provisions of this Act.

**Hon. Senators:** Agreed.

**The Chairman:** Now, Mr. Humphrys, were there any other provisions or questions that were raised with which we have not dealt even to the extent of considering them and deciding not to do anything?

**Senator Flynn:** Before you put that question to Mr. Humphrys, may I put a question which flows from an amendment made earlier to section 2, subsection (3)(d). You remember we deleted the exemptions concerning borrowing from the bank and we added another subsection which exempted borrowing from the spouse, father, mother and so on and so forth. Is this logical when you consider the prohibition to make loans in section 9 where this prohibition is limited only to the spouse or children? Why do we have a certain group mentioned in this first section I mentioned and a rather restricted group in a section which is to me more important for the control because it would mean a loan could be made to the brother of a substantial shareholder or the father and mother of a substantial shareholder. I was wondering

whether we should not extend the prohibition to the same extent as we have granted the exemption?

**The Chairman:** What we have said in section 2 is that where the lender to a company is a member of the family as we have enumerated it, that borrowing shall not count in determination as to whether or not the company is an investment company. Now in section 9 we are approaching it from the point of view of the investment company itself and there is a prohibition against the investment company knowingly making an investment by way of a loan to a director or officer of the company or a spouse or child of such director or officer.

**Senator Flynn:** I was wondering whether we should not go as far as including the father and mother.

**The Chairman:** Well, the word "spouse" does include husband or wife.

**Senator Flynn:** Well, does it mean that they can borrow from a brother?

**The Chairman:** I shall ask Mr. Humphrys to deal with this.

**Mr. Humphrys:** Looking at section 9 first, Mr. Chairman and honourable senators, there is a prohibition against investments or loans where there is an implication of a conflict of interest. And in considering the problem that it poses to companies in their lending activities, it is a question as to how far you should expect them to know about family relationships. We started from the concept that everybody in the company should know who the directors and officers are, and the immediate household, if you like, of the directors and officers, being the spouse and children create a unit where it is very easy to manipulate the loans from one member to another. Therefore we thought it reasonable to propose a prohibition in those terms. But to go further and expect the loan officers of the company to know who the brothers of the directors and officers are or who their parents are and spreading out the family was creating, perhaps, a situation that was more than reasonable to ask for in a statutory prohibition. So that the proposal is limited to the members of the immediate family.

Now, coming to this other question that we considered this morning, Mr. Vineberg suggested that there were a very large number of companies made up on the basis of this close family connection, and he thought that if there was not a statutory recognition of this and a statutory exemption we might be faced with a flood of applications for exemption. Now we have no information which would let us know as to whether there are many companies of this type or not, but Mr. Vineberg expressed views about it and I feel that he must have good reason for doing so. So the question then was how far we should go, and you can start with a very limited group such as now appears in section 9, a substantial shareholder, his spouse and children. But one of the particular cases referred to was that of parents staking the children, so it seemed reasonable to put the parents in. But then where do you go from there? What is the situation with the brothers and sisters? You could go on and say what



about brothers-in-law or sisters-in-law or sons-in-law or daughters-in-law or uncles and aunts. So we did not feel we should propose a tighter prohibition in section 9.

**The Chairman:** There is one other point I want Mr. Humphrys to comment on. Mr. Vineberg raised the question the last day about the time provided for doing things and he referred in one case to section 5 of the bill, and particularly to subparagraph (8) on page 9. I should like Mr. Humphrys to explain that because some people may read that as providing a limitation to the effect that you must file your prospectus either at the time you borrow the money or within seven days. Now, this is not Mr. Humphrys' interpretation at all, and I think his interpretation is sound. Would you just explain it, Mr. Humphrys.

**Mr. Humphrys:** Yes, Mr. Chairman.

Where a company is borrowing under circumstances that do not require a prospectus, the section says that the company shall file with us, either before the borrowing or within seven days after, a statement of the nature and purpose of the borrowing in such detail as may be required by the Superintendent. So if a case arose where a company was going to the market pretty regularly in a pattern, every week or even every day, what we would ask for would be a general statement of their policy in this regard, at the outset, and that would be sufficient to cover the whole pattern of borrowing. We would not expect a statement to be filed every time they borrowed money. If it were a special situation that was not part of the continuing pattern, then we would ask for information, but we did not contemplate that companies would have to file with us every time they borrowed.

**Senator Connolly (Ottawa West):** In other words, a long-term borrowing or issue of debentures, or something like that, might require special attention, but short-term borrowings, on a day-to-day basis, would not?

**Mr. Humphrys:** All we would want is a general statement what they were doing in their borrowing policy.

**The Chairman:** There is no limitation on the use of the word "prior to the borrowing" so they can start back at any period of time where they have formulated their policy in relation to that, and if it is a transaction where they do not have to file a prospectus, then they can file a statement with Mr. Humphrys. Then they have complied with the provisions of the act, and it has not interfered with their convenience or anything else in the carrying out of their business.

There is one other item I would like you to make a comment on. Mr. Vineberg raised it. On page 28 he was concerned in section 18(2)(b) with the provision where:

The Minister may, at any time and in respect of any certificate of registry,...

(b) impose any conditions or limitations relating to the carrying on of the business of investment that he considers appropriate,

He was concerned that this might go so far as to enable you to lay down the rules and regulations in relation to investment. Would you develop that?

**Mr. Humphrys:** We would not interpret this as going so far. The purpose of asking for a provision such as this is in consistency with the other acts we administer where this kind of power is given to the minister. We consider that it is a very desirable tool in any supervisory legislation of this type, because it gives a way of requiring certain steps to be taken if they seem to be necessary in the particular circumstances, without having to invoke the almost overwhelming penalties or provisions in the subsequent parts of the statute.

From time to time we encounter cases where it is required to lay down a condition in relation to a particular company's operation, and this provides a way of doing it without really going to the extent contemplated in the subsequent sections. It is discretionary with the minister, but we have this kind of provision in our other acts and have administered it for a great many years.

I do not think, properly interpreted, it can be considered as permitting the minister really to legislate for companies, in general, through this device. It is a tool available to him to deal with special circumstances and, in our experience, is used very rarely. But I think it is an important tool to have as an intermediate stage in supervising companies.

**The Chairman:** And, Mr. Humphrys, the person who may be affected by any such direction that the minister would give has the right, under this very same section of the bill, and is entitled to the opportunity to discuss this matter and what the minister proposes to do before it is done.

**Mr. Humphrys:** Yes, Mr. Chairman.

**The Chairman:** This appears to cover all the things that were raised in the course of our consideration of the bill. I think we have fairly examined all the questions raised by those who made representations, and we may have introduced a few more of our own.

Now I put the question: Shall I report the bill, with the amendments which we have made?

**Hon. Senators:** Agreed.

**The Chairman:** I was going to suggest this as a method of procedure, that we will re-draft the bill, incorporating all these amendments, and then check it with Mr. Humphrys to make sure that we are in line with our understanding, and also have the benefit of the views of our assistant law clerk. That would mean that we would not be in a position actually to present the report until, say, next Tuesday evening. I would think that would be in order. We have made extensive amendments and, therefore, we want to be sure that they are properly reflected.

**Senator Connolly (Ottawa West):** The wording is very important here.

**Hon. Senators:** Agreed.

**The Chairman:** Is that agreed?

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

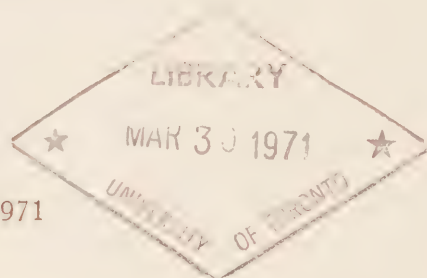
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No. 12

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WEDNESDAY, MARCH 3, 1971

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Complete Proceedings on Bills C-184 and C-191,  
intituled respectively:

“An Act to amend the Export Development Act”  
and

“An Act to amend the Farm Improvement Loans Act, the  
Small Businesses Loans Act and the Fisheries  
Improvement Loans Act”

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REPORTS OF THE COMMITTEE

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(For list of Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29).
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, February 25, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Hays, P.C., for the second reading of the Bill C-184, intituled: "An Act to amend the Export Development Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, February 24, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Argue, seconded by the Honourable Senator Molgat, for the second reading of the Bill C-191, intituled : "An Act to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Argue moved, seconded by the Honourable Senator Heath, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, March 3, 1971.

(14)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 11:40 a.m. to consider:

Bill C-184, "An Act to amend the Export Development Act"

and

Bill C-191, "An Act to amend the Farm Improvement Loans, the Small Businesses Loans and the Fisheries Improvement Loans Acts".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Everett, Flynn, Gelinas, Hays, Hollett, Kinley, Macnaughton, Walker and Welch—(17).

*Present, but not of the Committee:* The Honourable Senators Lafond, Sullivan and Urquhart—(3).

*In attendance:* Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

WITNESS: (Bill C-184)

*Export Development Corporation:*

Mr. H. T. Aitken, President.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

The Committee then proceeded to the consideration of Bill C-191.

WITNESS: (Bill C-191)

*Department of Finance:*

Mr. F. C. Passy, Chief,  
Guaranteed Loans Administration.

After discussion and upon motion it was Resolved to report the said Bill without amendment

At 12:25 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*



# Reports of the Committee

Wednesday, March 3, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-184, intituled: "An Act to amend the Export Development Act", has in obedience to the order of reference of February 25, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
Chairman.

Wednesday, March 3, 1971.

The Standing Senate Committee on Banking Trade and Commerce to which was referred Bill C-191, intituled: "An Act to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act", has in obedience to the order of reference of February 24, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
Chairman.



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, March 3, 1971.

[Text]

The Standing Senate Committee on Banking, Trade and Commerce, to which were referred Bill C-184, an act to amend the Export Development Act, and Bill C-191, to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act, met this day at 11.40 a.m. to give consideration to the bills.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have for consideration Bill C-184, to amend the Export Development Act. Mr. Aitken, the President of the Export Development Corporation, is present. He has appeared before us on other occasions and we have always been very happy with him and the way he presents things, so the stage is yours at this moment to tell us what this bill does.

**Mr. H. T. Aitken, President, Export Development Corporation:** Mr. Chairman and honourable senators, I would like, if I may, to take three or four minutes just to give you the brief background and history and the present position of the corporation.

The Export Credits Insurance Corporation, which was the predecessor corporation of the Export Development Corporation, was established in 1945, and we had only one facility, we provided export credits insurance; that is, we insured the foreign accounts receivable. We insured both consumer goods sold on short term credit, up to 180 days, and capital equipment sold on medium-term credit, up to five years.

Then in 1960 the Government decided that we should provide long-term financing facilities. So, for the past 10 years we have been financing on long-term capital projects abroad, substantial capital projects where Canadian exporters of capital equipment can supply the equipment on a competitive price, delivery, servicing basis, but where they could not make the sale unless long-term financing were made available. The Export Credits Insurance Corporation provided financing from 1960 on.

In 1968 and 1969 it was decided that the entire act should be reviewed, and inasmuch as the Export Credits Insurance Act had been amended some 15 times in its 25 years of existence, it was felt that we should have a new act. Also, to reflect the fact that the name Export Credits Insurance Corporation did not clearly describe our entire facility, it was decided to change our name, and we are now called the Export Development Corporation, which is more indicative of the operations and facilities we are providing to Canadian exporters.

At the time of drafting the legislation for the Export Development Act it was decided that we should add a third facility, regarding Canadian investors establishing, say, a branch plant in another country, in a developing country, by means of which the Export Development Corporation should be authorized to insure that investment in the developing country against the risk of expropriation or confiscation, against the risk of war or revolution in that country which might destroy the assets, or against the inability to transfer profits or repatriate capital.

So now the Export Development Corporation does three things: it provides export credits insurance for consumer goods and capital equipment; it provides long-term financing for major projects abroad, for exports of Canadian capital equipment, and it provides foreign investment insurance. That is what the present Export Development Act authorizes.

The present bill seeks approval to increase our capital, increase our ceiling of liabilities, make certain changes with respect to the operation of foreign investment insurance, add an additional director from outside the Public Service, and certain other consequential amendments.

With regard to the director outside the Public Service, the Export Credit Insurance Corporation had eight directors, all of whom were in the Public Service. The Export Development Corporation has 12 directors, eight of whom are from the Public Service and four from outside.

We have been so happy with the contribution of outside directors to our deliberations that the present bill proposes that instead of having eight from the Public Service and four from outside, we will have seven from the Public Service and five from outside.

The capital of EDC today is \$50 million, made up of \$25 million capital stock and \$25 million donated capital surplus. The bill asks that our capital be increased to \$100 million, made up of \$75 million capital stock and \$25 million donated capital surplus.

The present ceiling in the act for insurance is set at a certain number of times the capital. Were that figure to remain in the act our ceiling would become \$1 million, which is not required under today's circumstances.

So we are removing the multiple, leaving the ceiling as it was. When the Export Development Act was introduced a year and a half ago the ceiling which had been established under the previous Export Credit Insurance Act was increased by 150 per cent. So the proposed ceiling for export credit insurance at the corporation's risk is in this bill established at \$500 million.



Under long-term export financing the present ceiling for the corporation to lend on its own account is \$600 million. We are seeking an increase in that figure by \$250 million up to \$850 million. The Government has authority to instruct us to lend. It gives us the money and we are the medium through which financing is provided. At present the ceiling under the Export Development Act is \$200 million. It is proposed to increase that figure by \$250 million to \$450 million. So instead of having at present \$800 million for long-term financing, we will have \$1.3 billion.

**The Chairman:** On that point, when the Government directs you, within certain liabilities, do they provide the money at that time or do you have to find it within the limits authorized by the statute?

**Mr. Aitken:** They provide the money, but under the ceiling of the statute. With regard to foreign investment insurance, the present act requires that there be an undertaking of the host country that should EDC have to pay a claim to a Canadian investor, EDC would be recognized by the host country without having all the rights and authorities of the previous investor, and that in addition EDC would get no less favourable treatment than any other investor. This is a statutory requirement. We have found that this inhibited our operations.

We have in process some 25 negotiations with host countries to try to develop this type of agreement, with singular lack of success, except in two cases. We have been able to convince Barbados and St. Lucia that they should give us such undertakings.

The present bill proposes that that requirement be eliminated; but it is substituted by another requirement that the Minister of Trade and Commerce must be satisfied that the laws, legislation and economic and political climate of the host country is such that the provision of insurance for the investment would be reasonable.

**The Chairman:** Concerning protection of investment in foreign countries, how practical do you think that is? Is your liability to the person who suffers?

**Mr. Aitken:** Our liability is to the investor.

**The Chairman:** Is it a direct liability, that you undertake to reimburse without any dependence on how successful you might be in that country to recoup yourself?

**Mr. Aitken:** We do not protect the exporter against any commercial risk. If his business goes bankrupt, that is his baby.

**The Chairman:** But this insurance for investment is political?

**Mr. Aitken:** That is correct.

**The Chairman:** And if there were any form of revolution, you might lose that money?

**Mr. Aitken:** Yes.

**The Chairman:** And if there were any change in the climate that might lead to socialism and a failure to recognize obligations, you would be stuck?

**Mr. Aitken:** Correct. The United States has provided this type of insurance for the past 20 years. They have a ceiling of \$7 billion. We are seeking \$150 million. They have taken in something like \$75 million in premiums, and they have paid out, according to the latest official figures that I saw, something like \$600,000 in claims. They have two or three claims at the moment. The famous, say, Peruvian case was not an insured investment.

**The Chairman:** What has been your experience, in the operation of the act with relation to all these different coverages that you provide?

**Mr. Aitken:** Over the past 25 years we have insured \$3.5 billion, of which roughly two-thirds was at the corporation's risk and one-third at the risk of the Government. The Government has the same authority under the insurance operation as they have under long-term financing, in that in certain circumstances they can tell us to insure where our board turns it down.

Under the Government's program we have never had a claim. Under the corporation's business, where our board authorizes insurance, we have paid out claims in the amount of something like \$16 million and we have recovered slightly more than \$12 million. So there is roughly \$4 million outstanding, of which we have written off as irrecoverable \$1.5 million. If we consider our premium income, less our net loss, less our operating expenses, we are in the black somewhere between \$4 million and \$5 million, which is a very modest sum in relation to our current liabilities which are in excess of \$200 million. That is the insurance operation.

In the long-term financing we have been lending for 10 years. We have signed contracts totalling \$562 million. We have had six requests for extensions, for roll-overs, in five countries. We have been able to come to an arrangement with the borrower who is in difficulty, and I am very happy to tell you that as at December 31, 1970 there was not a single loan that we made—and we made 84 loans in 28 countries—that was in default.

**Senator Connolly (Ottawa West):** Do you lend at market rates?

**Mr. Aitken:** Yes. The instructions from our board are that we have to lend at the cost of money to us plus one-half of one per cent. We try to get what the market will bear, because there are certain cases where in order to help Canadian exporters compete with those from the UK, France, Italy or Germany, where the interest rate provided may be more favourable than the going market rate...

**Senator Connolly (Ottawa West):** You subsidize?

**Mr. Aitken:** We do not subsidize. We try to meet them. We try to help Canadian exporters be competitive. All the business that we did up to about two years ago was at 6 per cent. That was then the competitive rate. It was

a non-subsidized rate. The money was costing the board  $5\frac{1}{2}$  to  $5\frac{1}{4}$  per cent; but when the rates went up astronomically over the past couple of years we agreed to provide finance in certain cases where clearly we would lose money. By the way, we do not publish the rates at which we lend. However, we signed a financing agreement within the last few months in which the interest rate to us is 9 per cent.

**The Chairman:** Is your insurance of investments a recent innovation?

**Mr. Aitken:** Yes.

**The Chairman:** Have you had any claims, or losses?

**Mr. Aitken:** No, we have issued only one policy.

**The Chairman:** Is it confidential?

**Mr. Aitken:** No, because any insurance we issue under that section of the act is by authority of order in council, except for a delegated authority by which the board can do it if the amount involved is less than \$1 million. In this particular case it was for a hotel development in St. Lucia, where the Canadian interest is in the order of \$2.4 million. We are providing cover for 85 per cent of that. The policies are issued on a co-insurance basis; the investor carries 15 per cent of the risk and we carry 85 per cent. Senator Paul Martin was down there a couple of weeks ago and told me it was a first class investment, a first class place to stay.

**Senator Connolly (Ottawa West):** He should know.

**Senator Aird:** Mr. Aitken, can you tell me how you came to decide upon the proposed limits? Is this based on your forecast of a program over a period of years, or will you be back in two years saying the limits are inadequate?

**Mr. Aitken:** It is based on past experience and future prospects. The present hope is that the ceilings we are seeking will carry us forward until the end of 1974. We have had forecasts made of the demands for insurance and financing.

**Senator Aird:** One of the reasons for the question is that in hearings before the Standing Senate Committee on Foreign Affairs we had International Nickel discussing their prospects for a new development in New Caledonia. They were asked if they had communicated with the Export Development Corporation and the answer was no. The reasons were not developed, but it would seem that this is the kind of situation in which your corporation should be interested. Do you pursue this kind of business, seek it out?

**Mr. Aitken:** We are responsive. When we started we had a ceiling of \$50 million. It was an experimental situation. Over the past 18 months we have had 200 inquiries, totalling about \$300 million. Mr. Culham, who is the head of our Foreign Investment Insurance program, has spent some time with the other countries who provide foreign investment insurance and it appears that

maybe 30 per cent or 40 per cent of the inquiries result in active investment. So, on a \$300 million basis if we get 30 per cent we would have done \$90 million worth of business. We are seeking a ceiling of \$150 million.

However, the cabinet decided when approving the legislation that we should do two things: (a) we should insure only to developing countries, that we would not insure, for example, an investment in Germany, but we would insure a Canadian company in Latin America, the Middle East, the Far East or Africa; (b) we should not provide insurance for any investment in excess of \$5 million.

**Senator Aird:** What is your criterion for a developing country?

**Mr. Aitken:** We use the list of the Development Assistance Committee of the OECD.

**Senator Carter:** What proportion of the loans have gone to developing countries?

**Mr. Aitken:** With regard to foreign investment insurance, we have issued only one policy so far. With regard to long term financing, I would say that 90 per cent of all our financing has gone to the developing countries.

We made one loan quite recently, which will be of interest to the senators. We put up \$13.5 million to finance a steel mill into the United Kingdom. Isn't that something; coals to Newcastle. This is a patented, Canadian-developed process known as a mini mill which apparently is capable, by using scrap steel, of producing a type of product which is a by-product or an end product of a big mill. This project, which will use Canadian equipment and know-how exported from Canada to the United Kingdom, involved a credit from EDC to the borrower in the UK, which has to be repaid on a 10-year basis.

**Senator Desruisseaux:** Mr. Chairman, this makes the Province of Quebec very envious.

**Mr. Aitken:** But, senator, much of the business we have done has come from the Province of Quebec.

**Senator Connolly (Ottawa West):** In other words, as far as Quebec or any other province is concerned, you are facilitating the sale abroad of products produced in Canada.

**Mr. Aitken:** The sale of equipment in Canada which will ultimately produce in the U.K.

**Senator Connolly (Ottawa West):** This question arises from our work in the Standing Senate Committee on Foreign Affairs. When I was a member of cabinet I often used to wonder about this corporation insuring loans in South American countries, such as Chile, where Canadian organizations are selling capital equipment in areas where Canada is an important manufacturer of the product of the use of this equipment, such as paper mills. I do not ask this question in any carping sense, but are we by this process endowing a foreign country to the extent



that we will make it competitive enough to squeeze us out of markets and perhaps damage our economy?

**Mr. Aitken:** Senator, it is a very good question and one which concerns us. However, we feel that if we make the loan to purchase equipment in Canada on a basis comparable with the term and at the rate of interest which the borrower or buyer could get from other countries, we tend to benefit rather than hurt the Canadian economy, even in the case of pulp and paper mills.

Our very first transaction was in Chile, with a company called Industrias Forestales. It was in the order of a \$30 million pulp and paper mill and we put up the foreign exchange costs of about \$14 million. We were in competition for that business with the Germans and we just managed to beat them out on a question of price. We offered the same credit terms, the same rate of interest, but my feeling and contention, which I believe is supported certainly by the manufacturing community, is that to the extent our financing is provided to help produce capital equipment sold abroad it enhances the capacity and capability of the Canadian manufacturer. This should ultimately tend to benefit the purchaser of that type of equipment in Canada who, admittedly, will be producing pulp and paper in competition with Canada, but today is selling that pulp and paper, made with Canadian equipment, into Mexico.

There is no doubt that it would appear at first blush that it is perhaps creating competition for the Canadian manufacturer of the same end product, but the fact remains that if we do not do it, someone else will and their manufacturers will have more business and exports and be better off as compared to ours.

**The Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** We shall now consider Bill C-191, to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act.

Mr. Passy, Chief, Guaranteed Loans Administration, Department of Finance is here.

Mr. Passy, will you just tell us what you propose to do, and how successful you have been in what you have done so far?

**Mr. F. C. Passy, Chief, Guaranteed Loans Administration, Department of Finance:** Mr. Chairman, the purpose of this bill is to extend existing legislation on the three guaranteed loans programs for the three areas mentioned—farmers, small businesses and fishermen. The present legislation is due to expire on June 30, 1971, and the main purpose of this bill is to extend it for a further three years in each case, and to provide new loan pools for the chartered banks to lend under the programs. I would imagine most honourable senators are aware of

these three programs, which have been running for a number of years. The farm program has been going since 1945 or 1946, the fisheries program was introduced in about 1955, and the small business one in 1961. All three programs are designed to facilitate the availability of credit for use by these three groups for a wide range of capital projects.

**The Chairman:** Take the first group, the farm improvement loans: what would be the total of those, and how have they worked out?

**Mr. Passy:** The farm program has probably been the most successful. There has been a very substantial sum of money loaned under the farm program. Since inception a total of \$2.3 billion has been loaned.

**Senator Connolly (Ottawa West):** By "inception", what year do you mean?

**Mr. Passy:** Nineteen forty-five. The normal annual rate, you might say, for this program over recent years has been about \$200 million a year. It has dropped off. It dropped off in 1968 because the interest rate then in force, fixed in the original legislation, was 5 per cent, and by that time 5 per cent was not a particularly attractive rate, in 1968, so lending dropped off. The act was amended, along with the other acts, in 1968 to remove the fixed interest rate in legislation and provide for a formula related to the yield on Canada Bonds which would provide a rate more in line with the current rates at that time. At present the rate on all three programs is, I think,  $8\frac{1}{2}$  per cent.

**Senator Connolly (Ottawa West):** It is related, is it not, to the cost of money?

**Mr. Passy:** Plus one per cent.

**The Chairman:** What has been your experience? You have loaned \$2.3 billion over that period. What losses, if any, have there been?

**Mr. Passy:** The loss on all programs is less than one-tenth of one per cent. Certainly that on the farm and fishery ones is a good deal less. The loss on the small business program is perhaps slightly more—just over one-tenth of one per cent.

**The Chairman:** The \$2.3 billion is in relation to the farm improvement loans?

**Mr. Passy:** That is correct.

**The Chairman:** What is the total figure on which you have determined losses of one-tenth of one per cent?

**Mr. Passy:** That is in respect of the farm program. The losses have amounted in total to \$3 million, of which about \$0.5 million has been recovered.

**Senator Connolly (Ottawa West):** So the net is \$2.5 million?

**Mr. Passy:** Right.

**The Chairman:** And on the other two programs?



**Mr. Passy:** On the small business program the total of loans to date is just under \$200 million, and the claims paid amount to \$800,000 odd. There has been a small recovery.

**The Chairman:** What do you say the loss was?

**Mr. Passy:** The loss was \$870,000.

**Senator Welch:** What is the limit on a small business?

**Mr. Passy:** The maximum loan is \$25,000.

**Senator Connolly (Ottawa West):** What is the security?

**Mr. Passy:** They normally take section 88 security under the Bank Act, or a chattel mortgage on the equipment purchased, or mortgage security if they feel it is required.

**Senator Connolly (Ottawa West):** When you have been able to make recovery, is that because of the security?

**Mr. Passy:** Before the claim is paid the security must be realized upon. Our losses are net after the security has been realized. In many cases the security may well be adequate at the time the loan was made. I am thinking here, for example, of a tractor or thresher on a farm; the man is taking five years to repay it, and after two or three years of depreciation the sale would not cover it.

**The Chairman:** During hearings we conducted on the White Paper on taxation we were told by small business people who appeared, and also by the banks who appeared, that full use was not being made by small business of this facility. I think the suggestion was that they could do better elsewhere, or they did not have the security that would enable them to borrow. Have you any comment to make on that?

**Mr. Passy:** I would make the general comment that part of the rationale in merely extending these programs at the moment is that on all three we are at present conducting a major review of the effectiveness of the programs. It will be impossible to complete this by June 30, 1971. Therefore they are being extended to allow completion of this review.

**The Chairman:** What are the points at issue?

**Mr. Passy:** Under the small business loans program, particularly, there is criticism in relation to the definition of a small business itself. Under the present act it means a business whose gross annual revenue is, I believe, \$500,000. This was set three or four years ago, and it is now reckoned to be unrealistic in terms of a small business today.

Another point is the loan ceiling of \$25,000, which is considered to be inadequate for the purpose. For example, a motel wishing to build two or three more units could a few years ago have covered the cost with the \$25,000. Today the same units would cost in excess of that.

There are a number of other points. The loan terms and the security have also been criticized. There is a maximum loan term of 10 years on most of these pro-

grams. Some of the items are less; vehicles and so on are only three years.

The whole construction of the legislation is now under review. It is a major chore and will take some time. We are receiving representations from interested groups, all of which are being considered. As I say, it proved impossible to complete this before the 30th of June and it is necessary to keep the acts going in the interim.

**Senator Connolly (Ottawa West):** In other words, in the next three years we will come back to provide a radically altered act?

**Mr. Passy:** I would hope so. I am sure we shall.

**Senator Welch:** Could I ask a question about small business loans? When do you consider it a small business loan?

**Mr. Passy:** The act at the moment limits it to certain types of business—manufacturing, retail, wholesale, transport, and communications. There are specific businesses nominated and in order to qualify within those types of business the gross revenue...

**Senator Welch:** Do you set your sights on the capitalization of a business, or how do you define it?

**Mr. Passy:** It is the growth revenue basis and the growth revenue figure in the act at the moment is \$500,000 as the maximum. Any business with a growth revenue of more than that at the moment would not be considered a small business.

**Senator Welch:** If the business is, say, a \$500,000 one, a \$25,000 loan would be a small loan.

**The Chairman:** Nowadays, yes.

**Mr. Passy:** The original definition was \$250,000 gross revenue, and I believe two or three years ago it was raised to \$500,000, and at that time the loan limit was not changed. It had been \$25,000 throughout.

**Senator Welch:** Then I suppose this is recommended through the local bank, is it?

**Mr. Passy:** An essential feature of these programs is that it is through the local bank or other designated lender. Some credit unions, and some trust, loan and insurance companies are eligible to make these loans, if they apply for designation, and a number have done so.

**Senator Welch:** I cannot see where a \$500,000 business could be recommended by the local bank for \$25,000. I think it should be raised to the vicinity of \$100,000.

**The Chairman:** That is what Mr. Passy has been saying, that this whole thing is under review now, because in the light of today's money situation, et cetera, the revenue limit, if it is to be continued, is too low, and the loan limitations are too low. That is the public concept, I think. Therefore, you could look forward, when this study is complete, to some further legislation. It may take an entirely different approach.

**Mr. Passy:** It may take an entirely different approach.

**Senator Carter:** What is the average loan to small businesses? I know that \$25,000 is the maximum.

**Mr. Passy:** The average loan at the moment is about \$11,000.

**Senator Carter:** So you are lending only about 50 per cent of the maximum now.

**Mr. Passy:** On average.

**Senator Carter:** Is not part of the trouble with the Small Business Loans Act that there are restrictions as to the purposes for which the loan can be given? You cannot get a loan for anything. You can get it only for certain purposes. Although a businessman may need money, if he cannot use it for a particular purpose, he cannot get it.

**Mr. Passy:** That is correct. That is another of the areas to be looked at, the purposes for which the present legislation permits loans. There are no working capital loans, for example.

**Senator Carter:** Perhaps the area should be extended.

**Mr. Passy:** I would not like to say at this stage. Certainly we are receiving representations that the area should be extended but we have not come to any conclusion yet.

**The Chairman:** This study that the witness talks about embraces both the limitations on the classes of business and the size of the loans, and also the gross revenue base, and I suppose it involves the question of whether that is the basis that one should apply. All these factors are under review.

**Mr. Passy:** Yes. Even the question of the guarantee system is also under review. The whole area is under review.

**Senator Cook:** Also, the borrower has to show that he has a good purpose, that it is not a loan to keep him from going bankrupt.

**The Chairman:** Would you turn now to the fisheries area?

**Mr. Passy:** The total lending there is approximately \$10 million and the losses have been \$13,000. I should mention here that all these acts have considerable facility for variation of loan terms. I have given you the actual loss ratio here. There is an interim stage which we call a

default stage, where the loan has gone into default. At that stage the bank will endeavour to revise the borrower's terms in order to allow him longer to pay, and so on. This is done in a fairly large number of cases. It does reduce the ultimate loss ratio.

**The Chairman:** It spreads out the period for repayment.

**Mr. Passy:** That is right.

**The Chairman:** And makes the instalment payments smaller each year and on that basis the borrower is able to continue to be in business.

**Mr. Passy:** That is right.

**Senator Welch:** What is the limit on fisheries loans?

**Mr. Passy:** \$25,000.

**Senator Welch:** That is also for \$25,000. I did not ask the limit on the farm loans.

**Mr. Passy:** The farm loan is \$15,000 for each of the purposes specified in the act, one of which is for land purchase—that is, acquisition of additional land to an existing farm. If that is one of the purposes for which he has loans in the year, he may go to \$25,000.

**Senator Connolly (Ottawa West):** In that case, do you take a mortgage on the land?

**Mr. Passy:** Yes.

**Senator Carter:** I would like to know the average of the fisheries loans, if that is available.

**Mr. Passy:** The fisheries loan average is a little difficult to say just now. It used to run at about \$3,000 or \$4,000 when the loan limit was \$10,000. It is only 18 months ago that the limit was raised to \$25,000 and we have not really got sufficient experience with the new loan limit to know where the new average is. It is rather difficult to give it now.

**The Chairman:** Are there any other questions? Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** Thank you very much, Mr. Passy. This concludes our work for today.

The committee adjourned.









THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 13

WEDNESDAY, MARCH 10, 1971

Complete Proceedings on Bill C-217,

intituled:

“An Act to implement an agreement for the avoidance of double taxation  
with respect to income tax between Canada and Jamaica”.

REPORT OF THE COMMITTEE

(For name of witness—see Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 3, 1971:

"Pursuant to the Order of the Day, the Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Giguère, that the Bill C-217, intituled: "An Act to implement an agreement for the avoidance of double taxation with respect to income tax between Canada and Jamaica", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, March 10, 1971.  
(15)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider:

Bill C-217, "An Act to implement an agreement for the avoidance of double taxation with respect to income tax between Canada and Jamaica".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook and Hollet—(10).

*Present, but not of the Committee:* The Honourable Senator Denis—(1).

*In attendance:* E. R. Hopkins, Law Clerk and Parliamentary Counsel and P. Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

*Witness:*

*Department of Finance:*

Mr. R. A. Short, Chief,  
International Tax Policy Section.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

At 10:20 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, March 10, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-217, intituled: "An Act to implement an agreement for the avoidance of double taxation with respect to income tax between Canada and Jamaica", has in obedience to the order of reference of March 3, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, March 10, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-217, to implement an agreement for the avoidance of double taxation with respect to income tax between Canada and Jamaica, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, this will be a short meeting. We have one bill before us, Bill C-217, dealing with the tax convention with Jamaica.

**Senator Aseltine:** Do we already have a treaty with Jamaica?

**The Chairman:** No.

We have with us this morning Mr. R. A. Short, Chief of the International Tax Policy Section of the Department of Finance. Senator Denis gave an explanation of the bill on second reading. I take it he can assume that we wither listened to it or read it. Do you have anything more you want to add at this time, Senator Denis?

**Senator Denis:** On second reading Senator Grosart asked me for a list of those countries with which Canada has similar agreements.

**The Chairman:** I suppose we can get that from Mr. Short.

**Senator Denis:** Perhaps Mr. Short can give the names—he gave me a list—and I can repeat the information on third reading so that it appears in *Hansard*.

**The Chairman:** Yes, you could give the list on third reading. Do you have that list, Mr. Short?

**Mr. R. A. Short, Chief, International Tax Policy Section, Department of Finance:** I did send a list across. I do not have a copy of it myself but I can recite the names of the countries.

**Senator Denis:** Perhaps you would take my copy, Mr. Short.

**Mr. Short:** Thank you very much. Alphabetically the list is as follows: Australia, Denmark, Finland, France, the Federal Republic of Germany, Ireland, Japan, the Netherlands, New Zealand, Norway, South Africa, Sweden, Trinidad and Tobago, the United Kingdom and the United States. The total is fifteen.

**The Chairman:** Perhaps we should top this off by having a very short statement from Mr. Short as to the

points that are covered by this proposed convention. Would you develop this, Mr. Short?

**Mr. Short:** By way of background I should say that this is not a tax treaty similar to those that we have with the 15 other countries. We have referred to these as comprehensive tax agreements which cover all aspects of income taxation. This agreement is a limited agreement entered into for the specific purpose of dealing with a number of problems that have arisen because of a reform in the Jamaican tax system, as it affects the taxation of company profits and distributions in Jamaica. It is not a comprehensive agreement embracing all aspects of income taxation, simply because until the Canadian tax reform is settled it is difficult to expect Canada or any other country to negotiate on the basis of a system the shape of which is unknown at this time.

So this particular agreement covers dividends and provides a restriction in the rate of withholding tax which will be imposed on those dividends. It covers management fees and technical service fees and a number of other similar type payments.

It also covers the salaries of teachers and it covers the income of non-residents in the form of salaries and wages from employment.

**The Chairman:** The teachers, I take it, would be teachers who are engaged in teaching in Jamaica?

**Mr. Short:** Yes, that is correct.

**The Chairman:** And if they have a residence in Canada, it is to exempt the income by way of that salary in one of those countries?

**Mr. Short:** Yes, that is correct.

**Senator Connolly (Ottawa West):** Which one would it be?

**Mr. Short:** Jamaica. Jamaica has given up its right to tax those Canadians who visit Jamaica for a period of two years for the purpose of teaching.

**Senator Connolly (Ottawa West):** Is the rate in Jamaica a lower rate?

**Mr. Short:** Do you mean lower than the Canadian income tax rate?

**Senator Connolly (Ottawa West):** Yes.

**Mr. Short:** It varies considerably, depending on the personal circumstances.

**Senator Connolly (Ottawa West):** I wonder whether the provision would discourage teachers from going there.

**Mr. Short:** No, the purpose of the provision is to encourage teachers to go to Jamaica. The Canadian teacher, on going to Jamaica, may well give up his Canadian residence, in which case we lose interest in him from a tax point of view. He is then a non-resident and is not taxable in Canada, except on his income from sources in Canada. In the ordinary case he would take up Jamaican residence and would be subject to the full rate of Jamaican tax—unless, by virtue of this treaty or some other special arrangement, the teacher were exempt. And this treaty provides an exemption from Jamaican tax for those Canadians who go down there and teach.

**The Chairman:** Only if they retain their Canadian residence.

**Mr. Short:** No.

**The Chairman:** In any event?

**Mr. Short:** In any event, even if they become residents of Jamaica.

**Senator Denis:** Does it apply to new teachers and old teachers? Do they get that if they have been there two years? It is only if the teacher goes there for the first two years they are exempt? What about those who are already there?

**Mr. Short:** It would apply to those teachers who are down there now, but it would only apply for the two years of his teaching assignment in Jamaica. Therefore, if a Canadian had been in Jamaica for, say, ten years, this would not apply. The agreement does not extend back beyond the first of January 1970. But a teacher who had gone down last year, for example, would fall within the terms of this exemption.

**The Chairman:** Article 6 of the agreement, which is at page 7, provides:

A professor, teacher or instructor who visits Jamaica for the purpose of teaching at a university, college, school or other educational institution in Jamaica and who is or was, immediately before that visit, a resident of Canada, shall be exempt from tax in Jamaica on any remuneration for such teaching received within a period of two years from the date on which he commenced teaching in Jamaica.

**Senator Denis:** Commenced.

**The Chairman:** Commenced yes. But the next application has two prongs to it. One is that he visits Jamaica and at the time he visited and took on this teaching job he was then or he was immediately before this visit a resident of Canada. That is one point. The other is that he gets exemption in Jamaica on this income for a period of two years from the date on which he commenced teaching.

**Senator Denis:** Commenced.

**The Chairman:** Yes, but I think the "commenced" must also be related to his visit to Jamaica.

**Senator Denis:** But that must be after or since January 1970. When one is teaching since 1969, he does not benefit there?

**The Chairman:** No. I raised this point because of something Mr. Short said, that Canada is not interested in the teacher teaching down there unless he retains his Canadian residence, so that he would be subject to some tax because if he is a taxpayer Canada is interested in him. All the visitor has to do is to cease to be a Canadian resident and then I would take it that this exemption from Jamaican tax may not apply?

**Senator Hollett:** He pays income tax in Canada during those two years, does he not?

**Mr. Short:** No. The wording here is that it is an exemption from Jamaican tax, not Canadian tax. In order to qualify for that exemption in Jamaica, he must be or must have been a Canadian resident immediately before he went to Jamaica. So that, if he retains his Canadian residence, of course he will qualify for the Jamaican exemption.

**Senator Connolly (Ottawa West):** But not being a Canadian resident, he would not be taxable here?

**Mr. Short:** If he is not a Canadian resident, he would not be taxable here on his Jamaican income.

**Senator Burchill:** And for the time he is in Jamaica he does not pay any income tax at all, either in Canada or Jamaica.

**Mr. Short:** For the two year period.

**Senator Connolly (Ottawa West):** And only on the Jamaican income.

**Mr. Short:** Unless he remains a Canadian resident.

**Senator Denis:** Most of the time they go there for a couple of years, or for three or four years, on a contract.

**Mr. Short:** I understand that very often they will give up their Canadian residence, when they go to Jamaica they will take the wife and family and establish Jamaican rather than Canadian residence, for that period.

**Senator Connolly (Ottawa West):** They give up their residence, they do not give up the Canadian domicile or citizenship. The citizenship is still retained. The residence in Jamaica qualifies them for exemption on the Jamaican income. That is, while they are teaching there for the period of two years, subject to the condition which the chairman has pointed out.

**Senator Hollett:** But he pays it in Canada during those two years.

**Mr. Short:** No.

**Senator Hollett:** During that period?

**Mr. Short:** No.

**Senator Hollett:** He does not pay any income tax?

**Mr. Short:** On his Jamaican income from teaching.

**Senator Hollett:** That is what I mean.



**Mr. Short:** Yes.

**Senator Hollett:** I am going right away.

**Senator Cook:** Does he pay in Canada?

**The Chairman:** If he maintains his Canadian residence, he pays income tax in Canada on the salary he earns in Jamaica, but he will not pay Jamaican tax.

**Senator Cook:** Some people seem to be under the impression that he is free of taxes altogether in the two years.

**Mr. Short:** He will be free of all taxation, if he ceases to be a resident of Canada.

**The Chairman:** Yes.

**Senator Blois:** What do you mean by "ceases to be a resident of Canada"? That he would not hold property here?

**The Chairman:** He gives up his residence here and does things that are reasonably consistent with giving up residence in Canada.

**Senator Connolly (Ottawa West):** As I understand it, the question of residence is a question of fact. The question of domicile and of citizenship is quite different from the question of residence. If a teacher goes to Jamaica and takes his family with him and sets up house there, or, if he is unmarried, and goes down there and lives for two years, he is resident there and he qualifies then for the exemptions.

**Mr. Short:** That would be correct.

**Senator Carter:** How long does he have to be in Jamaica before he ceases to be a resident of Canada? How does he terminate his residence in Canada?

**The Chairman:** Those are two different things. He terminates his residence in Canada by doing certain things in Canada that are inconsistent with being a resident of Canada. For example, if he has a home and sells it and does not establish any other residence in Canada; if he moves out of Canada everything he owns here in the way of tangibles; if he writes a letter to the Minister of Finance and says he has given up his residence in Canada; these are all ways of terminating his residence. But they have to be tangible things that you do to indicate a change of residence, otherwise you might end up with a residence in both countries. That is not unheard of.

**Senator Cook:** I see the point of the agreement in saving the teacher from double taxation, but I do not see the point of it saving him from any taxation at all.

**The Chairman:** He does that quite apart from this agreement. The Canadian does that by giving up his Canadian residence. Canada can no longer tax him. Then the question is whether, in those circumstances under this treaty, Jamaica does not tax him. It would appear to read in such a way that that is the situation for two years.

**Senator Cook:** That is quite right. I do not see what the rationale is for the Jamaican government to give up the right to tax a person living there who is not resident in Canada.

**The Chairman:** The answer is that they are so keen to get teachers.

**Senator Connolly (Ottawa West):** That is the answer. There is no question about it.

**Senator Denis:** But he is still a Canadian and has to pay Canadian income tax.

**The Chairman:** Not if he is not a Canadian resident.

**Mr. Short:** Taxation in Canada is based strictly on the concept of residence. Domicile and citizenship do not enter into it.

**The Chairman:** In the United States it is citizenship, but aliens also pay taxes as well.

**Senator Blois:** I have occasion to go to Jamaica once a year for a short stay and I know slightly a university teacher there who owns property in Canada. He will be coming back here for about two and a half months. What would happen to a person who has been in Jamaica for two years and still owns property in Canada and comes back to Canada for two and a half months?

**Mr. Short:** If I understand you correctly, senator, he would still come under the Jamaican exemption. Whether he would be exempt from tax in Canada is not a question I can answer, unless it could be determined on the basis of all the facts surrounding his case that he is in fact a resident of Canada. Under the facts that you have presented, he may or may not be a resident here. There is a constellation of factors that would have to be taken into account to determine whether or not he was a resident of Canada in the year.

**The Chairman:** We are agreed that the first thing he would have to do is take positive steps to terminate his Canadian residence. Then, if he wants to come in as a visitor for two and a half months in the year, his position would be sure.

**Senator Cook:** In that case the onus would be on him to prove that he was beyond the act.

**The Chairman:** Certainly.

**Senator Aseltine:** Referring to Article 6, what happens after the two-year period lapses? will he be taxed in both places?

**The Chairman:** If he is a Canadian resident during that two-year period, then at the end of that period, if he continues to teach in Jamaica, he would be subject to Jamaican tax. If he still retains his Canadian residence, he would be subject to Canadian tax. I would say that under our Canadian system of taxation he would have an offset.

**Senator Aseltine:** That would be double taxation.

**The Chairman:** No, I say he would have an offset. He would have a deduction of the tax he pays in the foreign jurisdiction in respect of the earnings there.

**Senator Denis:** Income tax is based on residence.

**The Chairman:** That is right.

**Senator Denis:** Then suppose the teacher in Jamaica has some other kind of revenues in Canada, does he pay tax on his other revenues in Canada?

**The Chairman:** Oh, yes.

**Senator Denis:** He is not a resident any more.

**Mr. Short:** We tax the non-resident on his income from sources in Canada. So that if he had dividends, interest, royalties, then these would be subject to the non-resident withholding tax that we apply to any non-resident. If he carried on business in Canada, then he would be subject to the income tax on profits of that business.

**Senator Connolly (Ottawa West):** It is not so different from the system that applies in the Department of External Affairs. For example, if a family goes abroad and rents its home furnished, then, I assume, they are taxed on the net income they get from that while they are abroad.

**Mr. Short:** Yes. There is a rather complicating factor there, however, in that if they are sent abroad and work for the Canadian Government abroad they would generally fall within the diplomatic immunity provisions to be exempt from taxation abroad. But we do not generally regard those people as having given up Canadian residence.

**Senator Cook:** It would be like the CBC. They would be clear of tax.

**Mr. Short:** Do I have to comment on that?

**Senator Aird:** Mr. Chairman, my question relates to CARIFTA. Mr. Short pointed out that we have an agreement with Trinidad and Tobago, and they are on the list at the present time. I see in item (g) of Article 2(1) that there is an extension, as I understand it, of the provisions of this so-called convention with members of CARIFTA. Is this convention therefore being extended, in fact, to all members of CARIFTA beyond Jamaica? In other words, is this going beyond the primary target of Jamaica? If it does, is there any conflict with the present agreement we have with Trinidad and Tobago which are included in CARIFTA?

**Mr. Short:** No. This agreement does not extend to any country other than Jamaica. The purpose of the definition of the "Caribbean Free Trade Association" in Article 2 has to do with some other specific provisions within the agreement itself. For example, on dividends the rate of withholding tax provided by the agreement will be 22½ per cent, or such lower rate as Jamaica may agree to with any other country outside CARIFTA. So that, for example, if the United States and Jamaica were to conclude a tax agreement which provided for a withholding tax on dividends of 15 per cent, then the rate under this agreement would automatically fall to 15 per cent. But Jamaica, being a member of CARIFTA, did not want to give us this most-favoured-nation protection, if you wish, for dividends paid by a Jamaican company to a share-

holder resident in one of the CARIFTA countries. So that is the purpose of the inclusion of the definition of "Caribbean Free Trade Association". It is for the purpose of the article relating to taxation of dividends, and it is also for the purpose of Article 4 relating to interest, rents, management fees and that sort of thing. But it has no purpose beyond that.

**Senator Aird:** Is there any place in this convention where there is mention or a description of an "open company"?

**The Chairman:** They use the word in Article 7.

**Mr. Short:** The word "open company" is a term in Jamaican tax law. It refers, generally speaking, to a company whose shares are listed on the Jamaican Stock Exchange, and would correspond, I suppose, to a widely held or listed Canadian corporation. An open company in Jamaica is subject to a lower rate of company profits tax than is a company that is not an open company—perhaps a close company.

**Senator Cook:** What we used to call a private company.

**Mr. Short:** That is correct. The purpose of including a definition of "open company" in Article 7 is to ensure that a Canadian company or the Jamaican subsidiary of a Canadian company that is itself a widely held company in Canada will be taxed in exactly the same way as would an open company in Jamaica. Let me give you an example to bring it into clear perspective. An open company in Jamaica would be subject to a rate of company profits tax on its earnings of 30 per cent. If it is a closed company, it would be subject to a company rate of profits tax of 35 per cent. There are additional taxes as well. But if an open company in Jamaica were one whose shares were listed only on the Jamaican Stock Exchange, that would mean that a widely held Canadian company in Jamaica would not qualify as an open company, because its shares being listed on the Toronto or Canadian Stock Exchange would not meet the test set out in Jamaican law. It would therefore be subject to a company profits tax of 35 per cent. The purpose of Article 7 is to have this effect, namely, that a Canadian company such as one of the Canadian banks whose shares are widely held or listed on a Canadian Stock Exchange or its subsidiary in Jamaica will qualify as an open company and therefore will be subject to the lower tax applied to those companies. That is the purpose of Article 7.

**Senator Aird:** No doubt you have given consideration to the question as to whether or not it should be more fully defined. I suppose my question really is this; are you satisfied that Article 7 is complete?

**Mr. Short:** Yes.

**The Chairman:** The difficulty is that we cannot change this agreement.

**Senator Connolly (Ottawa West):** It is an all or nothing proposition.

**The Chairman:** I should like to call Mr. Short's attention to the fact that when we were dealing with the White Paper in so far as it relates to foreign or interna-



tional income, there was quite a discussion on what was called passive income. I took this to mean income which had no reasonable business purpose to justify such income developing in the foreign country and coming to Canada. The proposal was that the income derived from those profits earned would be treated as income of the person who had the ownership of the company. That is the law which is now sought to be applied by the Income Tax Division. If they decide there is no substantial business purpose to be served, then they treat the profits as part of the income of the Canadian who may own the company.

Now, let us apply this treaty to that situation. Let us suppose the company in Jamaica is a Jamaican company wholly owned by a Canadian company and it does have profits; if it remits those profits to Canada, then the profits are subject to the withholding tax in Jamaica at not more than 22½ per cent under this agreement, and in Canada the person receiving that income would be entitled to a credit either at the highest withholding rate that Canada applies in a reverse situation or at what the Canadian rate is. If you get the situation where Canada says "That is not a dividend; if any money comes to you, it is an alter ego for you in Jamaica and therefore the profits are your profits," how does this treaty deal with that situation?

**Mr. Short:** Well, that is a very complicated question but I shall deal with it as best I can. There are two features of this that I think I should draw to your attention. The first is within Article 2 itself where it deals with the question of the residence of a corporation. That is very often a difficult question and very often the attack on these foreign companies that lack much substance, or the attack of the Department of National Revenue, is to try to treat the foreign company as either being resident in Canada because it is managed and controlled in Canada, as an agent of the Canadian shareholder, or as a foreign company which is really not in existence or not having any real substance at all—a sham, if you like. I am not aware of any case in which the existence of the foreign company has not been accepted when in fact there is a foreign corporation, but I do know that there are a number of disputes that centre on the question as to where a company is resident. In these circumstances if the company is managed and controlled in Canada, it would ordinarily qualify as a company resident in Canada.

**The Chairman:** Why do you say "ordinarily"?

**Mr. Short:** Under our rules of residence, in the absence of anything else, a company will be regarded as resident where it is managed and controlled. There are a number of cases on this.

**The Chairman:** You mean where it is an emanation of a Canadian company?

**Mr. Hopkins:** Is there not a specific provision in this treaty?

**Mr. Short:** In this treaty there is. You see a company might have two residences; it might be managed and controlled both in Jamaica and in Canada and in those

circumstances the company could have a dual residence. But for the purpose of resolving this problem we have provided in Article 2, subsection (2) a special provision that says that where a company which is otherwise resident in both Canada and Jamaica is incorporated in Jamaica, it shall for the purposes of the agreement be regarded as a company resident in Jamaica.

**The Chairman:** So this brings us to the conclusion to which I was attempting to lead you. If that is the situation then the vehicle in Jamaica is a company incorporated in Jamaica regardless as to whether it is an alter ego of the Canadian company and regardless of the fact that management and the direction are being given from Canada, and the incidence of tax in Jamaica will apply. If there is a corporation tax it will be paid by the company to the Jamaican Government. Then under our law this company also has a residence in Canada and it will be entitled to offset whatever tax it pays in Jamaica against Canadian tax otherwise payable.

**Mr. Short:** Yes, that is correct. It is a vexing problem for a number of companies. Take a large Canadian company which might have a Jamaican subsidiary in order to carry on a mining operation or a banking operation within Jamaica. It is clearly under a certain amount of control from Canada, and it is a fine question of degree as to whether the control exercised in the ordinary course of carrying on business abroad through a foreign subsidiary is enough to bring that subsidiary into Canada as a resident of Canada.

I think it is fair to say that in the ordinary circumstances the fact that a company carries on a bonafide operation in a foreign country through a subsidiary incorporated in that country will be recognized by our administration as a company other than one resident in Canada. It will be recognized as a foreign corporation. However, it is still quite a problem, because as times get more difficult, or depending on how close the relationship between the two companies is, there will, in fact, be a greater or lesser degree of control exercised in Canada.

In the case of a Canadian smelter, for example, where they are using a Jamaican subsidiary to supply raw material for a smelting operation in Canada, there will be a considerable degree of control.

**Senator Cook:** The problem will soon be solved because they are going to nationalize them all anyway.

**Mr. Short:** So far Jamaica has made no attempt to do so.

**Senator Aseltine:** I take it we have no power to amend the Convention itself.

**The Chairman:** That is right.

**Senator Aseltine:** If we do not like the Convention and we do not pass the bill, what happens?

**The Chairman:** The Convention has been signed, and there it is as a signed document, but it does not have the sanction of parliamentary approval.

**Mr. Short:** It needs that approval, of course, before it takes effect.



**Senator Connolly (Ottawa West):** And there is a provision in it to that effect, is there not?

**Mr. Short:** Yes.

**The Chairman:** It does not become operative until there is parliamentary approval.

**Senator Denis:** Of the two countries.

**Mr. Short:** Yes.

**The Chairman:** There is one thing that strikes me, if I may take a minute to comment on it, and that is that I often wonder why the Caribbean countries, when they are looking for revenues, do not investigate this aspect. It seems to me there was a natural for revenues in levying a withholding tax on dividends moving from the Caribbean area to Canada, because they are not really penalizing the Canadian because when he brings...

**Senator Bennidickson:** How do you define "a Canadian"?

**The Chairman:** I mean, if a Canadian resident is receiving dividends from an operation in the Caribbean area.

**Senator Benidickson:** Are you speaking of a Canadian resident or a Canadian national?

**The Chairman:** "National" has nothing to do with it. I am talking about a Canadian resident.

**Senator Benidickson:** I am thinking of tax havens.

**The Chairman:** It struck me that here was a source of revenue if in the Caribbean area they had a withholding tax on dividends coming to a Canadian resident, because they are not penalizing that Canadian resident because he would have to pay here in Canada; but by paying in the Caribbean area he gets an offset on the payment here. We have done this in Canada in our tax laws vis-à-vis the United States in many situations, and here is a source of revenue. Jamaica is certainly alert to it here, and I am wondering why they are not all alert to it. It seems to me they would not scare off Canadian investment in their country, because it would not be increasing the tax load unless the withholding tax in Jamaica, for instance, were greater than the withholding tax in Canada in the reverse situation. I guess they will tumble to it some day, Mr. Short.

**Mr. Short:** I suppose one of the factors involved is that so much of the investment by Canadians in the Caribbean is through Canadian corporations who hold these investments in a foreign subsidiary or, certainly, foreign affiliates. Those dividends are not taxed in Canada, and any Jamaican withholding tax imposed on the dividend would fall directly as a burden on the Canadian company, since we do not relieve a foreign tax on income which we do not tax. Under the Income Tax Act a dividend received by a Canadian company from a foreign subsidiary is not taxed in the hands of the Canadian company.

**Senator Benidickson:** You are probably familiar with this situation. I hate to mention corporate names, but last year I found that the relatively new Holiday Inns in the Caribbean were operated under a corporate name, Canadian Commonwealth Holiday Inns. That would be in the category about which you have just spoken. They have Holiday Inns in Canada and the United States operating under the corporation that was set up some years ago in the United States. In the Caribbean they seemed to operate under the title Canadian Commonwealth Holiday Inns. They would pay the full Canadian tax, would they?

**The Chairman:** One thing you did not say was whether the Canadian Commonwealth Holiday Inns was a Caribbean, or Bahamian, company or a Canadian corporation. Which is it?

**Senator Benidickson:** In other words, the Holiday Inns in Ottawa might not belong to that corporate name.

**The Chairman:** Is the company that you call Canadian Commonwealth Holiday Inns a Bahamian or a Canadian incorporation, because the approach to the question would be different depending on what it is.

**Senator Benidickson:** Take another hotel, say, at Nassau, which reputedly some years ago was a Canadian-financed hotel. Then again, the lack of certainty in the matter is not helpful for you to answer. It could conceivably be Canadian capital operating what then was a very prominent hotel, but it was general knowledge it was Canadian money. You need more information to answer a question of that kind, of course.

**Mr. Short:** I think I could answer a hypothetical question though. If the hotel in Jamaica is run by a Jamaican company, then when the dividends come back to Canada, to the Canadian parent company, they would not be taxable in Canada, provided the Canadian company owned more than 25 per cent of the issued voting shares. But if the hotel in Jamaica were owned by the Canadian company which, in fact, dealt with the hotel as a branch operation in Jamaica, in those circumstances the Canadian company would be fully taxable in Canada on the income from carrying on business in Jamaica, with, of course, the full offset for any Jamaican tax imposed on those earnings.

I suppose that is really one of the reasons why most operations abroad, at least those that turn a profit, are carried on abroad through foreign corporations rather than through a branch.

**The Chairman:** Under section 28 of the Income Tax Act, if they have more than 25 per cent of the voting shares of that foreign incorporation they can bring the dividends in without affecting the Canadian tax.

But there is an angle. If we are concerned about revolution or overthrow of governments there could be advantages in having a branch operation as against having a domestic company, because in branch operations the country that is being overthrown might have assets somewhere else and one can go after them. This may be one of the reasons why in a lot of situations Canadian banks have maintained branch operations rather than local incorporations. If we had had local

incorporation rather than branch operations at the time of the overthrow in the Dominican Republic it might have been an entirely different story.

**Senator Aird:** And in a similar fashion in Cuba.

**The Chairman:** Yes, and in Cuba.

**Senator Aird:** That was very much the same situation. I should like to ask a question of Mr. Short. I do not want to ask him particularly when the tax reforms will be concluded either in Canada or in Jamaica, but it seems to me that this is a fairly prevalent situation throughout the world. In nearly every country that I know of is going through tax reform of one kind or another.

**Senator Cook:** Tax change.

**Senator Aird:** I should like to ask Mr. Short whether we are now about to be faced with a series of limited agreements of this nature. Are these types of so-called limited agreements now being pursued, for example, with a number of Caribbean countries?

**Mr. Short:** No, they are not. Once our tax reform is out and the dust has settled, we will have no cause not to conclude comprehensive agreements.

**The Chairman:** How will you know when the dust has settled?

**Senator Benidickson:** Who is to guess who will win the next election?

**The Chairman:** I liked Senator Cook's interjection when Senator Aird was using the word "reform". Everybody seems to concede that when we change the tax law it is tax reform. It is change, not reform.

**Senator Aird:** The reason I used the word is because it is in the preamble.

**The Chairman:** Yes, I noticed that.

**Senator Benidickson:** They called it White Paper reform. On the news this morning it said in substance that it will not be carried out.

**The Chairman:** Are there any other questions on this bill? Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** Thank you, Mr. Short.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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N° 14

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WEDNESDAY, MARCH 17, 1971

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Complete Proceedings on Bill C-185

intituled:

“An Act to amend the Crop Insurance Act”.

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REPORT OF THE COMMITTEE

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(For names of witnesses—see Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

amendment to the Bill

## Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 11, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Molgat, seconded by the Honourable Senator McNamara, for the second reading of the Bill C-185, intituled: "An Act to amend the Crop Insurance Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Smith moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, March 17, 1971  
(14)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider:

Bill C-185, "An Act to amend the Crop Insurance Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Blois, Burchill, Carter, Desruisseaux, Everett, Hollett, Kinley, Macnaughton and Welch—(11).

*In attendance:* E. R. Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were introduced and heard:

Honourable H. A. Olson, Minister of Agriculture;

Mr. Larry C. Rayner, A/Director, Crop Insurance, Department of Agriculture.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

At 10:25 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Georges A. Coderre,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, March 17, 1971

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-185, intituled: "An Act to amend the Crop Insurance Act", has in obedience to the order of reference of March 11, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, March 17, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-185, to amend the Crop Insurance Act, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have before us Bill C-185 which deals with certain amendments to the Crop Insurance Act. The Minister of Agriculture, Mr. Olson, is here with Mr. Larry C. Rayner, who is the Assistant Director of Crop Insurance, Department of Agriculture.

Mr. Minister, would you like to start off by telling us what this bill proposes?

**The Honourable H. A. Olson, Minister of Agriculture:** Mr. Chairman, I appreciate the opportunity of being in your committee this morning to discuss the amendments which are proposed by Bill C-185 to the Crop Insurance Act. The purpose of these amendments is to provide for contributions to insurance programs which would cover losses from pre-planting expenses. This would include such things as the purchase and application of fertilizer, preparation of the land, purchase of plants, et cetera, which would be investments that the farmer would have to make whether or not he planted the crop. Of course, the farmer would have to meet certain requirements to carry this kind of insurance, such as holding a continuing and valid insurance contract, because the new coverage will cover a period outside the growing season itself.

There have been requests from both Ontario and Manitoba that this kind of coverage should be available, because in some places, as much as 80 per cent of the cost of producing a crop is in fact paid out—or at least the obligation is made—by the farmer before he does in fact plant the crop. We have had cases where a farmer has had what we refer to as a continuing valid insurance contract. Even though he may have made as much as 90 per cent of the cost of growing that crop, if he did not physically get it into the ground he would have no insurance against those pre-planting expenses.

**The Chairman:** Is the scheme of this insurance policy the result of an agreement by a province with the growers?

**Hon. Mr. Olson:** Yes.

**The Chairman:** They know the Government re-insures part of the risk, but does it make grants or loans to the provinces?

**Hon. Mr. Olson:** Yes, in the master agreement which we have between the federal Government and the provincial Government, if the provincial Government does set up an insurance scheme with premiums that make it actuarially sound and meets the other conditions of our statutory requirements, then we pay 25 per cent of the premiums and 50 per cent of the administration costs. In addition to that we re-insure part of the risk in excess of their fund and that is the contribution that the federal Government makes to these contracts. We do not deal directly with the farmers. The agreements are made with the provinces and the provinces administer them.

**The Chairman:** How many of the provinces have these insurance agreements or contracts?

**Hon. Mr. Olson:** Perhaps Mr. Rayner could answer that question. I believe it is only eight.

**Mr. Larry C. Rayner, Assistant Director, Crop Insurance, Department of Agriculture:** That is correct

**Senator Carter:** Are the contracts similar or do they vary from one province to another?

**Hon. Mr. Olson:** There are variations because the conditions of production of particular commodities vary from province to province. Obviously there is a different kind of insurance scheme, for instance, for tree fruits than for cereal grains. There are conditions set down in our statute that must be met by all of the provinces. There is one exception and that is the Province of Quebec where we have not been able to make statutory payments because their scheme thus far has not met the criteria. What we have done until now is make a payment to them as if they had met the conditions on a pilot or experimental basis so they will get a crop insurance developed which will fit the criteria in our bill, and we expect that will happen next year.

**Senator Burchill:** What percentage of the premium does the farmer pay?

**Hon. Mr. Olson:** In most provinces it is 75 per cent, but I believe in Quebec they make a contribution to the premium as well.

**The Chairman:** It is voluntary as far as the farmer is concerned?

**Hon. Mr. Olson:** That is right.

**The Chairman:** What would you say overall as to the percentage of those who would be eligible to apply for insurance and those who actually do?

**Hon. Mr. Olson:** This varies widely. I can give you some examples of particular provinces. Manitoba was the first province which made insurance available to all areas. In other words, it was available to 100 per cent of the geographical area that is producing crops. About 50 per cent, or slightly less than 50 per cent, of the farmers in that area did in fact buy insurance. In Saskatchewan I would think that in the cereal grain sector it is substantially less. I am not quite sure of the percentage of the geographical area where it is available, but perhaps a little over 50 per cent. In Alberta, about 90 per cent of the province is covered. When we get into the other provinces where there is a variation, for instance, in the commodities that are grown, it is not quite as easy to determine because there are crop insurance schemes available for corn in Ontario and tree fruits in British Columbia. There are some other soft fruits, or small fruits as we refer to them, where they have not as yet evolved a scheme that is workable.

**The Chairman:** Your contribution is available for whatever the scheme may be in relation to growing crops?

**Hon. Mr. Olson:** That is right, and there are new crops being added almost every day.

**Senator Desruisseaux:** That was the net expense to the government in the last year?

**Hon. Mr. Olson:** I believe our total cost was about \$8 million.

**Senator Desruisseaux:** That is the share that the Government paid?

**Hon. Mr. Olson:** That is the contribution that the federal Government made. I am sorry, I wish to correct that statement. I am advised that last year it was about \$5½ million in total.

**Senator Desruisseaux:** Does it vary a great deal from year to year since it has been in operation?

**Hon. Mr. Olson:** It does, although it is an expanding program so it is going up.

**The Chairman:** I suppose the realm of contributions would be something like this: The provinces that administer these carry 50 per cent of the administration costs?

**Hon. Mr. Olson:** That is right.

**The Chairman:** The fund has to carry itself with the contribution by the growers and by the federal authority.

**Hon. Mr. Olson:** That is right.

**The Chairman:** If there is any deficiency in the fund the federal authority fills in the gap?

**Hon. Mr. Olson:** We make a loan to the province. In most provinces there is a fund building up.

**The Chairman:** Would you say that when you make a loan to the province that means the province has a liability to repay at some time?

**Hon. Mr. Olson:** Loans and reinsurance; if the pay-out exceeds the amount of the premiums plus the reserves that we have.

**Senator Welch:** What is covered in regard to tree fruits?

**Hon. Mr. Olson:** There are a number of risks which are covered. Under this program we do not have specific risks, such as hail insurance or tornado insurance. The insurance is based primarily on a calculation of what an average crop might be, and then insurance can be taken out up to 80 per cent of what that yield would be and whatever the loss from it is. It is called an all-risk insurance scheme. In other words, it is insurance based on something which would reduce the yield, whether it is drought or for some other reason. It is not specific risk insurance, nor is it what we call spot loss. For example, if a farmer should lose a small part of his field where he had 100 per cent loss, but did not have a reduction in yield below the percentage of insurance that he took over his entire farm, then we would not pay him, although the provinces have been putting a great deal of pressure on us to pay the spot losses. We do not have that in the scheme yet and I am not sure that we will.

**Senator Welch:** Would there be a difference in the rate of tree fruits and grain crops?

**Hon. Mr. Olson:** There would be a marked difference because the premiums are set up on the historical basis of what the risk is.

**Senator Desruisseaux:** Are the farmers satisfied with the operation or have there been any complaints or suggestions as to how it could be improved?

**Hon. Mr. Olson:** I do not think it would be fair to say, Mr. Chairman, that the farmers are entirely satisfied with the program. There have been representations made to increase the contributions to the premium, and there have also been suggestions that we reduce the calculation or change the factors in the premium, particularly in Ontario on certain crops, but the premiums we have established or agreed to are primarily based on a calculation that would make it actuarially sound.

**Senator Blois:** How is the amount of coverage determined?

**Hon. Mr. Olson:** We review the historical yield in a particular area. Suppose we talk about a grain crop where the average yield is perhaps 30 bushels per acre. Once that is established then a farmer can buy up to 80 per cent of that, which is the maximum. Some provinces are not offering 80 per cent on all crops and indeed a farmer does not have to buy 80, but can buy 60 per cent if he wishes.

**Senator Kinley:** Is this bill applicable to the whole of Canada?

**The Chairman:** Yes.

**Hon. Mr. Olson:** There is one point which I think we ought to make, that this is strictly in terms of the insur-



ance which could be reduced to dollars. This is actually based on a production guarantee, and the price involved is for any commodity at the actual market price. When we talk about 60 per cent or 80 per cent, we are talking about that percentage of the average production.

**The Chairman:** I take it the loss must occur while the crop is in the ground.

**Hon. Mr. Olson:** That is right, except for these amendments which are dealing with the expenses or the growing of that crop that indeed would have been made prior to planting.

**Senator Carter:** Could you tell us what two provinces are not covered?

**Hon. Mr. Olson:** Newfoundland and New Brunswick.

**Senator Desruisseaux:** Mr. Chairman, I am just looking at subsection (1)(b), and wondering what "other agricultural hazards" is. Has it been defined anywhere in the act?

**Hon. Mr. Olson:** Subsection (1)(b) provides:

Loss arising when the seeding or planting of a crop is prevented by excess ground moisture, whether or other agricultural hazards.

**Senator Desruisseaux:** What is that?

**Hon. Mr. Olson:** We did not have a precise explanation of those "other hazards", but it would be in so far as these amendments are concerned, such as hazards that would prevent you from planting that crop. In most cases, of course, it would be excess ground moisture—I am sure that is going to be the major hazard—climatic conditions that would prevent a farmer from getting on the land, and other agricultural hazards which may fall into that same category.

**The Chairman:** I would think the expression "other agricultural hazards" is a matter of law and legal interpretation.

**Senator Aird:** Accepting the fact that is the legal interpretation, what is the historical practice of the department?

**The Chairman:** This is occurring in this bill which is before us. It does not presently occur in the act.

**Senator Aird:** Has it been widely or narrowly interpreted?

**Hon. Mr. Olson:** Other agricultural hazards?

**Senator Aird:** Yes.

**Hon. Mr. Olson:** I do not think there have been very many other hazards that would be applicable to these amendments other than excessive ground moisture, but we have a number of very severe cases in both Manitoba and Ontario. As I said, up to 90 per cent of the costs had already been incurred, but, because of excessive ground moisture or unfavourable climatic conditions they were unable to get seed in the ground. Of course, their con-

tinuing insurance contract which is also required under these amendments is not valid, because it says the crop has to be in the ground.

**Senator Carter:** Would it cover pests, plague, et cetera?

**Hon. Mr. Olson:** Yes. I think perhaps in the general crop insurance it would, but I cannot visualize in practical terms any situation where pests would, in fact, prevent you from planting the crop.

**Senator Desruisseaux:** There must be some kind of a definition about other agricultural cases. If there is none, will the claimant have the insurance?

**Hon. Mr. Olson:** Yes, he would have insurance, but, of course, a contract is written between the farmer and the crop insurance authority within the provinces. I am sorry, but I do not have a copy of that with me. Indeed, they will be amended this year, but the contractual arrangements will be such that they will be capable of being settled in a court of law.

**Senator Carter:** How widespread would the situation have to be? Would it apply to a single farmer, or would it just apply to a single province? Would it have to be province-wide, or narrowed down to a single farm?

**Hon. Mr. Olson:** No, it does not, and indeed some arrangements are now being made in some areas within a province where it is reduced to an individual farmer. In Manitoba, for example, they are almost getting down to the point where they could write the premium on the basis of that individual farmer's performance of the yields, and so on.

**Senator Desruisseaux:** Does it cover the lower value of grains?

**Mr. Rayner:** Yes, there is a quality insurance included in the guarantee for some plans in some provinces, but it costs extra money.

**Senator Everett:** I was wondering how average costs are determined under the amendment. I am referring to subparagraph (ii) of paragraph (b) of subsection (1) which says:

eighty per cent of the average cost of such of the following operations as have been carried out—

**Hon. Mr. Olson:** I do not think it would be too difficult in any area to arrive at the average cost of summer-fallowing. The reason we want that in there is because we would not like to be in a dispute where a farmer claimed, or had the right to claim, what he says are individual costs if indeed they were excessive and above average. It would not be difficult to arrive at the average cost of summer-fallowing or cultivating land. We get down to (C) which is "fertilizing the land". We can obtain figures from almost any area as to the average amount of fertilizer which is put on that field for whatever crop the farmer intended to grow. We would use that figure rather than a claim which he may make that is in excess of the average. When we get to purchasing plants and that sort of thing I suppose we would make inquiries into the area to find out how much the average cost of plants or seed



would be. It would require us to make a survey in the area. We have field men, as have the Crop Insurance authorities within the provinces. They are quite knowledgeable on what the average should be.

**The Chairman:** I take it the work of checking on costs or where claims are made is done first by the staff of the Crop Insurance administration.

**Hon. Mr. Olson:** That is correct.

**The Chairman:** Do your staff go out and verify and check these figures or do you accept them?

**Hon. Mr. Olson:** Yes, we accept them. What we are asking here, of course, is statutory authority for us to make a contribution to the provincial crop insurance scheme based on these factors, and not on the present statutory conditions which we have.

**Senator Everett:** When you are dealing with a crop loss, is it not a percentage of a fixed figure?

**Hon. Mr. Olson:** Yes.

**Senator Everett:** So that it is determinable when you take on the insurance policy?

**Hon. Mr. Olson:** Yes. I should say that there are some averages of crop yields for any particular commodity in an area.

**Senator Everett:** Would you agree on that when you take the insurance out?

**Hon. Mr. Olson:** We agree on more than that. The farmer makes an application of how much of that production he wants insured, and the maximum is 80 per cent of that average.

**Senator Everett:** He also agrees on the yield and the price at the time he takes out the insurance.

**Hon. Mr. Olson:** We do not guarantee the price, but we do guarantee the production. For example, if he buys an insurance policy which is up to the maximum of 80 per cent of the yield, that is then based on whatever the market price is.

**Senator Everett:** At the time of the loss.

**Hon. Mr. Olson:** Yes.

**Senator Everett:** That is a determinable amount that cannot be argued—the quantum is exact.

**The Chairman:** It depends on what you mean by “determinable”.

**Senator Everett:** Is it determinable at the time of the loss—that is, a market price? The yield is agreed upon when the insurance contract is entered into—the percentage is agreed upon—so it would be very difficult for the farmer to argue the quantum of the loss. It seems to me that this term “average cost” leaves the matter wide open for losses. It is average cost of what, and over what area? He might suggest that it is the average cost of his immediate neighbourhood, or it could be aver-

age cost of the province. I am just wondering if there is not a way to define the term “average cost” more precisely.

**Hon. Mr. Olson:** I will ask Mr. Rayner to comment on the details of this administration, in addition to what I said a minute ago about using these words “average cost” in the area, because we would like to avoid situations where claims that were in excess of the average would be valid.

**Mr. Rayner:** This particular amendment may not apply very extensively in Canada. We think there will be only certain areas where the farmers will be interested in this coverage protection prior to the date of seeding. The purpose of putting the words “average cost” in this permissive legislation is to be as a guide to the provinces. The provinces have come to us with this proposal and our purpose is that they provide coverage to a farmer who is unable to seed his land. That does not guarantee to the farmer more than what he has put into his crop. It is not our intention to pay him an indemnity of what he would have obtained if he had grown that crop. We have crop insurance which is a production guarantee to protect the farmer after he has seeded the crop. We are trying to give him some protection prior to the seeding.

There have been representations to sell insurance to a farmer for, say, \$30 per acre to help him out on the income he would not have received. We say that this is not the purpose, but that the purpose is to protect him on the investment. In actual practice I think the provincial plans will have proposals which arrive at a conservative or reasonable estimate of the average cost of growing several crops in Essex and Kent, for example. When you consider the cultivation and early application of fertilizer—perhaps tile draining—it does not take very long to see that the farmer has probably got \$10 or \$20 per acre invested even before he puts the seed in the ground.

**Senator Everett:** I understand that. If I understand you correctly, you are saying that the average cost will be determined by provincial regulation?

**Hon. Mr. Molson:** Yes.

**Senator Everett:** Why do we not put into the act that the average cost is determined by provincial regulations? What is really happening here is that the farmer is entering into an insurance contract. He has a right under the insurance contract to be paid for his pre-planting costs if he suffers a loss due to such hazards as excessive moisture. It seems to me that the method of determining the quantum of the loss is too broad for what is essentially an insurance contract. If you are leaving that definition up to the provincial government involved, I think it should be average costs as determined by provincial regulations, or, alternatively, average costs with an arbitration feature, or there should be someone who can at least decide what the average cost is.

**Hon. Mr. Olson:** May I make a suggestion that might be helpful? The statutory authority we seek in this bill, or indeed in the total crop insurance statute, is for entering into agreements with the provinces. We do not have,

as a federal government, contracts with the farmers at all.

**Senator Everett:** I do not think that changes my point, because eventually someone has to define it.

**The Chairman:** By reason of what is in this bill the federal Government will have to stipulate the terms of coverage in relation to what the federal authority has said must be in the protection. That is, all the farmer can be assured of is not necessarily his costs. It is his cost if it does not exceed the average cost of doing that kind of work. I think it might be a mistake to try to define it too narrowly at this time. The farmer applies for this insurance, and for this excess he is paying 75 per cent of the premium. He is the one who will be looking very carefully at the coverage which he is given.

**Senator Everett:** That is precisely my point. If the loss is paid on the basis of the definition of the words "average cost" it seems to me that you are going to entertain a number of arguments as to what the average cost is.

**The Chairman:** Of course, you will do that in any case where you have a contract.

**Senator Everett:** Not if the terms of the loss are defined.

**The Chairman:** I do not think anybody can write a contract which consists of nothing but prohibitions.

**Senator Everett:** It is a matter of degree. Under the crop loss itself, the quantum is determinable by the market price and the yield and percentage agreed upon.

**The Chairman:** You are moving ahead to the stage of the loss. What I am saying is that the initial step is that the farmer applies for the insurance coverage, and also for this extension. If he does not like the definition he will not pay his 75 per cent and take the insurance.

**Senator Everett:** I would have to disagree. He might very well, if he is in an area which is subject to a lot of heavy moisture early in the springtime. What I am concerned about is the fact that, having suffered a loss and having entered into a negotiation for the settlement of the loss, he might disagree quite violently with the definition of average cost. It is just too loose a definition in my judgment.

**Hon. Mr. Olson:** I think I should repeat partly what I said, that the contractual arrangements are, in fact, put in the provincial regulations because the provinces, of course, administer them. What we are seeking here is a kind of master agreement of statutory authority which we can enter into with the province. The details of the regulations and the administration of individual provincial crop insurance schemes, of course, are spelled out in their regulations. Although I am not absolutely certain about this, all of the other terms and conditions under which the insurance is purchased and the obligations by the crop insurance authority to the farmer is in the provincial regulations. What we have to be concerned about is that our overall agreement with the provinces

does provide them with authority to make regulations, taking into account these factors which are not in our statutory authority at the present time.

**Senator Carter:** Would it help if you had the average cost related to the size of the farm? The average cost on a small farm would certainly be higher than on a very large mechanized farm.

**Hon. Mr. Olson:** Mr. Chairman, summer fallowing and the cost of cultivating land and putting fertilizer on it would be based on an acreage determination. I realize there could be some difference in costs, related to scale, but here again it is reduced to an acreage cost.

**The Chairman:** I suppose the question is whose cost is being insured.

**Hon. Mr. Olson:** In this context it is the average cost that the farmer would have incurred for those items which are listed under (A), (B), (C), (D) and (E).

**The Chairman:** Let us take, for instance, the summer fallowing of the land which he might have done the previous summer or fall.

**Hon. Mr. Olson:** That is right.

**The Chairman:** When he cannot get his seed in, that is regarded as a loss.

**Hon. Mr. Olson:** It would be calculated into the cost of his pre-planting expenses.

**The Chairman:** The cost ultimately gets down to the cost of the particular person who has suffered the loss. If he has 100 acres of land and he summer fallows 50 acres of it, is it likely that his costs for part of that 50 acres will vary?

**Hon. Mr. Olson:** I suppose it could. It would depend upon weed conditions and the number of times he would have to cultivate. Here again it seems that we would be avoiding a great deal of difficulty like putting in average costs rather than attempting to determine the precise cost of that individual farmer. It would also depend upon how many times he may have summer-fallowed it or cultivated it—five times, or in another case three times. I suggest that we would be completely at the mercy of claims if we did not use the average cost.

**Senator Everett:** That is why I would be satisfied if you put in average cost as determined by provincial regulations. That would then be a directive to the provincial authority as to who defines a loss and what the quantum of the loss is, and that they must have a regulation determining or defining average costs.

**The Chairman:** I think there has to be a provision in the contract indicating what the coverage is, and what you get if you take out that insurance. The federal authorities simply say that if you want us to be a party to this extra, in the way of pre-planting losses, then you must have a provision of this kind. We are not tying them down as to how they read the definition.

**Senator Everett:** Nor am I.



**Hon. Mr. Olson:** I am sure, senator, that in the totality of the province's administrative regulations, that, along with one hundred other things, will be included.

**Senator Desruisseaux:** How long would it take to have the claim processed and the insurance paid?

**Hon. Mr. Olson:** That is a very difficult question to answer for all of the various crops which are involved, because there are cases where damage is done for some reason where the totality of the loss cannot be determined until harvest time. An example of one case was a widespread hailstorm which went through an area and wiped out the farmer's entire crop. In this case it is possible to make an assessment of the loss even before harvest time. I am not sure that I can give you any precise details as to when the payments are made.

**Senator Desruisseaux:** Based on the experience of the department, surely you have claims which you have settled. How long would they take, on the average?

**The Chairman:** The average time between the filing of the claim and the payment?

**Senator Desruisseaux:** Yes.

**Hon. Mr. Olson:** I am advised that in some cases it only takes a very few days if the assessment of the total loss can be determined quickly.

**Senator Desruisseaux:** I was trying to find out the actual experience of that department.

**Hon. Mr. Olson:** I think it is fair to say, Mr. Chairman, that on crops such as cereals, which have reached a stage of maturity, there is no chance of recovery and it is relatively easy to make an assessment of the damage. In this case the payment is made within a few days, but as I said, with some other crops it takes a little longer.

**Senator Desruisseaux:** Is it a matter of a year?

**Hon. Mr. Olson:** No.

**Senator Desruisseaux:** What is an average?

**Hon. Mr. Olson:** It is much less than a year.

**Senator Everett:** Would the minister tell me whether this loss was one that might have been paid in the past under PFAA?

**Hon. Mr. Olson:** I do not think so. There is a bit of difficulty in answering that question, because under PFAA if all the other conditions are met, such as widespread crop disaster over a block of twelve sections, and so on, the payment is made to the farmer on his cultivated land, which includes summer-fallow. Where unseeded acreage insurance is going to be applicable, for the most part, PFAA is not available anyway. I could hardly visualize a situation, although there may be one or two, where this problem would arise with respect to cereals. That is mostly what unseeded acreage insurance is designed to cover, such as tomato crops, where the farmer has already purchased the plants and has done so much work on it. I do not think generally that it would be applicable to the same kind of coverage as PFAA.

**The Chairman:** Section 9(1) of the existing act provides:

The cultivated land of a farmer in any area to which an insurance scheme extends is not eligible for assistance under the Prairie Farm Assistance Act if an insured crop is grown by the farmer on any part thereof.

**Hon. Mr. Olson:** That is another part in which anyone who has a valid crop insurance contract cannot receive the benefit and he is also relieved of paying the levy.

**Senator Everett:** I assume it is the wish of the Government that the Crop Insurance will replace PFAA.

**Hon. Mr. Olson:** As rapidly as it can be done. We have indicated in the last few days that when the Grains Stabilization Act program comes in we may move even more rapidly than just relieving the PFAA levy from those who have bought crop insurance. We may extend it even beyond that once the stabilization program is in place.

**Senator Everett:** Extend it?

**Hon. Mr. Olson:** Extend the withdrawal or the relief of the farmers paying PFAA.

**Senator Everett:** Which would mean that they would not be eligible for PFAA.

**Hon. Mr. Olson:** That is right.

**Senator Everett:** You could have a situation in which a farmer might not have either crop insurance or PFAA.

**Hon. Mr. Olson:** Eventually we will reach that stage, but my concern in this regard is that before we withdraw PFAA I think that crop insurance ought to be available to the farmer. Whether he buys it or not is his own choice, but I am a little reluctant if he does not have an option open to him. There are areas in Saskatchewan and Alberta where crop insurance is not available in the same areas where PFAA is available now.

**Senator Everett:** You mention the stabilization policy affecting your judgment in this matter. How does it do that?

**Hon. Mr. Olson:** There are two reasons. One is that I think if we have a farm receipt stabilization program in place, such as outlined in the proposals, which my colleague, Mr. Lang and I have put before the farmers, that this would go a long ways towards stabilizing the income in that area. On the other side of the coin, where there is going to be a 2 per cent levy for that program on the farmer, we think that most farmers would probably support a withdrawal of the one per cent for PFAA so it would not be three per cent of the gross receipts.

**Senator Welch:** Is this insurance sold through insurance brokers or the provincial Government?

**Hon. Mr. Olson:** The provincial Government agencies.

**Senator Welch:** They issue the policies?

**Hon. Mr. Olson:** Yes.



**Senator Welch:** Who sets the rates?

**Hon. Mr. Olson:** The rates are set by the provincial authority, but there is a condition to our participation that those rates be actuarially sound.

**Senator Desruisseaux:** Is there much variation between the rates between the different provinces?

**Hon. Mr. Olson:** Yes, I think there is. I do not think there is a great deal of variation between provinces who have essentially the same crop insurance and the same climatic conditions. There are some variations between crops and the totality of the risks in various areas.

**Senator Welch:** Last year one orchard lost 7,000 trees because of destruction by mice. Would that be covered by insurance? This, of course, would interfere with his crop and kill his trees, and therefore he would not be able to grow a crop.

**Mr. Rayner:** There is no protection in British Columbia at the moment, and that is by choice of the provincial Government. They have said that wild life should be considered controllable, including starlings, and they also

felt this should be something considered within the control of the orchard operator and should not be insured. There are some cases in which wild life damage is included. We have not taken the position one way or the other, particularly if there is doubt about the control and the premium rates are sufficient to pay for that kind of indemnity. That is the kind of program the farmers desire.

**Hon. Mr. Olson:** Mr. Chairman, these amendments, in my view, are not going to be widely used in the grain growing areas. They will be more widely used in vegetable growing areas where these pre-planting costs are substantially greater. They will be used particularly in Ontario and certain parts of Manitoba where they are growing these types of crops. There has not been any great demand in respect of cereal grains in the Prairie provinces.

**The Chairman:** Shall I report the bill without amendment?

**Hon Senators:** Agreed.

The Committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable JOHN J. CONNOLLY, *Acting Chairman*

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No. 15

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WEDNESDAY, MARCH 24, 1971

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**Complete Proceedings on Bill C-225**

intituled:

“An Act to amend the Income Tax Act and to amend An Act  
to amend that Act.”

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REPORT OF THE COMMITTEE

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(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Smith, for the second reading of the C-225, intituled: "An Act to amend the Income Tax Act and to amend an Act to amend that Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, March 24th, 1971.

(15)

Pursuant to adjournment and notice, the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

Bill C-225, "An Act to amend the Income Tax Act and to amend An Act to amend that Act".

*Present* The Honourable Senators Beaubien, Burchill, Carter, Connolly (*Ottawa-West*), Cook, Gélinas, Hays, Hollett and Kinley. (9).

*In attendance:* Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Cook the Honourable Senator Connolly (*Ottawa-West*) was elected *Acting Chairman*.

On motion of the Honourable Senator Beaubien, it was resolved: That 800 copies of these proceedings be printed in English and 300 copies in French.

The following witnesses were heard:

Mr. F. R. Irwin, Director,  
Personal, Commodity and Estates Tax Division,  
Department of Finance.

Mr. A. E. Thompson, Director,  
Corporation and Business Income Division,  
Department of Finance.

After discussion and on a motion of the Honourable Senator Hayes, it was resolved to report the Bill without amendment.

At 10.45 a.m. the Committee adjourned.

*ATTEST:*

Georges A. Coderre,  
*Clerk of the Committee.*



# Report of the Committee

Wednesday, March 24, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-225, intituled: "An Act to amend the Income Tax Act and to amend An Act to amend that Act", has in obedience to the order of reference of March 23, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

John J. Connolly,  
Acting Chairman.



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, March 24, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-225, to amend the Income Tax Act and to amend An Act to amend that Act, met this day at 9.30 a.m., to give consideration to the bill.

**Senator John J. Connolly (Acting Chairman)** in the Chair.

**The Acting Chairman:** Honourable senators, we have before us this morning Bill C-225, to amend the Income Tax Act, and we have as witnesses Mr. F. R. Irwin, Director, Personal, Commodity and Estates Tax Division, Department of Finance, and Mr. A. E. Thompson, Director, Corporations and Business Income Division, Department of Finance.

Mr. Irwin, perhaps you have read the discussion in the Senate on March 16 when Senator Hayden explained the bill, but I am sure you did not have an opportunity of reading the very impressive address made last evening by Senator Beaubien which was supported by a great many other senators. Senator Beaubien happens to be here now and will have an opportunity of asking questions relating to the matters which he has discussed. Perhaps you would like to give us a general outline of the bill first of all and then the questions can follow.

**Mr. F. R. Irwin, Director, Personal, Commodity and Estates Tax Division, Department of Finance:** Mr. Chairman, there is very little I need to say by way of explanation of the bill. Mr. Thompson and I are here at your invitation to answer any questions you may have and to help in any way we can as you consider the bill. As you have said, Mr. Chairman, we have read the report of the debate in the Senate a few days ago when quite a full explanation of the bill was given. As was pointed out then the bill has only two clauses, the first of which amends the Income Tax Act by making a change with respect to the definition of capital cost, and the second clause extends the surtax. The fact that the second clause extends the surtax accounts for the rather unusual title of the bill because clause 2 would amend a section of an Act to amend the Income Tax Act. You will recall that the Act which amended the Income Tax Act in 1967/68 to impose the surtax also had a coming into force provision which said it would apply for certain years and this bill merely amends that provision which deals with the duration of the tax. This is why we have a somewhat unusual title for this bill.

**Senator Burchill:** How long was the period for which it was originally imposed?

**Mr. Irwin:** It was imposed for the taxation years 1968 and 1969.

**Senator Cook:** This is another stage in the reform of the Income Tax Act.

**The Acting Chairman:** This was the imposition of an additional tax for revenue purposes, I presume.

**Senator Beaubien:** How much will the 3 per cent surtax on the personal income tax produce, and how much will the 3 per cent surtax on corporation tax produce, in your estimation in one year?

**Mr. Irwin:** There is a slight problem when you mention the period of one year. The budget speech referred to a yield of \$245 million in 12 months, and of that we estimated that \$178 million would be from the tax on individuals and \$67 million from the tax on corporations.

**Senator Kinley:** Mr. Chairman, I note the expression "manufacturing and processing business" is used. The Order in Council classifies "manufacturing" as being 1 per cent below what used to be 64 per cent. Does this "processing" get us out of the classification of "manufacturing"?

**The Acting Chairman:** I think what Senator Kinley is asking is whether there is a definition of the two words "manufacturing" and "processing".

**Mr. A. E. Thompson, Director, Corporations and Business Income Division, Department of Finance:** Mr. Chairman, as is indicated here in the bill, the definition of "manufacturing and processing" will be contained in the regulations.

**Senator Kinley:** I think it is in the regulations now.

**Mr. Thompson:** There will be new regulations once this bill is passed for the purposes of carrying out this particular measure. Mr. Mahoney indicated in the Commons that the definition would be much the same as set out in class 19 of the regulations at the present time.

**Senator Kinley:** Let us take ship repairs as an example. So much of the material used in ship repairs must be manufactured in a factory, and it is so classified. But I think our firm does more manufacturing than anybody on the shore, but they will not allow ship repairs in and we cannot get credit for this in this and other legislation for depreciation because it is manufacturing, and I think this is unfair.

**The Acting Chairman:** Along the line mentioned by Senator Kinley, I was looking last night at class 19 in the income tax regulations. It seems to me that there is no



definition there of manufacturing or processing, although there should be one by implication. It refers to a business in which the aggregate of its net sales, as determined under paragraphs (f) and (d) of subsection 2 of 71A of the act, are of goods processed or manufactured in Canada by the business. Section 4 refers to an amount equal to that part of its gross revenue that is rent from goods processed or manufactured in Canada in the course of its business.

There is another reference to magazines and newspapers. There is the exclusion of gas and oil as well as logging, mining, construction or a combination of two or more of the classes set out in paragraphs 6 to 9 inclusive. There is no specific definition.

**Mr. Thompson:** That is right. A lot of the definition depends on the general meaning of the term "processed or manufactured".

**Senator Kinley:** In the Maritimes our markets are too small. We are in ship repairs, electrical contracting and other fields. Last year ship repairs amounted to 64 per cent. We could not go into manufacturing. The percentage is 117 per cent in the legislation, but if you do research you get 110 per cent. If you invent a winch you can get 110 per cent on that.

**Mr. Thompson:** Perhaps the honourable senator is thinking of the 150 per cent deduction which used to apply.

**Senator Kinley:** Yes.

**The Acting Chairman:** One hundred and fifty per cent deduction on research?

**Mr. Thompson:** Yes. There are dividing lines for determining the taxpayer's business activity, and in class 19 two-thirds of one's revenue is supposed to be from processing or manufacturing.

**Senator Kinley:** If I do a lot of ship repairs I do not qualify. I think I see why they did it on ship repairs. They had a subsidy to build a ship, but they do not get that subsidy now.

**Mr. Thompson:** I do not know whether that is the intention, but it sounds as if the two-thirds rule applied.

**Senator Kinley:** Iron ships get a percentage but not wooden ships.

**The Acting Chairman:** Logging, for example, is one of the businesses excluded from the definition of manufacturing.

**Mr. Thompson:** In class 19.

**The Acting Chairman:** Yes. Suppose a logging operation decided to process its material and ground the wood up into some kind of board or plywood, would that be considered a manufacturing process for the purpose of class 19?

**Mr. Thompson:** I do not think they would qualify unless the processing of the wood into plywood was its principal business. If its principal business was logging

and it did a bit of processing on the side it would be excluded the way class 19 is written.

**The Acting Chairman:** In the case of mining there is a good deal of talk about selling our natural resources and having the processing done abroad, with the result that processing is done abroad. Suppose a company engaged in mining decides to process materials beyond the raw ore stage, the shipping ore stage, perhaps to enrich the product that is shipped—and I take it that would require very special equipment—would that be regarded as a manufacturing process within class 19?

**Mr. Thompson:** Not within class 19 if the principal business is mining. That raises a broad question of whether a measure like this applies to a special resource area like mining. As you know, the processing of our mining resources has recently been the concern of governments. Last summer it was reflected in the proposals that the Minister of Finance made to the provinces concerning tax reform proposals as a whole, and the way they affected the mining industry. The proposed changes would encourage processing of minerals in Canada.

For the purpose here of the 115 per cent allowance, the Government's intention, as indicated by Mr. Mahoney in the House of Commons, was that it would apply to classes 3, 6 and 8. Classes 3 and 6 are the usual building classes and 8 is the class for machinery and equipment. Nearly all buildings and machinery and equipment used in mining fall into class 10 and would not generally qualify under this 115 per cent allowance.

**Senator Carter:** May I ask a supplementary question about logging? What would be the position of a wood lot owner who has a small saw mill and who saw logs into lumber and sells them? Would he have to saw through two-thirds of his stock to come under this class?

**Mr. Thompson:** That would be one of the difficult borderline situations. The way that class 19 is drawn up, two-thirds of his revenue should be...

**Senator Carter:** It is based on revenue and not on the amount of wood cut?

**Mr. Thompson:** It is based on revenue from goods sold. He may well qualify if he were sawing up his own logs and that provided his main revenue. It is based on two-thirds of his revenue from goods processed by him.

**The Acting Chairman:** You are talking about section 71A(2) I take it?

**Mr. Thompson:** It is similar, but I think it is best to keep to class 19.

**The Chairman:** Neither in class 19 or in section 71A(2) do I see a figure of 66 per cent.

**Mr. Thompson:** It is in class 19, at the top of the right-hand page. It refers to not less than two-thirds of the revenue.

**The Chairman:** Yes, I see that.

**Mr. Thompson:** This measure applies where the emphasis is on processing and manufacturing.

**The Acting Chairman:** That certainly looks after one of the questions Senator Hayden raised in his speech in the Senate on March 16.

Senator Hayden also referred to section 11 (1)(a) which provides that capital cost allowances shall be established by regulation, although the language that is used is that it is a write-off of the capital cost. Senator Hayden thought there should be some relationship or tie-in between the clause in the bill and section 11 (1)(a). He went on to say that there should be some expansion to indicate that the base might be either capital cost or the deemed capital cost under certain provisions of the bill.

**Senator Kinley:** What is capital cost, Mr. Chairman?

**The Acting Chairman:** Perhaps Mr. Thompson can answer that at this time.

**Senator Kinley:** Does it refer to transportation? Is it the invoice of the cost of materials or the cost of transportation in handling the goods and other costs on the goods?

**Mr. Thompson:** Senator Kinley, as in the case of some of the other very important things in the act such as income, capital cost is not defined. It mainly rests on the general meaning of the term. If you had to transport equipment or building materials to a particular site in order to make the machinery or the equipment, that would be part of the capital cost under normal commercial usage.

**Senator Kinley:** But would you have to put it in as 100 per cent or 115 per cent?

**Mr. Thompson:** Ordinarily it would be the actual cost. That is the ordinary meaning. For this particular measure the new provision in Bill C-225 says that capital cost would be taken as 115 per cent of what it would otherwise be. In other words, it would be 115 per cent of the actual cost.

**Senator Kinley:** Then that is a relief; it is not a cost. If it costs you \$100, then you put in at \$100 on your statement instead of \$115.

**Mr. Thompson:** Well, it would still only cost you \$100, but for tax purposes you can claim it as if it had cost you \$115. It is supposed to give the taxpayer a break.

To answer the question that Senator Hayden had raised, it is really a matter of drafting technique. Senator Hayden wondered whether it would make it clearer if section 11 (1)(a) in the act specifically said the taxpayer could claim such an amount in respect of deemed capital cost—to flag the fact that the amount you could claim was based on something other than actual capital cost.

**The Acting Chairman:** Exactly.

**Mr. Thompson:** Now, that is really a question for the draftsmen in the Department of Justice, but, if you take

a look at section 11 (1)(a) of the Income Tax Act, which is the starting point for all capital cost allowances, it starts off by saying:

(a) such part of the capital cost to the taxpayer of property—

That sounds as if it were based on the actual capital cost, but then it goes on to say:

—or such amount in respect of the capital cost to the taxpayer of property

**The Acting Chairman:** You think that would include deemed capital cost.

**Mr. Thompson:** Our legal advice is that this indicates it does not have to be based on the actual capital cost. That is the approach the Department of Justice took in drafting this legislation.

**The Acting Chairman:** If that interpretation is given, would that be satisfactory, honourable senators?

**Hon. Senators:** Agreed.

**Senator Hays:** Mr. Chairman, are there any exemptions to the 3 per cent surtax?

**The Acting Chairman:** I believe that comes under clause 2 of the bill, senator. Would you mind if we dealt with that just a little later?

**Senator Hays:** Not at all.

**The Acting Chairman:** In the course of his discussion in the Senate, Senator Hayden, by way of illustration, used the case of a company that was going to make an investment that would cost \$100,000. He said the result of that investment for the purpose as set out in clause 1 of the bill would then be that the company could claim a capital cost allowance of \$115,000. If the interest he has to pay on \$100,000 is 9 per cent, that is \$9,000. In the case of machinery, rather than buildings, he will get a capital cost allowance of 20 per cent of \$115,000 instead of the actual \$100,000. In other words, he would get the normal \$20,000 under the act as it stands now and then he would get an additional 20 per cent of the extra \$15,000 in the first year, which is \$3,000. The effect of the new provision for practical purposes is to give him his money at a reduced rate. If it cost him 9 per cent it will now cost him 6 per cent.

**Mr. Thompson:** How do you arrive at 6 per cent, Mr. Chairman?

**The Acting Chairman:** It would be the 9 per cent, or \$9,000 on the \$100,000, less the 20 per cent on the extra \$15,000, which is \$3,000.

**Senator Cook:** Mr. Chairman, he only gets half the \$3,000. The other half of that goes to taxes.

**The Acting Chairman:** Oh, yes, that is right. It would still have the effect of reducing the rate. Instead of 9 per cent it would be  $7\frac{1}{2}$  per cent.

**Mr. Thompson:** For that particular year.



**Senator Cook:** Mr. Chairman, apart from the 115 per cent deal, generally speaking, are the rates of depreciation under our income tax regulations more generous or less generous than the rates used in the United States, the United Kingdom, Europe and Japan?

**Mr. Thompson:** That is a pretty broad question. If I could just make a comment in relation to the United States. Even in that context it is a difficult comparison to make because they have a much more complicated depreciation system than we have. In addition to having general categories of assets such as we have, they also have guidelines which cover all the assets in particular industries. These moreover are just guidelines. If the taxpayer can show his actual depreciation is greater, he can claim more. However, if the administration can see from experience that his depreciation is actually less, then they can cut back in the claims. In other words, it is a much more flexible and complicated system than we have, but with that qualification our rates on the general class of machinery equipment have been quite close to what theirs have been. Just recently they did liberalize their depreciation for machinery equipment, partly to help stimulate their economy.

**Senator Beaubien:** They are more generous.

**Mr. Thompson:** No, not more generous. When we take into account the 115 per cent I think ours is slightly more generous.

**Senator Cook:** You only get 115 per cent if you qualify under the regulations?

**Mr. Thompson:** Yes, in these industries, but their change is related to manufacturing equipment as well.

I suppose a short answer would be that the basic systems provide comparable rates and at the moment the measures in each country come close to adjusting to about the same amount.

**Senator Cook:** Would you care to comment on the others such as Germany, Japan and the U.K.?

**Mr. Thompson:** It is such a changing picture I feel it would be too dangerous to try and generalize.

**Senator Beaubien:** Mr. Thompson, in the American system can the corporation write off against the federal tax taxes that it has to pay the state? They can do this in their income tax. Can the corporations do that also?

**Mr. Thompson:** I believe the corporations can claim the state income taxes as expenses. I think that is the general rule. However, I have not checked on it recently.

**Senator Cook:** This is not so much a question as an observation. I assume the department informs itself as to the current rates allowed in competitive countries with which we are competing. Would it be in order to ask that a statement be furnished, broadly indicating our depreciation rates compared with these four competitive countries?

**The Acting Chairman:** Perhaps Mr. Irwin might answer that question.

**Mr. Irwin:** First of all, it is difficult to keep up to date on information from other countries regarding this sort of thing. Remember, that it is usually provided by regulation or something comparable under their system, therefore, one cannot just pick up their tax act and find it. In the past, some European countries had capital cost allowances which were a matter of negotiation and arrangement with some industries.

**The Acting Chairman:** By way of encouragement?

**Mr. Irwin:** I assume so. It is difficult to make a general comparison between countries for all taxes and particularly for features of tax systems. We would certainly like to help by looking at what information we have available. Sometimes it takes a long time to get this information, because we have to contact people in other countries. If we are able to find something from the available information in our department perhaps we could arrange to send it to you.

**The Acting Chairman:** I was going to say that if the information could be collected and made available to us it would be useful, because this is a matter constantly cropping up in this committee.

**Senator Cook:** The minister said in his White Paper that he was going to do such and such with the tax. He also intimated that perhaps the depreciation allowances were too generous and should be looked at. In my way of thinking I do not care if it is the heel or the foot, whether you take more away by tax or collect more by reducing the depreciation allowance. The net result for the taxpayer is still unfortunate. I think we should have an idea as to what the other competitors are doing. In other words, we should not have a free hand for up and down depreciation of what suits us. We should do what the citizens of other countries which are competing with us are doing.

**The Acting Chairman:** Thank you, Senator Cook. If within some reasonable time this information could be made available to us by way of a memorandum perhaps you would send it to the chairman of the committee or the Clerk of the Committees.

**Mr. Irwin:** We will do what we can.

**Senator Burchill:** Mr. Irwin said that some of these countries had special arrangements with certain companies in order to encourage them. Canada has the same arrangements, have they not? There are special depreciation arrangements with certain industries in the first, second and third year. Were they not able to write off?

**Senator Beaubien:** Those are the mining industries.

**Mr. Irwin:** The arrangements in the Canadian tax law are published in our act or regulations.

**Senator Burchill:** There are some special ones.



**The Acting Chairman:** There are incentives, Senator Burchill, in the Canadian tax law which are reproduced either in the act or the regulations. For example, unearned depletion is a good example.

**Senator Cook:** Going back to the question of depreciation, I shall have the duty in a few days time of sponsoring this new textile bill. That is an industry which depends very heavily on machinery. I gather from Mr. Irwin's answer that it is quite possible some of our competitors would have a special deal, whereby they would allow their textile manufacturers 50 per cent depreciation or something of that nature. In that way they will put themselves in a much better position to compete with Canadian textile industries where we publish our rates.

**Senator Hays:** With what other countries are we competing in textiles?

**Senator Kinley:** The Japanese are bringing in textiles and it would be disastrous for Quebec.

**Senator Carter:** Mr. Chairman, in the case of a fish processor who buys a filletting machine or a freezer as part of his plant and receives aid from the new program of regional economic expansion, what is the situation? Let us say the capital cost is \$30,000 and he receives a grant of \$6,000 which means he has to raise \$24,000 for himself. Now if his capital cost is \$30,000 which he must have to satisfy the program, he would still be able to add on 15 per cent and get the benefit of the 115 per cent.

**Mr. Thompson:** That is right, but this will apply only to the amount net of the grant. Under the Income Tax Act, the capital cost for the purpose of depreciation would be \$30,000 minus \$6,000 so his capital cost would be \$24,000, and he can add the 15 per cent to the \$24,000. Under the ordinary rules of the act, the 15 per cent would apply to the net.

**The Acting Chairman:** That seems to cover the situation with respect to clause 1 of the bill. Now, can we come to clause 2? I have a question here that perhaps might help us somewhat because it is a fairly general one. Clause 2 of the bill purports to amend section 104A of the Act which was passed in 1968. Last night in the Senate, Senator Burchill asked the question as to whether or not the 3 per cent surtax prescribed by section 104A, subsection (1) applied to personal income tax, and I would say that it does. At any rate I said last night that it does.

**Mr. Irwin:** Yes, the 3 per cent surtax applies both to individual income tax and corporation income tax.

**The Acting Chairman:** Under subsection (1)? I thought subsection (1) applied only to individual income tax.

**Mr. Irwin:** Subsection (1) of 104A applies to individuals and subsection (2) applies to corporations.

**The Acting Chairman:** But subsection (2) is being repealed by clause 2 of this bill.

**Mr. Irwin:** No, sir.

**The Acting Chairman:** Let me read clause (2):

(2.) Subsection (2) of section 4 of *An Act to amend the Income Tax Act*, being chapter 38 of the Statutes of Canada 1967-68, is repeated and the following substituted therefor:

**Mr. Irwin:** Subsection (2) referred to here is subsection (2) of section 44 of *An Act to amend the Income Tax Act* which was passed in 1968. The subsection (2) of section 104A is part of the Income Tax Act.

**The Acting Chairman:** Could we get the Statutes of 1968-69? As I recall the wording in that section, it is identical with what I find in subsection (2) of section 104A.

**Mr. Irwin:** I believe, Mr. Chairman, that that Act, although I do not have it before me, in section 4 would amend the Income Tax Act and would have a section 1 which would be identical to what we have here. Subsection (2) of that Act was the section which was not reproduced in the Income Tax Act. That is the section which provided for the coming into force of that particular piece of legislation. It said it would apply to the 1968 and 1969 taxation years. This bill repeals that coming into force provision of the 1968 bill, and enacts a new coming into force provision which in effect merely adds 1971 and changes 1971 to read 1972 and 1970 to read 1971 in the appropriate places. This is illustrated by the underlining on page 2 of the bill before the committee.

**The Acting Chairman:** Well, perhaps we can leave that until we get the book here.

**Senator Hays:** As I understand these amendments, they would provide a surtax of 3 per cent which in turn would produce \$245 million, of which \$178 million will come from personal income and the balance from corporate tax. What exemptions by regulation are there, if any, or what could be exempt from this?

**Mr. Irwin:** This is a tax on a tax, and therefore any exemptions which exist in the Act in computing the individual income or the corporation income tax would of course apply. Personal exemptions, for example, have a bearing on the amount of basic individual income tax one pays which in turn has a bearing on the amount of surtax one pays. But there is no exemption from the surtax as such with one very important exception in the case of individuals. The surtax applies only to basic tax in excess of \$200.

**Senator Hays:** In other words if you do not pay more than \$200 in tax, then you are exempt.

**Mr. Irwin:** That is right, and if you pay only \$400 of basic income tax, then the surtax would apply to only \$200 of that. Section 104A of the Income Tax Act, subsection (1), reads as follows:

104A. (1) Every individual liable to pay tax under Part I for a taxation year shall pay a tax for the year equal to 3 per cent of the amount by which the tax payable under Part I by the individual for the taxation year exceeds \$200.

**Senator Beaubien:** If the personal 3 per cent surtax produces \$178 million, then the personal income tax must produce over \$6 billion. I did not think the figure was that high.

**Mr. Irwin:** The basic revenue? Yes.

**Senator Beaubien:** A few years ago it was about \$3.5 billion. It would be over \$6 billion, because \$200 is exempt for everybody.

**Mr. Irwin:** The budget speech of December 3, 1970 showed a revenue forecast for the year 1970-1971 from personal income tax of \$5.3 billion. That is after abatement of 28 points for the provincial tax. The abatement from individual income tax is 28 per cent of federal tax, otherwise payable.

The base on which the 3 per cent surtax applies is greater than the \$5.3 billion forecast as federal revenue. The surtax applies to tax before the provincial abatement.

**Senator Beaubien:** The \$5.3 billion is roughly 70 per cent of the whole tax?

**Mr. Irwin:** Yes, in very rough terms.

**The Acting Chairman:** Honourable senators, I have before me the Statutes of Canada 1967-1968, chapter 38. It is an act to amend the Income Tax Act, and clause 4 ("") says:

The said Act is further amended by adding thereto, immediately after section 104 thereof the following heading and section:

Then it provides to enact Part IA in which section 104A(1) enacts the surtax for individuals, which has just been read by Mr. Irwin, and section 104A(2) enacts the surtax for corporations at 3 per cent. The bill before us repeals section 4(2) of chapter 38 of the Statutes of 1967-68 which leaves in effect the 3 per cent surtax for corporations. I therefore apologize to Senator Beaubien because I said that it seemed to me that what was being done by the bill before us last night was in effect making a change in the surtax applicable to corporations. We are not making that change.

In the Senate the other evening Senator Hayden raised another point in connection with this matter. He referred to a ruling which we did not have before us, and which we do not have before us at the moment. The ruling was issued by the Department of National Revenue on January 26, 1971. He said the effect of that ruling was that:

—where a corporation elects to pay taxes as provided in sections 43, 43A, 85E and 85F, the tax under these sections is not computed under sections 39 or 69.

These are the sections referred to in section 104A(2).

Consequently, that tax is not subject to the surtax levied under 104A(2).

It would appear that 104A(2) is all-inclusive in its scope for corporations, because section 39 is the section that deals with the basic corporate income tax, and section 69 deals with investment companies; is that right?

**Mr. Irwin:** Yes.

**The Acting Chairman:** Perhaps Mr. Irwin could tell us about this ruling and its effect.

**Mr. Irwin:** The ruling is contained in an interpretation bulletin issued by the Department of National Revenue. Perhaps I might say a further word in explanation of this. The surtax is a tax on tax. It is quite different from the usual income tax which is a tax on taxable income. The Income Tax Act has numerous sections providing for the calculation of special taxes or providing a special formula for the calculation of tax in particular circumstances.

For example the act provides for calculating tax under sections 35, 36, 43, 43A, 85E and 85F. There are taxes on undistributed income, and there is a 15 per cent tax on the Canadian investment income of life insurance companies. There is a special branch tax, and there are taxes on non-residents. There are quite a number of taxes computed under various sections of the Income Tax Act.

In imposing a surtax a decision had to be made about which taxes would be liable to the surtax. In the case of individuals the surtax applies to what could be called basic tax, or what the act describes as tax payable under Part I which is defined in a special way. It does not apply to the Old Age Security tax, or to the social development tax. It does apply after the dividend tax credit has been applied, but before the foreign tax credit has been applied.

In the case of corporations the surtax applies only to tax computed under sections 39 and 69. It does not apply to the 15 per cent tax on Canadian investment income of life insurance companies or to all the other taxes that I mentioned under a number of sections. The tax is not all-inclusive, but the decision had to be made that it would apply to tax computed under certain sections.

**Senator Hays:** I think this tax on tax is an insidious tax. But since I think we are stuck with it I should like to move that we report the bill without amendment.

**Senator Cook:** We reluctantly report the bill without amendment.

**The Acting Chairman:** I think we have had a good run at it. Certainly, the questions that were raised in the Senate have been very clearly dealt with by both Mr. Irwin and Mr. Thompson and we are very grateful to them for that.

Shall I report the bill without amendment?

**Senator Burchill:** Senator Hays says we are stuck with it. We are stuck with it for two years, according to this bill.

**Senator Hays:** That is policy.

**The Acting Chairman:** We are stuck with it for 1971, I am informed.

**Senator Burchill:** We are stuck with it until 1972, are we not?

**The Acting Chairman:** No, just for 1971.

**Senator Beaubien:** I should like to add one comment, Mr. Chairman. We are now using about 38 per cent of our gross national product in this way. That is 10 per cent more than the Americans are using. This continued increase of our taxes in this way is gradually smothering any kind of development in this country, and you can see that wherever you look. It is a terrifying thing when you look around and see people being laid off here and there. I tell you it is terrible, and yet we sit back and say, "We are stuck with it." Why haven't we got the guts to get up and say that this sort of business is just nonsense? Just look at the people Bourassa went to see in the United States. Do you realize that if those people down there were all of a sudden to say that Canada, and Quebec in particular, was not a good risk, it would mean disaster for us? Do you not understand that it would bankrupt our country? Do you know that two life insurance companies in New York, the Metropolitan and the New York Life, own about \$2 billion of Quebec Hydro bonds alone? Do you know that Quebec Hydro has to sell half a million dollars worth in bonds in the next 12 months, and if they cannot sell half of that amount in New York then they cannot sell the other half anywhere.

Knowing these things are happening, seeing them happening and seeing the effects of them everywhere, it is

preposterous that no one has the fortitude to get up and say that it makes no sense, because it is just nonsense.

**Senator Cook:** Another American insurance company has about \$2 billion invested in Labrador.

**Senator Beaubien:** Well, I just mentioned the Quebec Hydro bonds because I happen to know the figures involved there.

**The Acting Chairman:** What Senator Beaubien says is a fact of life. He has the figures.

**Senator Beaubien:** It is a terrifying fact of life, but nobody seems to realize it.

**The Acting Chairman:** We do have the bill here, and it embraces a question of policy. We cannot ask the officials from the department to deal with questions of policy. Perhaps it would be more effective if Senator Beaubien made his speech in a more appropriate forum.

**Senator Hays:** It was a short, quick speech.

**The Acting Chairman:** It was a very effective speech. Is it agreed that I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Honourable senators, the meeting is adjourned.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

---

No. 16

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WEDNESDAY, MARCH 31, 1971

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Complete Proceedings on Bill S-12

intituled:

“An Act respecting Central-Del Rio Oils Limited.”

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REPORT OF THE COMMITTEE

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(For list of witnesses—see Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Aseltine	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Hollett
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(29).
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, March 23, 1971;

Pursuant to the Order of the Day, the Honourable Senator Manning, P.C., moved, seconded by the Honourable Senator Quart, that the Bill S-12, intituled: "An Act respecting Central-Del Rio Oils Limited", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Manning, P.C., moved, seconded by the Honourable Senator Quart, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.

Robert Fortier,  
*Clerk of the Senate*

# Minutes of Proceedings

Wednesday, March 31, 1971  
(16)

Pursuant to adjournment and notice, the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

Bill S-12, "An Act respecting Central-Del Rio Oils Limited".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Everett. (9).

*Also present but not of the Committee:* The Honourable Senator Manning.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Mr. David Alexandor,  
Legal Counsel, Central-Del Rio Oils Limited.  
Mr. A. B. Beaven,  
Corporate Secretary, Central-Del Rio Oils Limited.  
Mr. R. D. Viets,  
A/Director, Corporations Branch,  
Department of Consumer and Corporate Affairs.

After discussion and on motion of the Honourable Senator Beaubien, it was Resolved to report the Bill without amendment.

At 9.50 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Georges-A. Coderre,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, March 31, 1971

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-12, intituled: "An Act respecting Central-Del Rio Oils Limited", has in obedience to the order of reference of Tuesday, March 23, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, March 31, 1971

[Text]

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-12, respecting Central-Del Rio Oils Limited, met this day at 9.30 a.m. to give consideration to the bill.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. We have before us this morning one bill, S-12, respecting Central-Del Rio Oils Limited. The witnesses are: Mr. David Alexandor, Legal Counsel for Central-Del Rio Oils Limited; Mr. A. B. Beaven, Secretary; and Mr. John Taylor, the President of the company. Mr. R. D. Viets, the Acting Director of the Corporations Branch, Department of Consumer and Corporate Affairs is also present. Senator Manning spoke on this bill in the Senate. Have you anything further to say, senator?

**Senator Manning:** As I said in the house, Mr. Chairman, the purpose of the bill is obvious. It is a simple piece of legislation, and the officials are here to answer any questions.

**Mr. David Alexandor, Legal Counsel for Central-Del Rio Oils Limited:** Mr. Chairman and honourable senators, as the bill was outlined by Senator Manning at the time of second reading, if it is agreeable to you, Mr. Beaven, the corporate secretary, and Mr. Taylor, the president of the company, will be pleased to answer any questions honourable senators may put.

**The Chairman:** It may not be necessary to answer any questions, in view of the simplicity of the bill. An opening statement might tell us why you are here.

**Mr. A. B. Beaven, Secretary, Central-Del Rio Oils Limited:** Mr. Chairman and honourable senators, Central-Del Rio Oils Limited is at the moment an Alberta incorporated company, incorporated in 1947. It proposes, as a result of the passage of this legislation, to amalgamate the parent company, Central-Del Rio Oils Limited, with its wholly-owned subsidiary, Canadian Pacific Oil and Gas Limited, which is a company incorporated under the Canada Corporations Act.

The purpose of the bill is simply to move Central-Del Rio from the provincial to the federal jurisdiction, so that we can follow with an amalgamation under section 128A of the Canada Corporations Act.

**The Chairman:** I understand there is a provision in the existing corporate law, statutory law in the province of Alberta, under which this may be done.

**Mr. Beaven:** That is correct, sir.

**The Chairman:** And the effect of the merger will be that what was formerly a provincial company will become a federal company in all respects and subject to the provisions of the Canada Corporations Act.

**Mr. Beaven:** That is correct.

**The Chairman:** And it will then be subject to the federal law, without being subject to the provincial statute?

**Mr. Beaven:** That is correct.

**Senator Connolly (Ottawa West):** What kind of company is it? Is it a developer of both oil and gas?

**Mr. Beaven:** It is a petroleum exploration and development company. We have oil wells and gas wells, and they are fully operative in the petroleum industry—short of marketing. We do not have service stations.

**Senator Connolly (Ottawa West):** Why is it desirable to have a federal charter? Does it operate in various provinces?

**Mr. Beaven:** Yes.

**Senator Cook:** You want a federal charter in order to amalgamate—so that you can amalgamate with your parent?

**Mr. Beaven:** That is correct.

**Senator Connolly (Ottawa West):** And the parent operates in various provinces?

**Mr. Beaven:** Central-Del Rio is technically the parent. The federal company is the subsidiary, Canadian Pacific Oil and Gas. We are moving the parent company so that it will be able to amalgamate with its wholly-owned subsidiary. This legislation in Alberta is fully reciprocal. You could move the federal company to Alberta.

**Senator Connolly (Ottawa West):** Senator Manning told us that at the time of his explanation.

**Senator Burchill:** In what provinces do you operate?

**Mr. Beaven:** We operate in the provinces of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia, and in the Northwest Territories and the Yukon.

**Senator Desruisseaux:** Will you be continuing under the name Central-Del Rio?

**Mr. Beaven:** Initially, Central-Del Rio, assuming this legislation passes, will become a Letters Patent company

under the Canada Corporations Act under that name. But, subject to the approval of our shareholders, we have entered into an amalgamation agreement with our subsidiary. One of the provisions of the agreement is that there will be a new name for the amalgamated company. That will not take effect until the amalgamation has been completed. The new name will be Pan-Canadian Petroleum Limited.

**Senator Burchill:** Where did you get the name Central-Del Rio?

**Mr. Beaven:** That came from two companies which were put together in 1957: Central Leduc Oils Limited, which from 1947 to 1957 worked very closely with a company named Del Rio Producers Limited. When those two companies combined, as a result of a purchase of assets, the two names were also combined, in effect, and the new company was called Central-Del Rio.

**Senator Burchill:** What is the name of your subsidiary?

**Mr. Beaven:** Canadian Pacific Oil and Gas Limited.

**Senator Burchill:** That is under federal charter?

**Mr. Beaven:** That is correct.

**Senator Burchill:** What provinces does it operate in?

**Mr. Beaven:** Virtually in the same provinces as Central-Del Rio.

**Senator Burchill:** Is it in the same kind of business as you are in?

**Mr. Beaven:** Exactly. The objects of both companies are virtually identical.

**Senator Carter:** I understand this company already has a provincial charter. Does the provincial charter become redundant when the company becomes incorporated federally, or do you retain the advantages of both?

**The Chairman:** No. There is a reciprocal arrangement between the Canada Corporations Act and the provincial Corporations Act of Alberta which permits an Alberta company to become federally incorporated, in which event, from that movement, it ceases to be a provincial company. The reverse can also be done. There are these reciprocal provisions in the provincial statute and in the federal statute.

Mr. R. D. Viets is here and, being the Acting Director of the Corporations Branch of the Department of Consumer and Corporate Affairs, he may have something to add. Do you see any objection to this procedure, Mr. Viets? It is provided for by statute, is it not?

**Mr. R. D. Viets, Acting Director, Corporations Branch, Department of Consumer and Corporate Affairs:** Correct, sir. The transjurisdictional aspect is not yet provided for in the way it is for the western provinces and Ontario, but if Parliament approves this bill, this legislation will be quite acceptable to us.

**The Chairman:** You mentioned transjurisdictional provisions. Would you develop that?

**Mr. Viets:** Yes, sir. Under the Alberta act and under the new Ontario Corporations Act there is provision that a transferor jurisdiction can transfer its company to a transferee jurisdiction, providing that the transferor jurisdiction has such provision in its act and providing that the transferee jurisdiction has the power to receive the company in its act. Unfortunately, those provisions are not yet in the Canada Corporations Act, although I believe they are under consideration by a task force which is reviewing our act. Consequently, this special act is necessary to enable Central-Del Rio to come under our act.

**The Chairman:** The contemplated provisions, or the reciprocal provisions, as and when they are finally brought into the Canada Corporations Act, will make unnecessary an application to Parliament.

**Mr. Viets:** Correct, sir. I believe there may be one or two other applications of this nature before such provisions do become part of our act.

**The Chairman:** But Parliament, in its own way and within its constitutional authority, can do anything it wishes.

**Mr. Viets:** Yes, sir.

**The Chairman:** So if it wishes to pass this bill there is nothing to prevent it from doing so.

**Mr. Viets:** That is right, sir.

**The Chairman:** There is certainly no objection from your department acting thereafter in granting their petition.

**Mr. Viets:** There is no objection, no, sir. I have spoken to counsel for the company, who said they will send us the amalgamation agreement under section 7 of this bill for our comments, because it will be subject to subsections (2) and (3) of section 128A of the Canada Corporations Act. The only thing that will really concern us, then, is to see to it that at that time the agreement complies with those two subsections.

**The Chairman:** It is really procedural.

**Senator Connolly (Ottawa West):** I hope the passing of this act will not create a problem in respect of the amalgamation agreement.

**Mr. Viets:** I have reviewed the act, sir, and I cannot see that any problem would arise. The amalgamation agreement will have to comply with the provisions of subsections (2) and (3) of section 128A of the Canada Corporations Act, and otherwise it is subject to the provisions of the Canada Corporations Act.

**Senator Connolly (Ottawa West):** Clause 7 of the bill states that the amalgamation agreement "shall be deemed to be an amalgamation agreement for the purposes of section 128A of the Canada Corporations Act".

**Mr. Viets:** "provided that..."



**Senator Connolly (Ottawa West):** Yes, "provided that such meeting complies with the requirements of subsections 2 and 3 of section 128A". I see that "such meeting" refers to the meeting at which the application is approved. I assume that counsel can give us assurances on that point. So far as the rest of clause 7 is concerned, "and that the said agreement is adopted by the shareholders as required by subsection 4 of the said section", I understand from Senator Manning's explanation that that has been done, as required by section 4 of the said section.

I wanted to make sure that there would be no difficulty for the company proceeding if the Corporations Branch of the Department of Consumer and Corporate Affairs found some defect in the amalgamation agreement.

**Mr. Viets:** I am sure that could be easily worked out in a procedural manner.

**Senator Cook:** This act is only permissive anyway.

**The Chairman:** I take it from what Mr. Viets has said that he has seen the agreement.

**Mr. Viets:** Not yet. I understand from the company's counsel that it is in the mail to us now.

**The Chairman:** If you look at the requirements of subsections (2) and (3) you will notice they are not very difficult. Subsection (2) says:

Companies proposing to amalgamate may enter into an agreement for the amalgamation prescribing its terms and conditions and the mode of carrying the amalgamation into effect.

Now, they have made an agreement which has been approved by the shareholders, so obviously they have met the requirements of subsection (2). There is an amalgamation agreement providing for the basis on which the amalgamation shall be carried into effect.

Then if you look at subsection (3) you will see that it says as to particulars of the agreement:

The amalgamation agreement shall further set out

(a) the name of the amalgamated company;

(b) the objects of the amalgamated company;

I assume those provisions have been complied with, Mr. Beaven?

**Mr. Beaven:** Yes.

**The Chairman:** Then it goes on to say:

(c) the amount of its authorized capital, the division thereof into shares and the rights, restrictions, conditions or limitations attaching to any class of shares;

I should think that that has been done. I would imagine what you would like to look at there, Mr. Viets, would be to see whether any of those restrictions or conditions, etcetera, exceed what is permissible under the Canada Corporations Act.

**Mr. Viets:** Yes, that would be so. I believe that there is a section in the Act which says that the capital should be the same before as after the passage of this bill.

**Mr. Beaven:** That is correct. There will be no change in the capital of the company.

**The Chairman:** Then going on with the conditions, it says:

(d) the place within Canada at which the head office of the amalgamated company is to be situated;

I assume the agreement does that?

**Mr. Beaven:** Yes.

**The Chairman:** Then it says:

(e) the names, callings and postal addresses of the first directors thereof;

I assume that is in order?

**Mr. Beaven:** Yes.

**The Chairman:** Then it says:

(f) when the subsequent directors are to be elected;

I assume your agreement provides for that.

**Mr. Beaven:** Yes, Mr. Chairman.

**The Chairman:** Then it goes on to say:

(g) whether or not the by-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed by-laws;

I assume you have met that condition.

**Mr. Beaven:** They are attached as an annex to the agreement.

**The Chairman:** Then it says:

(h) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company and the manner of converting the authorized and issued capital of each of the companies into that of the amalgamated company as determined pursuant to paragraph (c) above.

I suggest those conditions are simple and straightforward. With the exception of what has been mentioned and which has now been satisfied by Mr. Beaven, there does not now appear to be anything in subsections (2) and (3) of 128A that would be likely to cause you to say, "Your amalgamation agreement has some provisions which are not acceptable".

**Mr. Viets:** That is correct, sir.

**The Chairman:** Any other questions you want to ask, honourable senators?

**Senator Benidickson:** This company is substantially controlled by Canadian Pacific Investments?

**Mr. Beaven:** That is correct, sir.

**The Chairman:** Is it agreed, honourable senators?

**Senator Beaubien:** I move that we report the bill without amendment.

**Hon. Senators:** Agreed.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

---

No. 17

---

TUESDAY, APRIL 6, 1971

---

Complete Proceedings on Bills S-15 and S-16,

intituled respectively:

“An Act respecting the consolidation of the Income Tax Act in  
the printed Roll of the Revised Statutes of Canada, 1970”

and

“An Act respecting Mic Mac Oils (1963) Ltd.”

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REPORTS OF THE COMMITTEE

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(27)
Giguère	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Orders of Reference

Extract from the Minutes of the Proceedings of the Senate,  
March 30, 1971:

"The Honourable Senator Cameron presented to the Senate a Bill S-16, intituled: "An Act respecting Mic Mac Oils (1963) Ltd.".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Cameron moved, seconded by the Honourable Senator Burchill, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate,  
March 31, 1971:

"Pursuant to the Order of the Day, the Honourable Senator Stanbury moved, seconded by the Honourable Senator McLean, that the Bill S-15, intituled: "An Act respecting the consolidation of the Income Tax Act in the printed Roll of the Revised Statutes of Canada, 1970", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

With leave of the Senate,

The Honourable Senator Stanbury moved, seconded by the Honourable Senator McLean, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
Clerk of the Senate.

# Minutes of Proceedings

Tuesday, April 6, 1971.  
(19)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider:

Bill S-16, "An Act respecting Mic Mac Oils (1963) Ltd."

and

Bill S-15, "An Act respecting the consolidation of the Income Tax Act in the printed Roll of the Revised Statutes of Canada, 1970".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Croll, Macnaughton and Willis—(10).

*Present, but not of the Committee:* The Honourable Senators Cameron, Lafond and McLean—(3).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

Bill S-16, "An Act respecting Mic Mac Oils (1963) Ltd."

*WITNESSES:*

*Mic Mac Oils (1963) Ltd.:*

Mr. W. J. Hope-Ross, Counsel;

Mr. K. H. Burgis, Director and Corporate Vice-President of Hudson's Bay Gas and Oil Co.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

At 9:40 a.m. the Committee proceeded to the consideration of Bill S-15.

Bill S-15, "An Act respecting the consolidation of the Income Tax Act in the printed Roll of the Revised Statutes of Canada, 1970".

*WITNESSES:*

*Department of Justice:*

Mr. J. W. Ryan, Director, Legislation Section;

Mr. R. L. du Plessis, Legislation Section.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

The Committee then proceeded to discuss the action to be taken respecting its consideration of Bills S-9 and C-180.

At 10:15 the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,

*Clerk of the Committee.*

# Report of the Committee

Tuesday, April 6, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-15, intituled: "An Act respecting the consolidation of the Income Tax Act in the printed Roll of the Revised Statutes of Canada, 1970", has in obedience to the order of reference of March 31, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,

Chairman.

Tuesday, April 6, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-16, intituled: "An Act respecting Mic Mac Oils (1963) Ltd.", has in obedience to the order of reference of March 30, 1971, examined the said Bil and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,

Chairman.



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Tuesday, April 6, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-15, respecting the consolidation of the Income Tax Act in the printed Roll of the Revised Statutes of Canada, 1970, and Bill S-16, respecting Mic Mac Oils (1963) Ltd., met this day at 9.30 a.m. to give consideration to the bills.

Hon. Salter A. Hayden (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. We have two bills before us this morning—Bill S-15, an act respecting the consolidation of the Income Tax Act, and Bill S-16, an act respecting Mic Mac Oils (1963) Ltd. One week ago we passed a bill similar to Bill S-16 in form and substance. I refer to that respecting Central-Del Rio Oils Limited.

This morning we shall deal with Bill S-16 first. Mr. W. J. Hope-Ross, the counsel for Mic Mac Oils, will give us a short explanation

**Mr. W. J. Hope-Ross, Counsel, Mic Mac Oils (1963) Ltd.:** Mr. Chairman, honourable senators, I am Jim Hope-Ross, counsel for Mic Mac Oils (1963) Ltd. With me is Mr. Kenneth Burgis, a director of Mic Mac Oils (1963) Ltd. and corporate vice-president of Hudson's Bay Oil and Gas Company Limited.

Mic Mac Oils (1963) Ltd. is a wholly-owned subsidiary of Hudson's Bay Oil and Gas. Mic Mac is incorporated under the Alberta Companies Act. Hudson's Bay Oil and Gas is a federal Letters Patent company. Because Mic Mac holds petroleum interests in Nova Scotia, Prince Edward Island, Manitoba, Saskatchewan, Alberta, British Columbia and the Northwest Territories and because Hudson's Bay Oil and Gas holds interests in the same jurisdictions, there is obviously considerable administrative overlap. It is our intention to amalgamate Mic Mac and another subsidiary with Hudson's Bay Oil and Gas. In order to do so both companies must be in the same jurisdiction.

Section 158 of the Alberta Companies Act enables an Alberta company to continue federally. As yet there is no adoptive procedure in the federal act. It is our intention by this bill that we shall be authorized to apply to the Minister of Consumer and Corporate Affairs to have Letters Patent issued for Mic Mac Oils thereby continuing it as a federal company. Amalgamation can then take place under section 128A of the Canada Corporations Act.

As you see, it is a simple bill but an essential one that closely follows a similar bill sponsored by Senator Manning, which was passed recently by the Senate, with respect to Central-Del Rio Oils.

Mr. Burgis and I shall be pleased to answer any questions the honourable members of the committee may have.

**The Chairman:** As and when this bill becomes law, Mic Mac Oils will be a federal company.

**Mr. Hope-Ross:** That is correct, sir.

**The Chairman:** That is a preliminary step so that you may then amalgamate Mic Mac and Hudson's Bay Gas and Oil.

**Mr. Hope-Ross:** Yes. The amalgamation will probably take some months to complete, but this is the logical step.

If I may point out to the committee the difference between our bill and that respecting Central-Del Rio, ours is simpler in that we do not require the act to refer to the amalgamation. Because of the wholly-owned status it is a simple matter to call a shareholders' meeting to prove amalgamation. On the other hand, Central-Del Rio, with their large public holdings, for the sake of economy included the amalgamation agreement in their bill.

**Senator Benidickson:** Mr. Chairman, this bill is comparable to the bill that was introduced by Senator Manning.

**The Chairman:** Yes. It accomplishes the same thing.

**Senator Benidickson:** They simply want federal status instead of provincial status.

**The Chairman:** That is right. They intend to proceed to amalgamate once the two companies have federal status.

**Senator Connolly (Ottawa West):** Mr. Chairman, if the Canada Corporations Act had in it the same provision the Alberta act has for allowing a provincial company to become federal, there would be no necessity for coming to Parliament for special legislation.

**The Chairman:** That is correct.

**Senator Connolly (Ottawa West):** I hope some day, Mr. Chairman, that change will be made in the Canada Corporations Act.

**The Chairman:** Senator Connolly, a few years ago when we were working on the Canada Corporations Act I presented a draft of a provision which would accomplish that. There was fear and trembling in Ottawa that that provision might, in some fashion, intrude on the independent status of provinces and the federal authority.

I think Mr. Ryan recalls that, because he was one of the nervous ones. So we abandoned the idea at that time, but we still have it in reserve. I think possibly the Department may be approaching more closely the point where we will now get it done within the foreseeable future, otherwise we will try it again ourselves.

Are there any other questions?

Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** We shall now consider Bill S-15, respecting the consolidation of the Income Tax Act in the printed Roll of the Revised Statutes of Canada, 1970.

We have with us this morning Mr. J. W. Ryan, Director, Legislation Section, Department of Justice, to take us through and the complexities of this bill that make for hard reading.

Mr. Ryan, would you make a statement which to simplify this bill?

**Mr. J. W. Ryan, Director, Legislation Section, Department of Justice:** Mr. Chairman and honourable senators, the purpose of this bill is set out as concisely as it is possible to do so in the first paragraph of the explanatory note. I can expand on this to some extent by explaining the circumstances in which the Revised Statutes of Canada may appear at this time. As you know this revision has been under way for some considerable length of time, and as of last August 14 we were finally and irrevocably committed to the whole text that had been consolidated to that date. That is now in course of completion and should very shortly be reported to the Government by the Statute Revision Commission. At this time that manuscript or roll, whatever you want to call it, contains the Income Tax Act as one of the consolidated Statutes, and that Income Tax Act will replace the present or current Income Tax Act on the date that the Revised Statutes of Canada are proclaimed in force. The immediate result of that will be that the current Income Tax Act will be replaced by the Act in the Revised Statutes. I had a quick look at our manuscript before I came over and the last section numbering in the current Income Tax Act is, I believe, 144 while the last section numbering in the manuscript for the consolidated act is 207, which means there are some 63 added sections. That is, of course, numbering of sections and not of provisions.

**Senator Connolly (Ottawa West):** Do you mind if I stop you there? I take it that this increase in the numbers results from the additions of large sections identified by capital letters such as A, B, and c, etcetera.

**Mr. Ryan:** Yes, and going down to K in some cases.

**Senator Connolly (Ottawa West):** It is for the most part a re-numbering job.

**Mr. Ryan:** Yes, we go down through the numbering consecutively, and we avoid all the A's, B's and C's. This is traditional with revisions and has been for almost 100 years—at any rate from 1886.

Now, if the Income Tax Act that has been amended is brought in within a period of, say, 12 months, work on the current Income Tax Act will be in progress. I understand that that has been going on for some time, because it is very difficult for persons preparing bills to shift to a new numbering system, particularly when that new numbering system is no part of the law and no part of their knowledge. So, the effect of bringing the revised Income Tax Act into force at this time will be to cause some confusion, because any bill the Government brings in will relate to the current Income Tax Act.

We will have at that time in the House and for the public what amounts to three sets of numbers and that, of course, will cause some considerable difficulty in relating one set of statutes to another, and if this bill which the Government is proposing—and I suspect it will be although I have no direct knowledge of it—is by way of amendment of the current Income Tax Act, then there is a distinct possibility and almost a statutory requirement, if the practice of this present Parliament is carried out, that we will have to prepare an Income Tax Act in the second supplement. So, there is a distinct possibility of having four series of numbers in a period of

12 months. You can imagine the difficulty that this will cause to income tax lawyers, chartered accountants, parliamentarians, and the public generally.

**The Chairman:** Do not forget the taxpayer.

**Mr. Ryan:** Yes, and, of course, the administrative officials trying to prepare the forms for the taxpayers. The whole purpose of this amendment is to side-step that situation by preventing the Income Tax Act in the revision from coming into force so that the status will be maintained until the situation resolves itself.

**The Chairman:** Which Income Tax Act will be contained in the Revised Statutes if they come out before any amendments are brought into force to the existing law?

**Mr. Ryan:** The revision will carry the current Income Tax Act, and will automatically repeal that current law and substitute for it the version in the Revised Statutes which by law is not new law but a continuation of the old law. In effect, the current Income Tax Act will be replaced by the act in the Revised Statutes.

**Senator Connolly (Ottawa West):** That is assuming that this bill is passed?

**Mr. Ryan:** No, assuming that this bill is not passed.

**The Chairman:** That is not what I was asking. I wanted to know which Income Tax Act would be the one contained in the Revised Statutes if they are published before these tax changes that are talked about take place.

**Mr. Ryan:** That is what I answered you, senator.

**The Chairman:** Perhaps you had better have another run at it, because I was trudging up the hill.

**Mr. Ryan:** This is the last consolidation of the Income Tax Act that I have, which is 1966-67. There is a later one, I hope.

**The Chairman:** Yes, there is.

**Mr. Ryan:** This is what has been brought into the consolidation in the Revised Statutes of Canada, and this is what will be repealed by the Revised Statutes. There is a technical repeal.

**The Chairman:** Of course, otherwise you would have two statutes reading the same way.

**Senator Connolly (Ottawa West):** Assuming, Mr. Ryan, assuming that Bill S-15 is passed, what will appear in the Revised Statutes for the Income Tax Act? Nothing?

**Mr. Ryan:** Fortunately, it will be this one as revised. It will be there physically, but it will not be there in law.

**Senator Connolly (Ottawa West):** In other words, what you will have in the Revised Statutes is what we now have in the Income Tax Act?

**Mr. Ryan:** Yes.

**Senator Connolly (Ottawa West):** With all the sections A, B, C and D carried through. It will be consolidated, but it will not be revised.

**Mr. Ryan:** It will be revised and consolidated, but it will not be in force.



**Senator Connolly (Ottawa West):** I see; it is only to appear in the Revised Statutes?

**Mr. Ryan:** It is already there in the manuscript, and unless the whole revision is to be redone there would be no way of getting it out.

**Senator Connolly (Ottawa West):** If Bill S-15 is passed, then what appears in the Revised Statutes for the Income Tax Act is not the law.

**Mr. Ryan:** That is right.

**Senator Connolly (Ottawa West):** The law will be what is in the Income Tax Act and in amendments hereafter.

**The Chairman:** That is right. Mr. Ryan, let us take this a step further: let us assume that at some time during the lifetime of this Parliament or during this session there are amendments to the existing law. Will you then publish a supplement to the Revised Statutes, and if you do, what will you put in it in relation to the Income Tax Act?

**Mr. Ryan:** Mr. Chairman, are you speaking generally now, or are you speaking specifically of the Income Tax Act?

**The Chairman:** Specifically of the Income Tax Act.

**Mr. Ryan:** Assuming that this bill is not passed and amendments are made to the Income Tax Act in the same manner as other amendments have been made to other statutes in this session that are contained in our Revised Statutes, then what we would have to do would be to take these amendments and alter them—revise them, if you like—and put them in a second supplement to make them correspond to the numbering and the provisions of the Income Tax Act in the revision.

**The Chairman:** But if we pass Bill S-15, you will then have all this revision of what is the existing income tax law, but it will be of no force and effect.

**Mr. Ryan:** That is correct.

**The Chairman:** And the existing law, with its numbering, will continue?

**Mr. Ryan:** That is right.

**The Chairman:** And when changes are made at this session or the next session, they will be made in line with what is presently in the existing law.

**Mr. Ryan:** That is correct.

**The Chairman:** What I am really asking is: At what stage will you consolidate the existing law, and how will you go about it, because this will be after the event?

**Mr. Ryan:** Yes. We will assume we are talking about some time in 1972.

**The Chairman:** All right.

**Mr. Ryan:** The Income Tax Act will have been amended in the interim period, and the current Income Tax Act, with its amendments, would be put out in a consolidated form—not a legislatively authorized consolidation, but a consolidation that we call an “office copy” such as this one. They will be put out by commercial outfits,

and will retain the same numbering and will do so until there is another revision commission that has authority to alter its numbering.

**Senator Connolly (Ottawa West):** Or until the Income Tax Act specifically is revised by Parliament and the new act is passed.

**Mr. Ryan:** Yes, substituted.

**The Chairman:** So even with the Revised Statutes of Canada that are to come out available, you will not go there to find out what is the income tax law.

**Mr. Ryan:** That is right.

**The Chairman:** You will have to take the existing law and follow it through, together with all the amendments.

**Mr. Ryan:** Yes.

**Senator Connolly (Ottawa West):** I think this is a question of policy and perhaps it is improper to be asking it of Mr. Ryan at this time, but I think we should say something about it, Mr. Chairman. The Income Tax Act has been amended so frequently that it is not just difficult but practically impossible for the average citizen—and I would say even for the average lawyer—to follow it. After the new Revised Statutes of Canada have been published, I would hope that an early effort would be made on the part of the Government to consolidate the Income Tax Act, and to pass a new act that would, in effect, make it look like the revised act as contained in the Revised Statutes.

**The Chairman:** I think what you are saying, senator, is that if at some stage you have a substantial revision of the existing income tax law, what should be done is what is done very often when we are amending a section of an act—that is repeal the section and then substitute the new one.

**Senator Connolly (Ottawa West):** That is right.

**The Chairman:** If the amendments that may occur are very substantial, perhaps the proper way for Parliament to deal with it at the time they are enacting the amendment is to repeal the act and substitute a new act.

**Senator Connolly (Ottawa West):** Yes.

**The Chairman:** We could then achieve a renumbering in that fashion. However, this is speculating.

**Senator Connolly (Ottawa West):** Yes, it is, but I would like to see the committee air the view that it is a desirable step to take. I am sure that the department has thought about this and that in time it will be done, but I hope it will be done sooner rather than later.

**The Chairman:** Well, this is being reported and Mr. Ryan has been here to hear what we have to say. We will get the message across somehow.

**Mr. Ryan:** May I make one observation on that? It is not simply a matter of replacing the Income Tax Act. It is a fact that there are about nine income tax acts in the provinces which are tightly tied in with the federal Income Tax Act at the present time. So, it is not a simple matter.

**Senator Aird:** I think, Mr. Chairman, what, in effect, we are doing today is making an open-ended exception to the Revised



Statutes, and that is the point Senator Connolly is trying to underline. I am very pleased to have it on the record, that it is open-ended and there is no terminal date. What we are endeavouring to place before this committee and before Mr. Ryan is our concern that efforts be made to come forward with a sensible and comprehensible Income Tax Act.

**The Chairman:** When we change the format and the numbering of the existing law, then we are presenting a problem for different provinces to tie in, so it is a big job. The effect of what we are doing here is not to disturb that situation but to continue the existing law. Is that right?

**Mr. Ryan:** That is correct.

**Senator Connolly (Ottawa West):** Mr. Chairman, there must be some way of simplifying this very complicated act. We have talked about this often in this committee. The sections are inordinately long, and exceptions are put in. The text is almost impossible to read and follow. Perhaps there is some way of breaking up the act into different pieces of legislation. It may be that subject matter that affects the provinces could be segregated from the main body of the act. It should be simplified. Has any research been done on this, Mr. Ryan?

**Mr. Ryan:** Mr. Chairman, I am not aware of any because, fortunately for my state of mind, I am not very closely tied in with work on the Income Tax Act. I think others would have to speak on that score.

**The Chairman:** And I take it you are not ready to accept an assignment of that kind!

**Mr. Ryan:** Senator, I enjoy coming here far too much with regard to corporations and other matters.

**Senator Macnaughton:** It may be forced labour before long.

**The Chairman:** One of the complications you have in trying to wade through the income tax law, as it is now, is that no matter what thought is put into a subject matter in respect of which it is wished to legislate, doors are immediately opened; and I would say that at least as many doors are opened as are closed every time there is an amendment to the Income Tax Act. This seems to be an inevitable situation. The people who are on one side of the fence practising in that field have at least as much knowledge, ability and discernment as those who are drafting, and it is when they get their experience that the amendments start coming in. The ultimate idea, I suppose, is to have a perfect statute, which never seems to be achieved, in which there are no more doors that can be opened. I would say that that is Utopia—if you can use the word “Utopia” in relation to a tax bill.

Are there any other questions on this bill? I think the purpose is clear, and we have had some useful discussion with regard to the suggestion that efforts be made to produce a more simplified bill. But I am not as optimistic as Senator Connolly that that will happen.

**Senator Connolly:** I am not a bit optimistic.

**The Chairman:** Shall I report the bill without amendment?

**Hon. senators:** Agreed.

**The Chairman:** We have two other bills referred to us—C-180, the Packaging and Labelling bill, and S-9, to amend the Copyright Act.

Concerning Bill C-180, we have had requests from at least seven different organizations indicating their wish to appear before the committee to make representations. The period of time available since the bill was referred to committee has not been sufficient to enable the witnesses to prepare themselves. This is a very important bill. It is one of great public interest, and one which may be helpful to the public in many areas. Therefore, we have to examine it in considerable detail. We owe that to ourselves and to the public—not only the consumers but also those manufacturers who are affected by it. As I indicated to the minister a few days ago, we are unlikely to commence our study of the bill until after the Easter recess.

The purpose of Bill S-9 is to remove the performing right which, under the Copyright Act, record producers presently enjoy, and because of which they can collect royalty payments.

Although this provision has existed in the Copyright Act for years, manufacturers have never filed any tariff. When the bill was originally introduced in the Senate a year ago and subsequently withdrawn, the various groups described as record producers, and who enjoy this performing right, filed a tariff with the Copyright Appeal Board as provided for in the act, and hearings regarding that tariff are now being held. When those hearings have been concluded we will have a better idea of what is involved from the aspect of dollars and cents, and the kind of tariff the Copyright Appeal Board will approve.

Many members of the public representing both sides of the question have indicated a wish to be heard.

**Senator Willis:** The Economic Council has now brought in its report that was requested two and a half years ago, but it was not brought in at the time I spoke on this bill in the Senate.

**The Chairman:** Yes. The report points out that the copyright law is very complicated and requires expert knowledge to understand it. At first the council was hesitant, but then it jumped right in and made a recommendation in line with this bill, that the performing right be removed from the act.

However, when considering the removal of a right that has existed for years, we should study it carefully from the point of view of both sides. The minister will be present at the committee hearings with his representatives and the committee will certainly want to hear what he has to say. Those likely to be affected by the legislation will also wish to be heard.

**Senator Benidickson:** Have we to deal with this bill promptly?

**The Chairman:** We will deal with it with our usual promptness in the time available. Following the Easter recess we will deal with both these measures. There is no great pressure to pass the bill tomorrow.

We should hear whatever representations are to be made, and those who are appearing before the Copyright Appeal Board will no doubt wish to appear before the committee to present their views. One facet of their views is already being presented to the Copyright Appeal Board, and since the bill affects an existing right we should approach the subject seriously and as promptly as possible.

**Senator Carter:** It is possible that the Copyright Appeal Board may bring in a nil tariff which would have the same effect as this bill. The right would be there, but there would be no benefit from it.

**The Chairman:** Senator Carter has raised an interesting point. The Copyright Appeal Board is charged with the duty of setting the tariff, I doubt whether it has the authority to decide that there shall be no tariff. This is similar to the provision contained in section 91 of the B.N.A. Act. Many cases have arisen over the years because of this constitutional aspect.

The legislation then being considered had included a prohibition in relation to an item of trade or commerce, and the courts pronounced that the prohibition was not subject to regulation. There is authority to determine a tariff but not to make a decision that Parliament has not made, namely, that there should be no tariff. If we wish to do away with the performing right, and therefore the right to have a tariff and to collect a royalty, then it has to be done by legislation.

**Senator Carter:** Such matters can develop beyond present concepts. The right that we may be taking away now may be of consequence later and we may have to put it back again.

**The Chairman:** That is possible. There is a whole new field of copyright law which may have considerable effect on computers. Material fed into computers may be of Canadian content or subject to copyright. This is a problem that may have to be resolved sooner than we think.

**Senator Carter:** We may soon have not only recorded sound but also a recorded picture on the same record.

**The Chairman:** That is right.

**Senator Carter:** Whatever might be said with regard to using a sound that is performed, when it is expanded to include graphic material it becomes a different field, in which the right probably has more significance.

**The Chairman:** That is something we shall have to consider when discussing the bill. It deals with the performing right, which is an existing right to the manufacturer of records. The performer, of course, is paid when he performs, even for the purpose of making the record, so he also has a right.

**Senator Benidickson:** Mr. Chairman, I came in late and I apologize, I am concerned about this matter of copyright.

**The Chairman:** We are not dealing with it today. We are simply discussing it, but our hearings will not commence until after the Easter recess. There are many who wish to be heard, so there will be plenty of opportunity to ask questions and for you to put forward your point of view.

This is all the business we have. Are you agreed now that we should adjourn? Senator Aird has a committee meeting at 11 o'clock, and I informed him that we would be finished before that time.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable JOHN J. CONNOLLY, P.C., *Acting Chairman*

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No. 18

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WEDNESDAY, APRIL 21, 1971

MAY 21 1971

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First Proceedings on Bill C-180,

intituled:

"An Act respecting the packaging, labelling, sale, importation  
and advertising of prepackaged and certain other products"

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(Witnesses:—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Orders of reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Heath, seconded by the Honourable Senator Kickham, for the second reading of the Bill C-180, intituled: "An Act respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products."

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motions, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, April 21, 1971.  
(20)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider the following Bill:

Bill C-180, "An Act respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products".

*Present:* The Honourable Senators Beaubien, Blois, Carter, Connolly (*Ottawa West*), Desruisseaux, Everett, Flynn, Haig, Hays, Isnor, Macnaughton, Martin, Molson, Sullivan, Walker and Welch—(16).

*Present, but not of the Committee:* The Honourable Senators Heath and Méthot—(2).

Upon motion the Honourable Senator Connolly (*Ottawa West*) was elected *Acting Chairman*.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

Upon motion it was Resolved to print 800 copies in English and 300 copies in French of the Proceedings of this day.

## WITNESSES:

### *Grocery Products Manufacturers of Canada:*

Mr. G. G. E. Steele, President;

Mr. N. Murray Brown, Chairman (President, Christie Brown & Co. Ltd.);

Mr. John M. Lindley, Director (President, Campbell Soup Company);

Mr. Don C. Gibson, Chairman, Marketing Council (Vice-President, General Foods Ltd.) and

Mr. Philip V. Moyes, Executive Vice-President.

### *Canadian Food Processors Association:*

Mr. E. T. Banting, Executive Vice-President.

### *Packaging Association of Canada:*

Mr. James M. Scott, President (Vice-President, Reid Press Ltd.);

Mr. John A. Whitten, (Vice-President, Christie Brown & Co. Ltd.) and

Mr. Lyn G. Jamison, Executive Vice-President.

At 12:20 P.M. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, April 21, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-180, respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products, met this day at 9.30 a.m. to give consideration to the bill.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** We have before us this morning Bill C-180, the Consumer Packaging and Labelling Bill. There are witnesses representing three organizations, the Grocery Products Manufacturers of Canada, the Canadian Food Processors Association, and the Packaging Association of Canada. If it is satisfactory to the committee and to the witnesses I will call them in the order I have just mentioned. Is that agreed?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Mr. Steele, will you come forward.

**Mr. G. G. E. Steele, President, Grocery Products Manufacturers of Canada:** Thank you, Mr. Chairman and honourable senators. I should like to introduce the gentlemen who are here with me. I am the President of the association and a permanent officer. Mr. Murray Brown is Chairman of the Board of Grocery Products Manufacturers of Canada and President of Christie Brown & Co. Ltd. Mr. John Lindley is a member of the Board of Directors of our association, and President of Campbell Soup Company. Mr. Donald Gibson is Vice-President of General Foods Ltd. and Chairman of the Marketing Council of our association. We are here as a delegation and we thank the committee for the opportunity of making some comments on Bill C-180.

**The Acting Chairman:** I need not remind the committee that Mr. Steele was formerly Deputy Minister of the State Department, and formerly Secretary of the Treasury Board. He has had a very distinguished career in the Public Service and is now retired. Mr. Steele, you may proceed.

**Mr. Steele:** Mr. Chairman and honourable senators, we have circulated in advance a brief which we prepared for the joint use of the House of Commons and the Senate dealing with our comments on the bill. We thought we would not take the time of the Senate this morning to go through this again in full, because the brief was the

subject of our appearance before the house where there was considerable discussion on the details that we brought out at that time.

On behalf of our association I wish to say that we are disappointed that more of the concerns that we expressed in this brief were not reflected ultimately in the bill when it passed third reading in the house. I have prepared a separate smaller submission for the purpose of this morning's hearing based on three or four of the main points which still seem to us to be very important indeed with regard to this bill. We have brought to the committee copies of this submission in French and English, and if I may take the time of the committee I would like to go through it. It is a summary of what we still consider to be the main points of concern from an industry point of view.

**The Acting Chairman:** Is that agreed?

**Hon. Senators:** Agreed.

**Mr. Steele:** Mr. Chairman and honourable senators, we bring to the attention of the Senate of Canada, now considering Bill C-180, that our Association, Grocery Products Manufacturers of Canada, which contains some 70 companies engaged in the packaged food and non-food manufacturing business in Canada, will be greatly affected by the various new requirements set out in this bill.

As we indicated in our brief, our membership does not object to a new law of this kind which envisages a more comprehensive set of labelling and packaging requirements, but we do point out that our industry has for many years been regulated under many other statutes of the Parliament of Canada, some 15 in number—these, by the way, are listed in the back of our original brief as a list of all statutes which presently, in one way or another, govern this industry—so that our concern focuses more directly on the new requirements which appear for the first time in this bill.

Our concerns have not been greatly alleviated to date by the small number of amendments which the Government proposed during the committee stage of this bill in the House of Commons. These concerns essentially relate to the following:

Firstly, a number of areas which presently are covered by the Combines Investigation Act would now, if the bill passes in its present form, be the subject of detailed regulation by the Governor in Council. Therefore, decisions about what may constitute misleading or deceptive statements for the future in the many thousands of packaging and labelling situations which we experience will

become a matter for judgment by those preparing regulations rather, than by the courts of the land.

Essentially we are referring to the provisions of clauses 7, 9 and particularly 10 of the bill. Many rather onerous, detailed requirements are prescribed for listing information on labels. There will now be a right in the Governor in Council to decide really what constitutes a misleading or deceptive statement on the label of a prepackaged good. As I have indicated, this aspect of the law has up to this point in time been handled under the provisions of the Combines Investigation Act, section 33, which has the power, as you know, to bring action before the courts where there is any complaint of deception or fraud.

Secondly, we are very concerned that, in attempts to seek some standardization of package sizes and shapes, the Government and the minister under clause 11 of the proposed bill make no provision whatsoever for any form of mandatory consultation with those who are going to be regulated against. The arguments which the minister has brought forward to justify direct action in this way by the Governor in Council fail, we regret to say, to convince our industry that there will not be many problems unless there is some legislative assurance given that we will be consulted as a matter of right.

Thirdly, the other major area of concern has related to the strong powers of seizure and detention and the role of the inspectors as contemplated in this bill. The minister introduced some clarifying amendments to clauses 14 to 17, which have at least made it clear that in seizing product, inspectors would normally limit these seizures to the amount required to make adequate tests and as evidence, but power still resides with the inspectors to seize whole shipments or major quantities of both product and other materials, as defined in this act, on the inspector's own interpretation of what the public interest requires, and we would like to comment on this point at greater length while this matter is before your committee.

Could I just add that we emphasized very strongly when we had an opportunity to discuss this before the house committee that these powers seem to us naturally to make eminent sense when dealing with health or the safety of products. However, this is a packaging and labelling bill and it seems to us that to have the same broad powers of seizure and detention and to keep a product off the market because there may be some offence relating to the wrapper or label calls for further attention. Apparently there has just been a transference of this type of thinking from the one situation to the other.

In looking at the bill, therefore, on a clause-by-clause basis, we would refer the Senate to the following specific points.

Clause 3 of the bill was not amended in its progress through the House of Commons, although it was spoken to at some length by some of the Members of the Opposition. This is an unusual section stating that Bill C-180 would take precedence over the other acts and regulations which may at the present time deal with matters covered by Bill C-180.

During the committee hearings in the house, a witness appeared from the Department of Justice, a Mr. Beseau, and he did not really clarify the situation too much when he said that the powers under Bill C-180 would apply:

—only to the extent that another act is amended where a power has been given in Bill C-180 to do such things in such form and manner as may be prescribed by the regulations in Bill C-180.

Senators will note, for example, that in addition to the regulation-making power in clause 17, there are several clauses in Bill C-180 where the words "as may be prescribed by regulations" leave a considerable degree of uncertainty about what is intended. There would still seem to be some clarification needed of just how this broad power of clause 3 would work and also what is intended here in terms of setting aside the many acts and regulations with which our industry has become familiar over the years.

We realize that a comprehensive statute must contain some power which deals with the existing law and regulations. However, to include power of regulation which can in effect amend the statute law strikes us as unusual. We have been searching for a positive solution to this problem. Perhaps the power should be limited to amending regulations under the other statutes. Most of these cases would deal with regulations under the statutes, but it is a most unusual power.

**The Acting Chairman:** I take it, Mr. Steele, that this comment refers only to clause 3 (1)?

**Mr. Steele:** That is quite correct, Mr. Chairman.

**The Acting Chairman:** For the sake of the record it might be well to read clause 3 (1):

Subject to subsection (2) and any regulations made under section 18, the provisions of this Act that by the terms of this Act or the regulations are applicable to any product apply notwithstanding any other Act of the Parliament of Canada.

As I understand it, your comment is that although the terms of the act may vary other statutory provisions, you question the appropriate character of the further provision of this subclause, which says that regulations made under this act would take precedence over other statutory provisions that might conflict with those regulations?

**Mr. Steele:** That is our main point, Mr. Chairman. We find it most unusual that regulation-making power would be given to amend statute law. I do not believe I have participated in a sufficient examination of this point at any level, including such statements as I have heard by the minister as to why this power is needed. It simply places into the hands of those who will be making regulations a considerable power to review all the statutes and regulations in this field. We are afraid that we are replacing the familiarity and custom that we know in other acts and regulations by something about which we really do not know much.



**The Acting Chairman:** Perhaps it might be helpful if you would again read the statement of Mr. Beseau, of the Department of Justice.

**Mr. Steele:** When Mr. Beseau was asked this question before the House of Commons committee, he said that clause 3 (1) would apply more "only to the extent that another act is amended where a power has been given in Bill C-180 to do such things in such form and manner as may be prescribed by the regulations in Bill C-180." It is difficult, not having had a chance to examine him when he made this statement, to be precise about what he intended, but he may have said that this will only apply if Bill C-180 actually has had the effect of amending another statute.

**Senator Walker:** He is really giving it the power of the Bill of Rights, is he not—an overall omnibus bill?

**Mr. Steele:** Yes, he is. The question whether or not this applied to the Bill of Rights was asked by some members in the house. This is not a point we raised in our own testimony, but it is not clear if this does have the effect of setting aside the Bill of Rights, because it just says "any act of the Parliament of Canada".

**Senator Carter:** When we had the Hazardous Products Bill before us, it empowered the Governor in Council to add or delete articles in Schedules A and B, and these additions or deletions had the force of amendments to the act. You will remember that the committee took a fairly strong stand on that point, to the extent that I think there was incorporated by this committee a clause which would have the effect that any amendments brought about in this way through the regulations would come back to Parliament within a specific period of time for ratification.

**The Acting Chairman:** Was it a positive or a negative thing?

**Senator Molson:** Two years was it not?

**Senator Carter:** I think it was two years.

**The Acting Chairman:** The device used, as I recall it—I may be wrong—is that the change in the schedule would be made by order in council, and it would remain unless within a certain period of time appropriate action was taken in one of the Houses of Parliament.

**Senator Carter:** That is right. I think the regulation had to be tabled, and then there was a ten-day period in which anyone who had objections to the regulation could raise the issue. I think that was the form it finally took, but there is nothing like that in this bill.

**The Acting Chairman:** No. It is a useful precedent.

**Senator Macnaughton:** Surely the best way to get the best evidence on this is to have Mr. Beseau here.

**The Acting Chairman:** Mr. Beseau or someone from the Department of Justice, I should think. I am sure the

committee will do that. The chairman will arrange for it, and I will bring this to his attention when he comes.

Mr. Steele, I am afraid we interrupted you, but I thought this was an important point in your submission and that we should perhaps clarify the facts before we proceeded.

**Senator Molson:** Mr. Chairman, just before we move on, I am looking at clause 3 and then going to clause 18, paragraph (h) of which says, "subject to any other act of the Parliament of Canada". Is that not a contradiction? One says it may amend another act and this one says "subject to any other act" the Governor in Council may do certain things.

**The Acting Chairman:** That is a valid point to raise. I think our earlier comment, particularly the reference Senator Carter made, plus the one Senator Molson has now made, make it important for some explanation to be given from the Department of Justice on this issue. Thank you, Senator Molson.

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** May I just point out the opening words of clause 3 do say:

Subject to subsection (2) and any regulations made under section 18.

**The Acting Chairman:** Would you say that had the effect of eliminating the caveat in paragraph (h) of clause 18?

**Mr. Hopkins:** I think the Governor in Council would be left free under clause 18 to do what he likes. It could include a caveat of the kind in here.

**The Acting Chairman:** I think the question is whether the Governor in Council is left free under clause 3.

**Mr. Hopkins:** I merely point out that there are two exceptions in clause 3, and that is as far as I am going to comment at the moment.

**The Acting Chairman:** Obviously it is a complicated problem on which we should have an explanation.

**Mr. Steele:** My only observation was that we found confusion here in trying to relate clause 3 to the old clause 17, now clause 18, and also because of the fact that in addition to the specific regulation-making powers under the regulation clause there were these words attaching to some of the other clauses of the bill, "as may be prescribed in regulations", which are not referred to in the regulation-making clause. It is a rather difficult bill to work through in this respect and realize its full implications for industry.

Going on from clause 3, we did make reference to this problem of the relationship between this bill henceforth and the Combines Investigations Act as we have known it. Clauses 7 and 9, which deal with misleading advertising and labelling, brought forth a comment from our members in our brief that we have a strong preference for the approach under section 33 of the Combines Investigations Act. We were not reassured when the minister



made a statement during his committee appearance, from which I quote:

Regulations are necessary not to prejudge what is an offence, as the Grocery Products Manufacturers put it, but to remove from the courts and to put into clear law what the policy should be.

I think that rather aggravated our concern, as a matter of fact, because one of the things we have tried to stress is that business, in operating, develops a degree of certainty out of knowledge of the number of instances where cases have come before the courts, and it is guided by them pretty much and observes them fairly closely. However, if we are now to get into a situation where there will be regulation writing in this area, considerable element of uncertainty rather than certainty will emerge from the point of view of industry activity here.

**The Acting Chairman:** Would you not think, Mr. Steele, regulations could clarify the intent of the legislation itself? It seems to me that as long as the regulation is within the four corners of the act, then it can clarify and make more precise what is very general in the act. So far as your members are concerned, would they not know in a good deal more detail what they are required to do if the regulations are clear and precise and are seen to apply to them? I am not suggesting they may like the regulations. It is a question of clarification; I think it is something that can be cleared up by regulations.

**Mr. Steele:** It should be, I hope, Mr. Chairman. I think we should take just a moment to look at clauses 7 and 9. The thing that concerns us most is that there is a considerable extension through this bill of the areas of what may be described as misleading or false information, where large areas of judgment are going to be exercised by someone.

Until we know more precisely, I suppose, just exactly how regulations will be written in this area, we have a considerable amount of concern about what will be in peoples' minds. For example, clause 7(2)(a) on page 4 reads:

(a) any representation in which expressions, words, figures, depictions or symbols are used, arranged or shown in a manner that may reasonably be regarded as qualifying the declared net quantity of a prepackaged product or as likely to deceive a consumer as to the net quantity of a prepackaged product;

And then it goes on in (b) and (c) to elaborate more on what it is that they have in mind. These are all areas of considerable judgment in terms of how one interprets information on a label. There are just thousands of these situations. This is the point we are making on this.

No one is arguing that there should be any attempt to deceive the consumer deliberately by the information that is on a label or packaged goods. But the writing of regulations in this amount of detail in this area is worsened. The principle at least that we have been following so far is that people are free to make judgments in this area, knowing what the courts have said about what is misleading and deceptive, and to be guided by these decisions.

**Senator Beaubien:** Mr. Steel, in the United States, is this sort of legislation administered under the state or the federal jurisdiction?

**Mr. Steele:** It is administered by the Federal Trade Commission, under the Secretary of Commerce.

I think it would be fair to say that this would be a much more detailed and comprehensive statute than appears on the books in the United States at the present time. The minister, in fairness to him, in speaking on this bill, said that it was deliberately so, because in the United States they have run into difficulties with what they call the Fair Packaging and Labelling Bill. Nevertheless, there are a considerable number of safeguards for discussion built in between the Secretary of Commerce and industry generally in their law which do not appear in this one.

**The Acting Chairman:** This in effect, I suppose, would, for the purposes of safety, compel every manufacturer who prepackages his goods, to apply to the authorities for approval of his label?

**Mr. Steele:** It will in effect create that kind of situation, sir, because there will be so much uncertainty that it seems to me that the course of wisdom on the part of any manufacturer will be to check in advance. This creates a climate which is worrisome, too, that he must come to some one and actually say "do you think this will get by under the regulations?" There is this constant interpretation going on.

This has been one of the problems with the whole labelling and packaging area in the past, to try and get definiteness and certainty, so that there would not be a need to move to Ottawa to get a pre-check on this every time one wanted to make a change.

That is our main point on clauses 7 and 9, namely, that they introduce a completely new concept into the packaging and labelling area from that which we have been experiencing under section 33 of the Combines Investigation Act.

**Senator Walker:** Have you any suggestions as to a substitute for this?

**Mr. Steele:** Our recommendation, frankly, in our own brief was not to try and modify this but to raise very seriously the question whether this was a good move, whether we should not stick with the law we know in section 33, and not attempt to have regulation-writing powers in a packaging and labelling bill which deals with what we would call advertising on the package. Advertising is controlled under section 33 now.

**Senator Molson:** What about the frozen food requirements under the Food and Drugs Act?

**Mr. Steele:** They certainly deal, Senator Molson, with the safety and health aspects of our food. Of course, you may not advertise in conflict with regulations under the Food and Drugs Act. But here again over the years a certain amount of uncertainty has grown up as to what the Food and Drugs Act will or will not permit. For

example, you cannot make claims as to the nutritional quality of a product, or you cannot misrepresent the health or nutritional aspects of any product. That is a form of advertising, if you will, but it has to do with the objectives of the Food and Drugs Act. It seems to me that this bill takes us further into the area of advertising and promotion generally. That is a thing which takes us away from the straight health and safety aspects.

**Senator Molson:** You have other requirements under the Food and Drugs Act as regards to contents of the package, have you not?

**Mr. Steele:** Yes, there is quite a comprehensive set-up under this, as a matter of fact.

**The Acting Chairman:** There is a good deal of regulation under some of the other acts mentioned in your general brief where, by regulation, certain standards are prescribed for labelling and for claims, and indeed for content of the prepackaged goods.

**Mr. Steele:** Yes.

**The Acting Chairman:** I think it might be helpful to the committee, if the committee agrees, for you to read from your original brief, Appendix A, which sets out the various acts to which people in this industry are subject. Would that be helpful to the committee, to know about these acts? Would you care to put those on the record?

**Mr. Steele:** Yes. This is Appendix A to our main brief. It is a list of the current acts of Parliament providing consumer guarantees, standards and protections. There are fifteen of them. They are:

Weights and Measures Act

Fish Inspection Act

Meat and Canned Foods Act (Fisheries and Agriculture)

Food and Drugs Act

Proprietary or Patent Medicine Act

Canada Dairy Products Act

Fruit, Vegetables and Honey Act

Maple Products Industry Act

Canada Agricultural Products Standards Act

Meat Inspection Act

Combines Investigation Act

Hazardous Products Act

Textile Labelling Act

Broadcasting Act, because there are considerable regulatory powers referring to advertising, as you know.

National Trade Mark and True Labelling Act.

**The Acting Chairman:** These are all federal statutes?

**Mr. Steele:** Yes, they are all federal statutes.

**Senator Macnaughton:** Is there an area in the provincial acts that we have to cope with now, with requirements as to language, and so on?

**Mr. Steele:** Yes, at the present time there is no statute, for example, in Quebec, but there are regulations made

under their agriculture act relating to bilingual labelling within the Province of Quebec. These are well understood by our industry and in fact we have a code of practice in this field. Each of the provinces—I will not say all of them but an increasing number—are developing consumer protection acts of one kind or another, to deal with the areas within their own jurisdiction. I might just cite one kind of example, which is very recent and very bothersome to use. We were just out to British Columbia and making representations in their legislature. The legislature of British Columbia has passed a Synthetic Food Products Act, which will be administered by the Minister of Agriculture in British Columbia. This in effect is taking the same powers in that jurisdiction, in British Columbia, to regulate the way in which natural and artificially composed or formulated food products must be marked in that province.

So we are getting into quite a worrisome situation here, when some of the provinces now move in to establish independently a view of the concern from their own particular interest. There are real problems in British Columbia in some of these agricultural areas.

We have been trying to keep them in line so we do not get too many sets of rules going at one time in this country. We are as an industry concerned about this problem. All of the large companies in our association are national companies and depend very much on being able to understand the rules that operate from one side of the country to the other. In this respect we favour whatever law comes along so long as it is a nationally-accepted law that others can accept and work with.

**Senator Desruisseaux:** Mr. Steele, with respect to the broilers that are coming into Ontario from the province of Quebec, does the labelling or packaging of them require that they be sold under a permit?

**Mr. Steele:** The burden of the amendments which Mr. Stewart has before the Ontario legislature now is to give to the local marketing board the power to seize any product not licensed by the Ontario marketing board. British Columbia precipitated the same type of situation when it made sure that products moving from Alberta into British Columbia were licensed by the authorities in British Columbia.

Only one province has seen fit to challenge this at the moment, and that province has a case going through the courts on its way to the Supreme Court of Canada as a test case to try to determine just what the jurisdictional boundary lines are.

It is a very worrisome type of development, because there seems to be an upsurge of the use of provincial powers to deal with matters within their own jurisdictions, thereby, in effect, producing a situation where barriers are being put around the provinces so far as trade is concerned.

**The Acting Chairman:** The trade problem has very serious consequences, and perhaps we should deal with that separately; on the other hand, there is the matter of labelling and the importance of true labelling in order to communicate the true message to the consumer or pur-



chaser. In this respect, there is concern not only at the federal level but at the provincial level as well. I gather that most provincial legislatures are trying to correct this situation. I can see where the question might very well arise as to where the true jurisdiction lies. Has your association given consideration to the question of whether or not the power that is being taken here to label is a proper federal authority that is being invoked or is a provincial authority?

**Mr. Steele:** We have taken legal advice on this point, Mr. Chairman. I do not know whether this would be regarded as a proper posture for us to be in, but we strongly support the idea of having a national or Canadian set of standards here which would be acceptable in all of the provincial jurisdictions. Therefore, we have not wanted to identify certain of the sections here where one might be worried about this. But we are assured by some legal counsel who have looked at the bill that there are reasonable grounds for doubting whether some of these powers do in fact reside with the federal Parliament.

One general comment should be made. This is a worrisome aspect to us, too, because more and more the Criminal Code power is the one that is being used to extend and to make it quite clear that the federal Parliament has power to move into these areas. But this is a trade and commerce bill. In fact, it is a bill to regulate commerce in the country, and in the commerce-power field you would get real questions whether or not you could at the federal level make regulations which would apply within a province.

As I understand it, although there has been no public discussion about it, questions have been raised about this whole matter by the attorney general of Quebec. We understand further that other attorneys general may follow suit. It is our job to try to wrestle this out at this time. Our position is that if we are going to have this bill, then the concept of the bill should be one that everybody across the country will understand. We wanted to be as defined and as clear as possible so far as the industry is concerned.

**Senator Hays:** Mr. Steele, in so far as the objections you have to the bill are concerned, can you give us specific examples in the grey areas with certain specific products that you see trouble with in respect of the clauses you have already mentioned?

**Mr. Steele:** Yes, we can, sir. Would the committee wish to take a quick look at one or two of these problems? With respect to section 7 and section 9 we have already been given some indication of what the views of the minister and his officials would be, and those views raise some real points as to how products should be marketed or sold to the public. For example, we brought along some of the products of Mr. Gibson's company. With respect to these his company just accepts the fact that it is possible for some of its approaches in the way it markets products to be taken right out of its hands altogether.

Perhaps Mr. Gibson would like to speak to this matter. The question really is whether he should be able to put

the picture of a fruit, for example, on the front of a package if it in fact does not contain fully the natural fruit product depicted.

**The Acting Chairman:** Perhaps it might be helpful to the committee to have that kind of information, if the committee agrees.

**Hon. Senators:** Agreed.

**Mr. Don C. Gibson, Chairman, Marketing Council, Grocery Products Manufacturers of Canada:** Mr. Chairman, honourable senators, if I may I will just line up these packages of JELL-O. They are ten, separate, individual flavours of JELL-O jelly powder. Out of a total line of 16 flavours there are ten that are red flavours, as indicated by these packages. They are red in colour. These packages cover various combinations of fruit flavours, but they are all of the red fruits, such as cherries, strawberries, raspberries and so on.

As do many other companies, we have used pictorial illustrations of the original fruit from which the flavour is derived. Our submission is that if we as manufacturers were to be in a position of not being able to use illustrations of the natural fruit, it would be a disadvantage to the consumer. We suspect the consumer would have much more difficulty in identifying an individual flavour out of a large array of products on the shelf.

**The Acting Chairman:** The picture of the fruit is there simply as a symbol?

**Mr. Gibson:** The fruit is depicted to represent the flavour. It is not there to suggest that that particular fruit is contained inside the product. It simply illustrates that one package contains a cherry flavour and another a strawberry flavour and so on. We believe that symbols are the best way of communicating information instantly to the housewife doing her weekly shopping. We feel that we may create a substantial problem for the housewife in identifying what flavour a package contains should we not be able to use symbols to communicate that information.

**Senator Molson:** What is the descriptive wording on the package?

**Mr. Gibson:** Where imitation flavours are used, senator, it is clearly stated in the ingredient line.

**Senator Molson:** I see that it says that it is wild cherry jelly powder.

**Mr. Steele:** We chose this example, Mr. Chairman, not because it is a stark one—and it is that—but it does raise two or three interesting points. There is the view around, which I suppose is reasonable, that you should not be misleading the public about the real product that may be inside if, in fact, it is not made out of the real, natural product. Of course modern food technology permits the exact reproduction of these things. This was the essence of our discussion in British Columbia that whereas they were complaining about the competition of these apple-



flavoured drinks or apple crystal drinks, when dealing with their own problems of apple juice in British Columbia, one cannot claim it is nutritionally inferior to the other product because it would not be permitted. The problem we are running down and which bothers us about this type of legislation is, who is going to be making these judgments? Are we going to have a chance to consult with them about these things?

There is another aspect about symbolism which Mr. Gibson might have mentioned, and that is that there are many people in this country who do not understand either French or English too well, and symbols do have a meaning when people are looking around for goods.

**The Acting Chairman:** Well, your concern, Mr. Steele, is in connection with the regulations that might be made in respect of, say, clause 7(2)(b). The proposed law provides that where there is "any expression—or symbol that implies—that a prepackaged product contains any matter not contained in it", the use of that symbol is prohibited. Now in the case of the product which you have put before us you have a package of JELL-O which has, say, a raspberry flavour and you have a picture of a raspberry on top of a prepared dish of jelly. There is in fact no natural raspberry in that, but there is an artificial raspberry flavouring in it, is that so?

**Mr. Steele:** That is correct, sir.

**The Acting Chairman:** But your wording describing the content of the package says that it is raspberry flavouring rather than natural raspberry?

**Mr. Steele:** That is right.

**The Acting Chairman:** In that case I take it that your complaint is that since there is no natural raspberry in that then by law the regulation would have to require you not to use the picture of a raspberry.

**Mr. Steele:** It might, unless we won an argument that we were not reasonably depicting this as containing something it does not.

**Senator Molson:** Why is that carton not labelled "raspberry flavour"? It says "Raspberry JELL-O" or in the case of the package I have it says "Wild Cherry JELL-O". Why does it not say "wild cherry flavouring"? Surely that would cover the point pretty satisfactorily because when I see "wild cherry" on it, to me there is the natural assumption that the package contains wild cherry.

**Senator Carter:** It says in fact "Wild Cherry Jelly Powder" but in fact it is not wild cherry jelly powder. It is wild cherry flavour. So your statement is not actually correct.

**Senator Hays:** It is like picking a wife; you look at her face and legs and take a chance on the rest of her.

**The Acting Chairman:** I think your wife should feed you unseasoned JELL-O, senator, after that. I think Senator Molson's point is a valid one but I think there is also the further proposition that you would be prohibited

under the clause I have cited, clause 7(2)(b), because you did not have the natural juice of the fruit in question and then you would be prohibited from using the picture of the piece of fruit.

**Mr. Steele:** Yes, in any form, to identify it. This is the real concern we have. It is a more complicated world than this too, Mr. Chairman, because in some products, and I would not know whether this applies to the product we have been looking at, but I do know that in some others you get a mixture of natural fruit essences and some artificial ones. You get a very complex situation to try to cater for.

**Mr. Gibson:** Mr. Chairman, if I may talk to the point Senator Molson raised about the use of the word "flavour", this is not of concern because this can be done in respect of many products about which that statement is made. It is of no detriment to anybody in manufacturing. And if this clarifies it for the consumer, then that is fine. I think the issue is this; can we use pictorial symbols to communicate?

**Senator Molson:** I would think with respect, Mr. Chairman, that if it was clearly marked that that was the flavour that there would be a much stronger argument for the use of the symbol than there is in this particular instance. Personally I would think that the use of the symbol and the statement of the fact that it was artificial flavouring would be extremely useful from the point of view of the user as well as from the point of view of the manufacturer as long as that was clearly understood, and it was made clear what was in the package. I personally do not go to supermarkets very often, but if you have to go around and read the fine print on packages, then I think it would be extremely difficult to fill your cart. It seems to me that the use of the pictorial representation suitably protected is a very good one.

**Senator Blois:** Mr. Chairman, I make this point to support Senator Molson. I took the time to go into some of the supermarkets here and this is one of the items I looked at. Several of the ladies to whom I put the question said "Don't ever take that off because I can't see." They told me they go by the little emblem on that, whether it be cherry, raspberry, or strawberry. Perhaps it should be worded differently, but I think the emblem is necessary to the average woman who is doing the buying.

**Senator Isnor:** From the advertising point of view it is also very important. You are using it on television?

**Mr. Gibson:** Yes, sir.

**The Acting Chairman:** The neat question then is as to whether or not this section of the act would allow you to use the symbol and whether they could write the regulation in contravention of that section of the act. Is this the point you are concerned about?

**Mr. Steele:** Yes, we are very concerned about that because we feel, as you have indicated, that there is a likelihood that we would not be able to use symbolic representation of any kind.

**The Acting Chairman:** Well, I think you can visualize a situation where the official in charge of the regulations and who is going to write them would be approached by you and you would say "We would like to use the raspberry symbol" and he would say "Well, you do not have raspberry in it, and section 7(2)(b) does not allow me to let you use that symbol." That is the neat point, is it not?

**Mr. Steele:** Yes, sir. Regarding clause 11, in the minister's defence of his not wishing to change any part of clause 11 about package standardization—this is what he spoke about in the committee of the other house—he refers to the various packaging situations in our industry where some standardization already exists. He mentioned particularly the canned fruit and vegetable area. It is a far cry, however, from his example to the many thousands of different packaging situations which henceforth would be covered by clause 11 without benefit of any mandatory consultation. It is the view of the minister, with which we disagree, that he feels it is not necessary to call in the Standards Council, a new body created by the Standards Council Act, and that it is sufficient for manufacturers and consumers to sit down in a number of instances to work out what is required. We would submit that this would be a wrong course of action and that, if views are held by the Consumers Association and Government about what industry should do, these views should be referred to an independent body such as the Standards Council with a request that the matter be studied and a plan worked out to bring in changes if these are indicated. We would like the Senate to review our statement on this again and to consider favourably the amendment of this section to require some form of mandatory consultation with industry. The minister feels that such mechanism would take months or years to come to grips with the problem and he would like to get on with the job of passing judgment on examples of undue proliferation of shapes and sizes and of discussing regulations with the industry on this matter.

We think this is a most important point and that what is needed is some mandatory requirement that the minister consult with those who are likely to be affected. The industry is really the only one who can understand the problem and give the minister an indication of what the reaction and cost will be. This is our main point about clause 11.

**Senator Walker:** When advertising JELL-O you have always indicated that artificial flavouring is used.

**Mr. Steele:** Yes, whenever artificial flavouring is used the product is so marked. That is a requirement under the Food and Drug Act.

**Senator Walker:** What is the minister's objection?

**Mr. Steele:** One would assume from the statements reflected in the minister's comments that there is too much prominence given in this type of product advertising to the pretty picture on the package, which attracts people to buy it in the first instance, without asking them to be discriminating about what they find in the package.

We come again to the point I mentioned about standardizing shapes and sizes of packages which is of even deeper concern in some respects because it is completely new. Although the Government is moved to do something, in our view the way to approach this matter is that there should be prior consultation down the line with industry before regulations are passed which say that a particular product in a particular area might have only  $x$  number of sizes in such and such a form.

The examples used time and again by the minister are those which come up in certain specific product areas, such as toothpaste and detergents. There are many sizes of detergents. Our point is that there are so many thousands of similar examples in the packaged goods area, that to have regulations made in such areas without a consultation requirement of a mandatory kind would create a real problem for the industry, the consumer, the Government and everyone else.

**Senator Hays:** There is a right of appeal to somebody.

**Mr. Steele:** We feel that it is very important that when the minister exercises the power to make a determination on what is an undue number of sizes he should come to the industry and say "I think there are too many sizes" and should start negotiations and receive the views of the industry on how many sizes there are and what purpose likely to be served.

**Senator Hays:** Such as an eight-ounce size instead of a seven-ounce size.

**Mr. Steele:** Yes. There are all sorts of examples which could be cited of the great variety that exists on the shelves.

**Senator Molson:** Is there any unanimity in the industry as to the proliferation of sizes?

**Mr. Steele:** I could give examples indicating how difficult this problem is. Perhaps I should mention the case of tea. It is always said that the industry will not move in these areas unless it is forced to. This is really an unfair over-simplification of the problem. I take as an example packaged tea because we have within our one association all the major tea blenders and manufacturers in Canada. The majority of the larger ones quickly reached the conclusion that in packaging a pound of tea in different bag size you could have a range of 32, 64, or 120 bags, which would cover most of the marketing situations.

We have studied this problem and we know that we can reach agreement among the major companies. Is it appropriate for an industry such as this to have a standard of regulation put out by the Government if its effect will be to put certain tea companies out of business? One company wrote to me from England stating that they understood that in Canada we were studying a regulation of this kind. That company explained that they marketed their tea all over the world in a size that would not come within the range used in Canada. They explained that they used 144 tea bags to the pound, the reason being that they found a high degree of acceptability for that



size. In order for such a company to enter the Canadian market, would it be forced to use the Canadian standard?

We find this a difficult problem to wrestle with in terms of suggesting that it is nice and cozy for the companies that are already there, but we exclude someone who chooses not to package in that format. It is an interesting philosophical point. In the United States the Government has taken the view that it will not by means of regulation put certain people out of business.

**Senator Molson:** That is not one of the numerically greatest container problems?

**Mr. Steele:** No; it happens to be a fairly simple one.

**Senator Molson:** You are not comparing that to cans of juices, soups and vegetables?

**Mr. Steele:** In the soup, fruit and vegetable area we have some standardization for a number of years under the Agricultural Products Act. The minister uses this as an example of successful standardization. There are problems here to which I think a major company president such as Mr. Lindley would wish to speak. We find, in other words, after a review of the situation, product area by product area, that there are convincing arguments why every one of the sizes that are represented by our own companies' products exist in the marketplace in this form.

We attempted to demonstrate to the committee of the House of Commons that there are bound to be variations in the contents of packages of such products as cereals or detergents, depending on the density of the products.

**Senator Molson:** Some of them contain dishes, dish towels and various other items.

**Mr. Steele:** Quite apart from that point of promoting the product, the same amount of detergent product will at least be found in the package, whether or not it includes a bonus offer. The quantity which will go into the standard shell size depends on the type of cereal. The reason that shell size is used is that it makes sense in the market.

**Senator Carter:** Is there not an extra cost factor involved in all these proliferations of sizes? Are varying sizes not automatically more expensive than a standard size?

**Mr. Steele:** I would certainly like my colleagues, who deal with this problem on a day-to-day basis, to speak to it. We did not know whether we would have the time to present some of these points to you. You ask whether there would be an additional or lessened cost factor to standardization?

**Senator Carter:** Yes; would the cost to consumers not be reduced if there were fewer standard sizes?

**Mr. Steele:** This involves the question of increasing the assembly line capability in the plant in order to run two or three at the same time. High speed packaging equipment in the plants can accommodate a standard size of shell such as in this illustration that I am showing you.

At the bottom, by the way, is an exact illustration of the present method of packaging three standard types of cereal. The dimensions of that package are the same for all three and at a high speed packaging line the only concern is dumping and measuring the product through the line. This is a much simpler process than actually taking that same packaging equipment and adjusting it. The down time involved in adjusting equipment for variations in the outside container size involves far greater cost than that involved in just switching from one product to another using the same line.

A company with three or four very high volume items may find it necessary to install literally \$150,000 or \$200,000 worth of additional packaging plant on a line in order to meet their packaging requirements.

Mr. Brown, who is the president of a major biscuit and bread manufacturing company, Mr. Lindley and Mr. Gibson can tell you better than I what would be involved. I think the reverse would be true, Senator Carter.

**Senator Carter:** I have never been able to understand the reason for having packages of seven or 17 ounces, one ounce more than one pound or one ounce less than one-half pound. At one time there were simply one pound, one-half pound and one-quarter pound packages. Somehow we have arrived at all these odd sizes. How did that happen and why was it necessary?

**The Acting Chairman:** Your question implies with or without thumb, Senator Carter. In the old days that was the real problem; it is different now.

**Mr. John M. Lindley, Director, Grocery Products Manufacturers of Canada:** The various sizes and shapes in which a consumer good is packaged and sold are embarked upon initially by the manufacturer in an attempt to fill a market need and attain market acceptance of a product, whether new or an extension of an existing product.

In most instances we deal in a wide range of family requirements. Some are those of one person living alone in an apartment. Families can range up to 10 or 12, all having different requirements. The manufacturer constantly seeks to provide that wide range of family requirements with goods packaged to meet their needs most economically. A family of one or two buying in a small package may pay higher per ounce or some other measure, but the waste is nil. If they were obligated to buy a larger unit because we wished to restrict the number of sizes in which we sell packaged goods, they may pay slightly less per unit of measure but the resultant waste due to the larger package would offset the lower cost.

This probing of cost by the manufacturer has developed the existing range of packages. The response of the consumer to this dictates what we sell and do not sell. If we develop four sizes of a given commodity the consumer will soon indicate by the performance in the store whether or not two or all four sizes meet her need. The retailer has to display a large number of items in limited space so he therefore becomes a check point, because if the



consumer does not buy the product he cannot afford to leave it on the shelf and it disappears.

All of us here and many others in other types of industry could cite example after example of probing to fill a market need and failing because we have misread and then had to withdraw the product from the market. It is a balance and a counterbalance, which I think you will agree has been very successful in the marketplace of North America as compared to many other marketplaces around the world.

**Senator Macnaughton:** I understand that the point of the witness is that he objects to the attitude that father knows best, father in this case being the Government and industry has the best knowledge of its own position.

**Mr. Lindley:** Industry and the consumer.

**Senator Hays:** Has cost or price anything to do with it?

**Mr. Lindley:** From what standpoint?

**Senator Hays:** If a person needs 13 ounces of corn flakes rather than 16 ounces, should he buy the 16-ounce or 15-ounce package or two 7-ounce packages?

**Mr. Lindley:** Consumers should and will buy what fits their need. Unfortunately, of course—or fortunately—the manufacturer does not set the retail prices. During our appearance before the House of Commons committee one of the members of that committee attempted to bring to light the fact that a 13-ounce package of a commodity and the same commodity packed in a 16-ounce package may not represent value based on the eased size. This is the function of the retail store. Ninety-nine per cent of prices at which manufacturers sell to the wholesale trade represent lower unit costs, but that will not carry through to the retail store because of the manner in which they price the product. We have no control over that.

**Senator Desruisseaux:** Do consumer associations agree with the views you have just expressed?

**Mr. Lindley:** They rightly become concerned when they see a 13-ounce bottle or can costing less per ounce than the same product packaged in a 20-ounce size. They should be concerned about this, because it is confusing. But this is a function of the retail market place. First there is the discount war, which opened in the Ontario markets in the last three or four months. The retailers are again attempting to get a competitive gain over their friend down the street, and they may take a 16-ounce bottle of something and drastically under-price it, sell it below cost, because they feel that may be the most dominant size sold of that product, and they are trying to get a competitive gain in order to attract people to their store. That size may be by far the best value. A size containing double that amount sitting on the shelf at that particular point in retail price time may not represent as good a value as the 16-ounce size. Certainly it is confusing to her, but this is also a function of that total competitive market place.

**Senator Desruisseaux:** There has been no great complaint?

**Mr. Lindley:** I do not think there has been. We do not agree with her, but this can be a confusing situation.

**Mr. Steele:** Could I just emphasize one very important follow-on point from what Mr. Lindley has said. We fail to see how any action taken by the Government under clause 11 can help to improve the situation just described by Mr. Lindley. We were forced to discuss at the house committee level some of the retail practices. The discussion got on to unit pricing and whether this could improve things. It is a fact that these are two completely separate parts of the total market place structure, and the manufacturers do not control retail prices; that is a fact. Therefore, whatever happens by way of any regulations will not have the effect necessarily of improving the easy arithmetic that the consumer is going to have at the retail shop level.

**The Acting Chairman:** Senator Heath has a question. The rest of us will probably immediately recognize, after the question is asked, that we are amateurs and she is a pro in this field.

**Senator Heath:** Mr. Chairman, you are putting me on the spot here. I was wondering if in Mr. Steele's view a slight change in the wording of clause 11, even in the present proposed legislation, by saying that there shall be consultation rather than there may be consultation, would perhaps improve the situation. I cannot really see the manufacturers can gain too much by not having more standardization, and not having this unit price. If it is made possible for the consumer to do her own swift mental arithmetic, so that she is not faced with 7.26 ounces of one brand of canned fish and 7.25 ounces of another brand, if they are all eight ounce tins, I cannot see there is any difficulty with a particular class of product. If the wording were changed from "shall" to "may" I think you would be home free. I do not see the problem really.

**Mr. Steele:** It would improve the intent of the bill. We agree that it would do that. We were trying to make the point that really the whole thrust of this clause was put in such a way as to mean a worsening for us, because we feel in an area like this there has to be the closest requirement for consultation right down the line. If these things are to be done with the consumers' interest in mind, because there are very definite cost factor relationships here, unless a person knows what he is doing in this industry area there can be many foolish decisions made about what standardization is likely to do to the consumers' end price or the range of products on the market.

**The Acting Chairman:** Mr. Steele, would you say you generally agree with the concept of this clause, that more standardization is desirable than now exists in the market place, or would you controvert that?

**Mr. Steele:** I would not agree, Mr. Chairman. I could not agree, as we have stressed in our brief, it is an area

that lends itself to regulation or control, if you will, in the way in which clause 11 is setting out. In other words, I think these decisions, as has been indicated, are made on the basis of some pretty complicated judgments on the industry side. The problem as we see it has been one of explaining more effectively to the consuming public why these situations arise, but we do not find it an easy route to simplify it by suggesting that all you need to do is standardize these things across a range of products.

I would just make one brief comment on Senator Heath's statement. No manufacturer who has a range of products that he has respect for, and which he knows the public demands in a very strong way, would agree that he should be told to standardize the size of his product alongside a competitor's on the ground that there really is not any difference between these two products, and if you have them in the same sizes people will just be able to make a better judgment. This is just not true. No manufacturer will agree with that. This is something that in a way the consuming public would like to see greater simplification of. There has been great discussion of the unit price possibility in the house committee.

No, Mr. Chairman, I think, coming back to your point, that we disagree that this is a good move, because it will lead to a lot of complexities which we worry about.

**Senator Molson:** Have there been any disadvantages where some greater standardization has been achieved, as under the Canada Agricultural Products Standardization Act, which you mentioned? Have there been any disadvantages to the manufacturers or the marketing of those products, which I think you said were soups, vegetables and fruits?

**Mr. Steele:** This is a two-edged sword. There are some economies, obviously. First of all, it has been in the system a long time, so people are used to it. That is a factor.

**Senator Molson:** But my question still stands.

**Mr. Lindley:** I think in the canned fruit, vegetables and soups area there is still a broad range of canned sizes offered for sale to the consumer. Referring to soups, for instance, we have what we consider 8-ounce, 10-ounce, 19-ounce and 48-ounce sizes. Juices are sold in a wide range of can sizes—6-ounce, 10-ounce, some 12-ounce, some 19-ounce. Because there is standardization of size does not necessarily mean you will completely eliminate proliferation of sizes, because again the consumer and manufacturer are probing for items that meet changing needs.

A good example would be a recent change in apple juice can size. It was sold at one time and in a can that we refer to in the industry as 211 x 400 size diameter, which is the size you would recognize as the soup can size. The industry requested and obtained permission to change that size, but they did not eliminate the 211 x 400 for juice; they wanted an additional size. This was granted to them, and it merely put 10-ounce apple juice into a narrower, taller can, still holding 10 fluid ounces of juice.

There are many other instances I could quote of our going to those who regulate our container sizes for given commodities because of a change in market conditions, and we requested approval to change the size and obtained that approval.

**The Acting Chairman:** What was the changed market condition that brought about that change?

**Senator Desruisseaux:** Vending machines?

**Mr. Lindley:** Partially vending machines, if you are speaking of the food service industry. I think just the consumer recognizing that there are more and more instances where one or two people live in an apartment and their needs are so drastically different from those of the average family of five or six.

The size needs change and the types of foods they buy are of a very different pattern. I think this is a function of society. If you go back far enough to the rural oriented farm family where they had products, such as the present frozen foods, in vegetables and fruits—they did not freeze them, but they canned them and put them in jars—I think the evolution away from that to the buying of these goods in the stores and not being processed in the homes is another factor that has created a demand for a lot of ranges of sizes in these commodities.

**Senator Molson:** Is there not a change in refrigerator size as well to adapt to various sizes?

**Mr. Steele:** Yes.

**Senator Isnor:** Would not the cost of a greater number of sizes increase your general overhead in marketing?

**Mr. Lindley:** No, sir. I do not wish to refer to a particular company, but it is a product with which I am familiar, so I will use it as an example. We have been selling a vegetable juice product for a number of years in this country in three container sizes. There has been a growing demand for a smaller size can of this juice and we decided we should attempt to fill that need. We decided to explore the market potential for it, with the smaller size. We entered the market with the smaller size in the last nine months in Canada, in the United States a year ago, so we have also had some experience.

The acceptance of that smaller size is just phenomenal. The sales are just running rapidly far ahead of some of our other standard sizes, which we have been selling for years, because we are filling an apparent need for some people who want to buy that juice in a smaller sized unit than we had been selling before.

**Senator Isnor:** Did you drop any of the other sizes?

**Mr. Lindley:** No, sir. We have now increased the number of sizes, but we have also greatly increased the volume we sell. The additional cost to equip our operation to run the smaller sizes far offsets the increased cost of the increase in our operation.

**Senator Heath:** It is very difficult to see how this proposed legislation is going to curtail the sizes, to the extent that you seem to be worried about, Mr. Steele. It does not look so restrictive to me.



**Mr. Steele:** I think the point we were trying to make before, Senator Heath, is that we are going into an unknown area. It is unknown certainly to those who are going to attempt to regulate it here. There is no knowledge on our part of just what they may have in mind by way of pre-conceptions. We are trying to ensure that we have a system set up in this law which will require that we be consulted about how they are going to regulate. In other words, we want to make sure that the uncertainty is followed right down the line, so that we are able, at the end of it—presumably and hopefully—in agreement with them or on a set of regulations which will meet their criteria and ours.

**Mr. Gibson:** Mr. Steele, you have an illustration of a pudding product there. If I may, I would like to talk to a couple of points raised, one by Senator Heath and one by another senator. I have an illustration here of some of the end products made by the company which I represent. It is JELL-O Puddings. There are some seven or eight different flavours, but they are packed in three different sizes, three weights. We have four sizes that are packed in 3¼ ounce packages, one size that is packed in a 4 ounce container, and another size that is packed in 3¾ ounce packages, three more sizes, three more flavours, packed in 3¾ ounce packages.

When I say that there is a great deal of standardization even in this commodity, it may sound strange, but there is. There is standardization of the shelf price, normally, for each of these different products, even though the quantity of powder inside may be somewhat different. There is standardization in the end product that goes in the bowl, the same quantity ends up in the bowl. Very important, too, is the fact that the housewife finds there is standardization in measurement. She uses one cup of milk, not to reconstitute but to carry through the recipe in order to make the product. The only non-standardized part is the quantity of product that goes into the package in order to produce an acceptable end result that, through our research, consumers have told us they prefer in the flavour.

So we end up with a variation in weights, in order to standardize at the other end of the line. I think this is one of the problems that we might be concerned with. Remember that our packages are the vehicles through which we do our business and this is why we are so interested in them. If we had to standardize to 4 ounces, for example, in the three sizes, we are probably not going to come out with the same satisfaction at the other of the line, or we are going to ask the consumer to measure a fraction of a cup of milk in order to get the end product she desires, or the recipe has to be changed, if the packages are standardized. As Mr. Steele says, that is not an easy thing to do.

**Senator Hays:** Is the quality the same that goes into those three packages?

**Mr. Gibson:** The flavour is. But the differences in weights are essentially created by the differences in flavour. The flavour levels and the various flavours—butter-scotch, chocolate, vanilla, banana and so on. We have

selected flavour levels which the consumer has told us she prefers, either stronger in chocolate or weaker in chocolate. These are the reasons why there is a slight variation in each.

**Senator Hays:** Are these selling at the same price—the 3¼-ounce and 4-ounce sizes?

**Mr. Gibson:** Yes, the same. The same shelf price.

**Senator Hays:** One is more concentrated than the other?

**Mr. Steele:** It is the density of the dried ingredients in the package, Senator Hays. Another aspect is that they go down the same packaging line, so the packaging machine is adjusted to one size of outside wrapping for the product.

**Mr. Gibson:** If there is standardization, there is another point—and I think this applies to a question which was asked earlier. This makes four servings, this product. There is on the market in Canada today, and has been for about a year, a product that is packed—not by us but by another organization—that is in a one-serving container. If we had regulations last year, for example, that said we can only pack in this particular 4-ounce product package, that manufacturer could not have manufactured a single-serving product. We do not know yet, but there is evidence that there may be a consumer need for people who live in small apartments, working housewives, and so on, who want a single serving. Perhaps if we had that regulation, the person or the companies who perceived the potential need might not have had the opportunity to fill it.

**Senator Isnor:** You have only shown one size of package on television advertising, have you not?

**Mr. Gibson:** In many cases that is true, senator; not in all.

**Senator Isnor:** Is it not in all? I have never seen you show two sizes on television, and I have watched it very closely as advertising.

**Mr. Gibson:** The reason for showing the package itself normally is simply to familiarize the consumer with the package so that she will recognize it when she goes into the store.

They have the same packaging visual characteristics, for example.

**Senator Isnor:** I am asking a lot of questions about the initial cost of this packaging because, of course, that is reflected later in the retail price to the consumer.

**Mr. Lindley:** Most manufacturers will also embark on a new size as an extension to an existing line. Built into that price is all the cost associated with going to market with that new size. They do not add the cost to the existing sizes. That new product must bear its full cost, it must stand on that shelf at that price. If the consumer says that price is too high, then for that number unit of that product it will not be around for long. I would guess that is so in our company and I expect also in most other



companies. If there is an extension made to a line, that extension has to bear the full cost. We cannot spread it through the existing line.

If I may, Mr. Chairman, I should like to return to some of the other points we are concerned with. Coming back to clauses 14 and 16 which deal with the powers of an inspector et cetera, as we have indicated the amendments introduced in the House of Commons have made it clear that products will be seized only when needed to carry out tests and to prepare a case, but it is left with the inspectors still to make a judgment whether or not a whole shipment or a major quantity of a product or other material should be held off the market. The minister, in reviewing our arguments before the parliamentary committee, took strong exception to our view that there was no economic justification for this kind of penalty to be invoked.

In other words, the minister was defending the point that certainly there can be economic loss and harm as well as the point we were mentioning about health and safety hazards and things of that kind. Of course one cannot disagree with the minister on that point. But, in effect, we stated then and still maintain that arbitrary action here could cripple many businesses.

Our point here is that this is a very high-volume-low-return type of business and if you are taken off the market for some reason which later turns out to be incorrect—or perhaps you win an argument about whether or not it is in conflict with a regulation—if you are off that market for a week or even a day in some cases you can suffer considerable economic loss. We point out that in the food and grocery manufacturing and retail business this is of very serious concern.

The minister countered by stating that he felt there were situations where such action might be justified, but the example he gives is one which is so patently obvious in the circumstances, namely, an incorrect weight labelling being applied to a package, that one could not possibly argue against this point. Our contention is that there will be so many other areas of straight judgment involved in the kind of regulations which will, or may, be forthcoming that it will be very difficult to anticipate in advance when an inspector, acting in his own personal judgment and capacity, may interpret the public interest a certain way and confiscate a crippling amount of product. There is still necessity it seems to us for a further clarification of the role of inspectors as contemplated in this act, and we contend that there should be some requirement for a court order if product is to be held for an extended period of time. The most that the Government has conceded so far is to reduce an originally suggested 90-day confiscation period to 60 days. That is to bring it in line with the normal period allowed under other statutes.

The basic question we are raising is whether it should rest with an official of the Government to make a judgment of that kind without having the right of way to secure some kind of backup judgment for his from some party which will be acceptable to both sides. It is very difficult for us to suggest amendments in this statute, but

we still remain very concerned about the effect which these powers can have here if we run into a number of confiscation procedures.

Clause 20(3) of the bill as passed by the House of Commons deals with a very special and worrisome point that, even though an action against a corporation for some offence alleged under this act may not be proceeded with, there must still be power in the bill to proceed against a director or an officer of that same corporation. Examination of this tricky point before the parliamentary committee produced an interesting and obscure opinion by a Department of Justice lawyer who pointed out that there need be no formal charge against a company, no formal conviction of the company, no formal finding of guilt in proceedings against the company, but that if one proceeds against a director—he never mentioned officer but the act does—you have to prove in court beyond a reasonable doubt that the company was guilty of the offence as well as the individual. He makes the curious legal point that there is a distinction between a company being guilty and the company being convicted. The examples which have been cited as precedents are those in the Income Tax Act and the need sometimes to get behind the corporate veil or the dummy corporation situation to pursue individuals.

It would still seem to us to be necessary for the Senate to examine this particular section to ensure that it is well understood and equitable. Our own view is that on the explanation of it to date, it is a worrisome principle since we cannot conceive of any situation amongst our company membership where it would be at all appropriate or equitable to take an action against a director or an officer of a company without pursuing the company in the first instance.

In common with all our membership, I find this a very difficult point.

**Senator Carter:** Mr. Chairman, it would appear that clauses 14, 15, 16 and 17 are identical to certain sections in other acts, such as the Hazardous Products Act. They seem to be standard clauses.

**Mr. Steele:** They are also found in the Textile Labelling Act, the Feed and Drugs Act and the Canada Agricultural Products Standards Act.

**Senator Hays:** Is clause 20(3) also found in some of the new provincial acts?

**Mr. Steele:** I am not aware of whether it is in the provincial acts, but it is in the federal Income Tax Act, Senator Hays. But with respect to the recent amendments to the corporate law in the provinces, I do not know.

**Senator Sullivan:** This may not be an appropriate question for these gentlemen to answer, Mr. Chairman, but in respect of a labelling act, I cannot see how it would be possible to label in detail a phial that is practically microscopic in size. It is difficult enough just to get the name on it let alone give a detail of what the contents are and put that in two languages.

**Mr. Steele:** That is a good point, sir. We have not wrestled with that ourselves, however.

**Senator Sullivan:** We may have to wait for the officials of the department to come in order to get an answer to that question.

**Mr. Steele:** In conclusion, Mr. Chairman, there have been one or two other points in the bill where the minister has added new clauses in the committee stage and where there was no opportunity for those witnesses who were called before the minister made his final appearance to comment on them. One of these is an addition to section 10(b)(iii) dealing with labelling where the word "age" has been added to "size, material content, etc.". This is to make it clear, in the view of the minister, that the Government will have power to regulate requirements relating to the showing of shelf life or date of manufacture, or whatever, on the many types of food or other products which appear on the market in packaged form.

We would only observe that this again is a very complex question which has many aspects to it which would benefit by some special discussion with the manufacturers and, as indicated, since the matter was brought forward by the minister in the form of an eleventh-hour amendment, there has been no opportunity to make our views known to Parliament, nor would we wish at this point to do more than to indicate that this is a matter upon which we hope there will be ample opportunity for discussion before regulations are passed.

This whole question of the shelf life of products and the cost effect which this might have if you get the public into the mood of always searching around for products that are otherwise acceptable, except that one has a later date on it than another, is going to produce problems we have not even begun to think about yet.

The minister has also added after clause 11 a new clause 12 relating to research and studies which have to do with the whole subject of the marking of unit prices on packaged goods, and to research on the date and storage marking and shapes and sizes of containers. Again, there has been no opportunity to explore in advance either with the department or with the House of Commons committee what is intended by this section, and we can only hope that there will be a full opportunity to pursue these matters prior to the writing of regulations.

Mr. Chairman, the foregoing points constitute the issues which we as an association still regard as important for further consideration prior to the passage of Bill C-180, and we wish to thank your committee for this opportunity to make our views known.

**The Acting Chairman:** Are there any other comments that the members of the delegation wish to make?

**Mr. Steele:** I think we have covered the ground fairly well, Mr. Chairman.

**Senator Carter:** The question of cost was raised this morning in so far as it relates to the proliferation of sizes

and weights. Are you looking forward to the time when we will have the metric system and you are going to have to change these things?

**Mr. Steele:** We might have mentioned as we did in our brief, Senator Carter, and here we had to take a neutral position, that if it is the wish of the country to set out to plan and adapt and change our entire system, our whole production, distribution and standards system to the metric system, then, of course, we along with the rest of industry are going to co-operate with this as best we can. But it is unique in the packaging and labelling bill in that this is the first bill where they have introduced a mandatory requirement that there should be a declaration both in metric and in our standard units of measurement even though the manufacturing processes have not caught up with this at all. The question is this; is this additional education to the consumer, which is put on arbitrarily and has nothing to do with anything else, helpful to the consumer in that right away it introduces fractions and calculations of a different kind? The evidence seems to be that if you go out into the street—and tests have been done on this—only about 20 per cent of the population at large at the present time really understand the metric system at all. So it would appear that we are going to be used to educate them.

**Senator Blois:** Mr. Chairman, as I said earlier, I spent a considerable time in the supermarkets recently. One day I spent with a lady who has brought up a family which is now grown up and another day I spent with a lady who is bringing up a very young family. One thing which was brought to my attention very forcibly had to do with a number of products but particularly with washing powders and things of that nature. A bottle or package containing, for example, 8 ounces would be a certain price while a container of 16 ounces of the same material would very frequently be dearer—in other words it was cheaper to buy two 8-ounce containers than one 16-ounce container. Now this does not seem to be reasonable. Is there any explanation for this kind of thing?

**Mr. Steele:** I think the point made earlier by Mr. Lindley is simply this; this is one of the functions of the retail pricing system and it can only be understood in the context of what their philosophy of what pricing is. If they want to move the smaller sizes and price them more attractively vis-à-vis the larger size, that is their prerogative. The manufacturer may be criticized for seemingly being party to the fact that the unit prices are smaller for smaller sizes, but in fact this has nothing to do with the manufacturer.

**Senator Blois:** But you would naturally think that where they had to use two containers for the same amount of goods, it would be somewhat cheaper to buy the larger single container, but this is not true in many cases. I realize this may be a matter for the individual stores concerned.

**Mr. Steele:** There is no easy answer to this, but as Mr. Lindley has already indicated for most situations where you are selling into the wholesale level from the manufacturing level, what you say is true, and there are



economies of scale. Generally the larger sizes will come out at a lower per-unit cost than the smaller sizes. But when it gets to this stage the manufacturer is out of the situation.

**Senator Carter:** How frequently are changes made in sizes in a particular line, say in detergents or breakfast foods? Are changes going on all the time, or do you make a change, keep it for four or five years and then change again?

**Mr. N. Murray Brown, Chairman, Grocery Products Manufacturers of Canada:** Many of these high-speed packaging lines are just not changeable. They must continue to produce along the same line. In the industry in which I am interested, the biscuit and cracker industry, we have a half-pound line in which we package crackers. We also put about 12 other varieties in that package. Now that line cannot be changed because there is approximately one quarter of a million dollars involved in the equipment for that line and if we had to have a series of those to produce the 12 lines, we would have to build a pretty big bakery. Then of course that equipment would be standing idle much of the time because we would be running it for, say, four hours and then have to move over to another line. This also answers one of the other questions you raised about the odd sizes and the odd ounces that come in because of the different densities of the products we put into different package lines.

**The Acting Chairman:** Are you ever forced to adjust your own equipment by a competitor who decides to change the size of his package? Perhaps I should not ask that of you specifically, but is one segment of the industry producing a given sized package or box ever forced by a move on the part of a competitor to adjust its packaging style and change the size of the package or the quantity of the material contained in the package?

**Mr. Brown:** I think, Mr. Chairman, that we go back to the question Mr. Lindley answered here. We believe that the law of the marketplace still decides and determines what size you produce, and our research tells us there are many more things other than size and price and value and in all these things we have to go back to the consumer because she is still queen of the battle and determines what sizes we produce and market.

**Senator Carter:** I still do not know what the average frequency is. We know that the changes are made and one of the witnesses said that these changes are made because of the market research that is done by which you found out what the housewife wanted. But I would like to know what is the time interval between these changes.

**Mr. Lindley:** Mr. Chairman, I think it would vary so much from product to product that it would be very difficult for us to give you an average. For instance we have sold a number 1 size soup, 10 fluid ounces, since we have been in Canada—we started in 1931—and we have changed it. We have added others, but that one has not been changed. I think Mr. Brown is attempting to point out that the cost of making frequent changes in product

size because of the machinery required and the patterns of warehousing which becomes distorted is a real brake on how often you can change or on how many new sizes you can produce. We think the growth is more in the development of new sizes than in the changing of existing sizes. Therefore I think it would be difficult to pick out what would be an average. You would have to do it product by product.

**Senator Carter:** Well, I cited detergents and breakfast foods as examples. Do these change every two years, every five years or how often do they change?

**Mr. Lindley:** Speaking for our own products, it is very seldom that we change from an existing size to something else.

**The Acting Chairman:** Are there any other questions? Honourable senators, on your behalf I thank Mr. Brown, Mr. Lindley and Mr. Gibson for coming here today and for the very helpful information they have given, and particularly I would like to thank Mr. Steele. The other gentlemen are in various branches of the industry and Mr. Steele has been the catalyst who has brought the whole question into focus because he is able to take an overall look at the industry. We are indebted to him as well as to the other witnesses.

**Mr. Steele:** Thank you, Mr. Chairman.

**The Acting Chairman:** We have a submission from the Canadian Food Processors Association. Mr. E. T. Banting, the Executive Vice-President is present and I understand that he has one point which he particularly wishes to make. Mr. Banting, if you will be kind enough to come forward we will proceed.

**Mr. E. T. Banting, Executive Vice-President, Canadian Food Processors Association:** Thank you, Mr. Chairman. I should like to express the regret of my President, Mr. Anderson of the Green Giant Company, who hoped to be here with me this morning but at the last moment could not make it. I wish to say at the outset that in our original brief we supported the Grocery Products Manufacturers' presentation. We worked very closely with Mr. Steele and we support the presentation his delegation made this morning. I wish to speak mainly for the seasonal products fruit and vegetable processing industry which has specific problems which are perhaps a little different from others of a seasonal nature. With your permission, Mr. Chairman, I should like to read a short presentation and then I will be most willing to answer any questions.

**The Acting Chairman:** Is that agreed?

**Hon. Senators:** Agreed.

**Mr. Banting:** On behalf of the members of the Canadian Food Processors Association, I wish to thank you for this opportunity to appear before this committee and to express our views regarding Bill C-180, the Packaging and Labelling Act, as it applies to the food processing industry.



The Canadian Food Processors Association is a voluntary trade association which has been in existence for 24 years. It represents 102 firms located in all parts of Canada which produce a wide variety of food products. We regard this legislation of major importance to our industry since it represents a significant change in Government policy.

As we stated in our brief to the House of Commons Standing Committee on Health, Welfare and Social Affairs, our greatest objection to the original draft of the bill was the discretionary powers of the inspector to seize and detain products for minor packaging infractions or misrepresentation without recourse to the courts. We pointed out that firms, particularly small independent firms, could be put out of business by such action.

We are pleased to see that this part of the proposed legislation was amended to read:

...an inspector shall not seize any product or other thing pursuant to subsection (1) where in his opinion the seizure of the product or other thing is not necessary in the public interest.

**The Acting Chairman:** What section is that? I understand it is on page 9, section 15(2).

**Mr. Banting:** This is certainly an improvement over the original draft. However, if we interpret the bill correctly, a firm still does not have any recourse to the courts for compensation if at any time those concerned are found not guilty of an alleged infraction of the regulations. Under today's marketing system, the seizure or detention of a product can result in:

- (1) loss of shelf space at the retail level due to retailer's reaction,
- (2) loss of customer confidence,
- (3) loss of product due to the relatively short shelf life of certain products.

We believe that such arbitrary powers given to the inspector when there is no danger to health or fraud involved places the supplier in an untenable and most vulnerable position without any recourse.

One of the amendments made by the Minister of Consumer and Corporate Affairs to the original draft was the addition of the word "age" to the mandatory information which must appear on the label. This is in section 10. Our industry believes that this will substantially increase costs of seasonal products to the consumer. For this reason, we hope the Minister of Consumer and Corporate Affairs will carry out extensive research and thoroughly examine the broad implications of such a requirement.

Many factors determine the shelf life of a product, such as the method of preparation, storage temperature, and handling procedures. We ask who is qualified to determine the shelf life of a product when conditions which determine shelf life are the responsibility of many individuals or organizations.

The act states in section 12(2):

The Minister may, in carrying out any research or studies pursuant to subsection (1), consult with or

seek the advice of any department or agency of any government, any dealers or any organization of dealers or any organizations in Canada of consumers.

We sincerely hope that the minister will, on every occasion, consult with the industry concerned and determine the economic aspects of any regulation which will affect this industry. Industry is concerned about the rising costs of consumer products and additional labelling and packaging demands which require extensive label and packaging changes are often very costly.

Our industry is very concerned at the present time about the responsibilities and jurisdiction of the various departments. There is confusion and duplication which is time-consuming and costly. We would welcome uniformity of label regulations and inspection services and would be pleased to work with Government in trying to bring this about. We believe that if a concentrated effort were made to co-ordinate inspection services and develop uniform labelling regulations, it would not be necessary to hire new inexperienced personnel and set up an army of inspectors to further regulate an industry which is already the most regulated industry in Canada.

In closing, I would just like to remind you that, unless very carefully administered, Bill C-180 could result in considerable increased costs to the consumer. This is particularly true of seasonal products. Is the consumer prepared to pay for the additional costs that could result from this legislation? We suggest that this aspect of the Bill C-180 be thoroughly examined before regulations are implemented.

Once again, thank you for this opportunity to appear before you. Our association is prepared to work with Government at all times to assure that Canadian industry is able to compete on world markets and continue to supply Canadian consumers with quality products at reasonable prices. Thank you, Mr. Chairman.

**The Acting Chairman:** Thank you, Mr. Banting. Are there any questions?

**Senator Carter:** "Age" is not defined in section 1. Does it indicate the date of its manufacture?

**Mr. Banting:** This would have to be spelled out in the regulations. It could be either the date on which the product was manufactured, or the length of time it is suitable for sale. This is a point of concern to us.

**Senator Carter:** Does that mean that the date a product becomes unsaleable would be printed on the package?

**Mr. Banting:** That is correct.

**Senator Molson:** That is done with milk today.

**Mr. Banting:** Yes, it is done with certain products today.

**Senator Heath:** Yeast is another.

**Mr. Banting:** That is true.

**Senator Hays:** How long will a canned product such as clams remain fit for consumption?

**Mr. Banting:** Each product varies considerably and even industry does not have enough information. We have records where canned corn, for instance, is quite edible after 15 or 20 years. On the other hand, this all depends on the storage conditions. Frozen food really gives us concerns. It could be quite acceptable to eat in two, five and, yes, we have seven years in storage at the proper temperature. The same food may not be fit to eat in three weeks if the conditions are not right.

**Senator Sullivan:** That is right.

**Mr. Banting:** Therefore, to put a date on that product could give the consumer a very false sense of security. It does not have to be thawed; bacterial action starts when the temperature is above zero. The product could still be frozen at 20 degrees above zero, but there could be a great deal of bacterial action making the food unfit for consumption. The display of an age date could give a false sense of security, affecting not only the consumer but the packer. Something may have happened in the processing plant, over which he has no control, but his name is on the container.

**Senator Hays:** Who is responsible in the case of death after consumption of, for instance, a can of fish?

**Mr. Banting:** If it is definitely the fault of the original processor, there is no doubt as to the responsibility. However, in the case of frozen food thawing out in the retail store, or even after the consumer took it home, causing bacterial action, the responsibility has never really been determined.

**Senator Carter:** Who normally bears the cost of that? Does the grocer return this type of product to the manufacturer when the time expires and it becomes unsaleable, or does he bear the loss?

**Mr. Banting:** In some cases, yes; in some cases, no. It all depends on the arrangement or agreement between the processor and retailer. If it is still in the case and the electricity fails, usually the retailer bears the loss. If the damage occurred during transportation it would probably be returned to the processor. It varies.

**Senator Carter:** Does the retailer have to take extra insurance?

**Mr. Banting:** I would presume so, but I cannot answer exactly.

**Senator Isnor:** In your presentation the following sentence appears:

Is the consumer prepared to pay for the additional costs that could result from this legislation?

What do you mean by that?

**Mr. Banting:** For instance, we are very concerned about seasonal products, in which the volume of production varies with yields, weather and climate. It may happen that with a high yield in a particular province in the previous year because of ideal weather conditions there is a large carryover to the next year. In another

province there may have been no carryover so their product is dated the present year, whereas that of the first product, being a carryover is dated the previous year. The consumer seeing that date considers the product to be a year old, yet there may not be anything wrong with it. The consumer, quite logically, buys what he considers to be the fresher of the two products. The carryover product may have to be taken back from the retailer, becoming a loss factor.

Some of our members have carried out studies of this carryover problem and estimate that it ranges from 5 to 50 per cent. They feel that to be on the safe side, considering all the seasonal products across the board, there would have to be a 5 per cent to 20 per cent increase in cost of operations because of the losses incurred due to carryovers.

**Senator Isnor:** That exists at the present time, quite apart from this legislation.

**Mr. Banting:** Yes, but because of the fact that the date appears the consumer will logically buy what she considers to be the freshest and newest product. At the present time this is not the situation although the carryover product is in excellent condition.

**Senator Hays:** Are most products coded today?

**Mr. Banting:** Yes, they are.

**Senator Hays:** They therefore bear the date?

**Mr. Banting:** Yes.

**The Acting Chairman:** I simply quote to the committee the provisions of clause 10 (b) (iii):

such information respecting the nature, quality, age,...

And it is age with which you are concerned at the moment?

**Mr. Banting:** That is correct.

**The Acting Chairman:**

—size, material content, composition, geographic origin, performance, use or method of manufacture or production of the prepackaged product as may be prescribed.

I assume that your request is that when the regulations are drawn and the prescription laid down provision be made for these factors in respect of age?

**Mr. Banting:** That is correct.

**The Chairman:** By consultation, I take it, with appropriate members of the appropriate industries?

**Mr. Banting:** Yes. I fully support the statements made by the representatives of the grocery products manufacturers of Canada. Because of the economic aspects involved it should be mandatory that the minister contact the industry that will be affected by any of these regulations. We feel that it is important that these be taken into consideration during the preparation of any regulations.



**Senator Carter:** Do you desire that because you fear that the minister will make regulations without your knowledge? If you know about it there is nothing to prevent you from making representations to the minister.

**Mr. Banting:** That is true, but before regulations are drafted it is usually better to be aware of all problems involved. By means of prior consultation with industry, with which that industry can live, can be drafted to produce the required results.

**Senator Carter:** Yes. Although an attempt is made to bind the minister to consultation, he does not have to take your advice. He can still proceed with whatever he had in mind. What is your real problem? Is it that the regulations will be drafted without your knowledge and therefore you will have no opportunity to make representations?

**Mr. Banting:** The point we are trying to put across is that we feel it is most important that representation be made by the industry concerned with these particular regulations.

**Senator Carter:** There is nothing to prevent you making representations except that you would not know when to make them. Is that it?

**Mr. Banting:** Yes, provided there is enough time when changes are made, so that they can be implemented without a great deal of cost as well, which is another factor that concerns us very greatly.

**The Acting Chairman:** I think I would like to draw the attention of the committee to the top on page 2 of Mr. Banting's presentation, where he says, "However, if we interpret the bill correctly a firm still does not have any recourse to the courts for compensation" in the event there is an improper seizure and detention. I draw the attention of the committee to clause 16, which has been pointed out to me by our legal counsel. There is a provision there that permits the minister to extend the period of seizure of 60 days by application to a magistrate in the circumstances therein described. This is a right of recourse to the courts that the minister takes in this proposed legislation. Certainly there is nothing in this bill on the question of compensation. Have you taken any advice from counsel on your basic rights under the law to seek compensation in the event that a product is improperly seized and detained?

**Mr. Banting:** Our major concern here, of course, is this: Take a small independent canner who puts out one line of product, say a tomato product. For some infraction of labelling—there is no health hazard, no fraud involved; it may just not meet all the requirements of Bill C-180—his product is detained. He could be put out of business, because for 60 or 90 days his product is not on the shelf; once it is taken off the shelf it is most difficult to get back on. It was just an opinion of the inspector that led to the original seizure, and even if the courts decides the canner was not in violation of the regulations he is put out of business because of that interpretation by the inspector. This is a matter of great concern to our organi-

zation, in which there are a lot of Canadian-owned small independent organizations. This is one of their main concerns about the bill.

**Senator Carter:** What is the general practice with regard to shelf space? I remember when I was on the Joint Committee on Consumer Credit about five or six years ago there was some controversy because certain manufacturers would buy up shelf space and the retailer would have no control over that shelf space.

**Mr. Banting:** This is in the retail area, but I would think the retailer who made the original agreement, if there was such an agreement, would be the person in control of it, it being his shelf space.

**Senator Carter:** It was one of the problems put before the committee by some retailers, that they did not always have a free hand, and competition was curtailed because they were bound by certain agreements over that shelf space, which was reserved for certain products; some large manufacturers could bind retailers in this way while a small manufacturer could not afford to do so.

**Mr. Banting:** I would think it was an agreement that the retailer entered into originally. I cannot see how any manufacturer could control it unless the retailer agreed to it in the first place.

**The Acting Chairman:** Senator Carter's point is that larger manufacturers could buy up the shelf space and the smaller manufacturers do not find any room on the shelves for their products.

**Senator Molson:** It is in the hands of the retailer, Mr. Chairman.

**Mr. Banting:** Quite.

**Senator Molson:** This bill will not change that.

**The Acting Chairman:** It does not touch that.

**Senator Carter:** What the witness is saying is that they are at the mercy of the retailer because once the product is taken off the shelf space they cannot get it back. That was the argument I was replying to.

**Mr. Banting:** This is true. Shelf space is at a premium, and you can appreciate the retailer's point of view. Shelf space is at a premium and if a product is taken off because of an alleged infraction—the retailer does not want it on his shelf and it is taken off—it is most difficult to get it back, particularly for a small firm. As I said earlier, a large percentage of our membership is made up of small Canadian operations which may pack only a limited number of products.

This brings up the other point of the cost factor to the small people. If there is a label change or package change, a large firm may buy a few million labels that will last them a year, but to get that same price a small firm may have to buy enough labels to last two years, three years or five years. Two years is quite common, and it could be three or five years. Therefore, when any label change is required—and, as I mentioned, we are going to the metric system and everything else, which all



require label changes—we therefore have very high inventories, especially of the slower moving products, and we would hope that plenty of time will be given to use up these inventories, otherwise the costs will enter into it, which eventually somebody has to pay for.

**The Acting Chairman:** Are there any other questions? Mr. Banting, thank you very much indeed for your presentation, and we will certainly take it into consideration.

Honourable senators, the Packaging Association of Canada is here. We have present Mr. James Scott, Mr. Lyn Jamison and Mr. John Whitten. Mr. Scott will speak to the brief.

**Mr. James M. Scott, President, Packaging Association of Canada:** Mr. Chairman and honourable senators, the Packaging Association of Canada welcomes this opportunity to present its views to the committee of the Senate of Canada considering Bill C-180, the Consumer Packaging and Labelling Act.

Before proceeding, may I first of all introduce my colleagues. On my immediate right is Mr. John A. Whitten, Vice-President of Christie Brown & Co. Ltd. On Mr. Whitten's right is Mr. Lyn G. Jamison, Executive Vice-President of the Packaging Association of Canada. My name is James Scott, and I am Vice-President of Reid Press Ltd., and President of the Packaging Association of Canada. PAC was formed 21 years ago to promote the study, knowledge and understanding of packaging, to encourage better use of graphic arts in the industry, to collect and disseminate packaging information, and to foster mutual understanding among the various branches of the industry. PAC has Chapters in the Atlantic Provinces, Montreal, Toronto, London, Winnipeg, Calgary and Vancouver. Currently, the Association represents 297 member companies and 908 associate or individual members. The membership embraces a diversity of users, suppliers and manufacturers of packaging materials, including paper, paperboard, wood, metal, glass, plastics and films.

When the bill was referred to the House of Commons Standing Committee on Health, Welfare and Social Affairs, we were greatly concerned at many of its clauses. Some of these clauses were improved by amendment during the committee hearings, for instance: clause 9(2) is a valuable improvement which will protect both consumer and manufacturer. Other clauses, although still in the bill, were explained by the Minister to be less wide-ranging than we had feared. In this regard, we must accept the explanations of both the Minister and the specialist from the Department of Justice that clause 3, subsection (1) does not mean that the regulations under Bill C.180 will supersede the statutory provisions of other acts of Parliament. But we wish that the Bill could be more explicit.

During the clause by clause study by the Commons committee, the minister showed a much greater understanding of the problems which the marketplace would encounter from over-regulation than had been apparent before. For example, during the discussions on February 23 he referred to the U.S. regulation which specifies the actual position of the net weight on the package, and

pointed out that it had been decided not to include such specifications in the statutory provisions of this act. The reason he gave was reluctance to use packaging and labelling as some sort of non-tariff barrier to trade.

We appeal to this spirit of reason and understanding for a further study of that feature of this Bill which still worries us most of all—the fact that there is no mandatory requirement to consult outside the department before publishing proposed regulations under clause 11, subsection (2).

Considerable time was spent in discussion of this clause in committee. To our mind, the Minister's point that he did not feel it wise for his staff to be restricted as to whom should be consulted—since each regulation would have a logical group which could supply expert assistance—constitutes a solid argument in favour of making such consultation mandatory. We are not suggesting there be any restrictions on the ultimate right to regulate, but only that the principle of consultation—and even in some cases the possibility of resulting voluntary industry action—is bound to provide a more effective compromise, and less likelihood of over-regulation.

One of the early drafts for this bill, which was presented to us for comment, included a provision that such consultation would be held, and that the aim would be voluntary action. Only in the absence of satisfactory action would regulations be made.

We feel this is still the best form for this clause, and ask that you consider changing it.

Clause 19 currently reads:

A copy of each regulation or amendment to a regulation that the Governor in Council proposes to make under section 11 or 18 shall be published in the *Canada Gazette* and a reasonable opportunity shall be afforded to consumers, dealers and other interested persons to make representations with respect thereto.

The onus is left on 'other interested persons' to make then representations, and we think this is unwise. Consultation between the minister and appropriate industry organizations might reveal that the proposed regulation or amendment is unnecessary. Yet once the proposed regulation or amendment is made public, this is a visible intent of the Government, and governments do not like publicly to revoke their expressed intents. Once again we would ask that advance consultation be made mandatory and written into the bill.

I would draw your attention to statements made by Mr. Basford in addressing the House of Commons Standing Committee on Health, Welfare and Social Affairs on February 16 of this year:

The writing of regulations itself takes a great deal of time. It will be done in consultation with representatives of those who will be affected. I gave that undertaking clearly when I was here before. It will be in consultation with those who are affected—consumers, manufacturers, producers—and with other departments which administer other Acts with labelling provisions.

Under this Bill, ... it will be possible, by means of regulations—in the drawing-up of which, of course, all those concerned with consumer packaging and labelling will be consulted throughout...

Here Mr. Basford clearly undertook to provide consultation opportunities between his department, other departments and other organizations, including those of the packaging industry and other appropriate sections of industry.

We do not doubt Mr. Basford's intention to carry out the consultation he promises here. But ministers change, and we would like to have the assurance and protection given by Mr. Basford on February 16 written into this legislation.

Further, as for clause 12 (2) it is certainly our hope that in carrying out research or studies relating to packaging and labelling, he would see fit to consult members of our industry. To that extent we would be pleased to see here a direct reference to 'any appropriate industry organization representing packagers or manufacturers'.

Mr. Chairman, we have restricted our representations concerning Bill C.180 today to the few points which I have highlighted. There are, needless to say, other areas of the bill which we question, and which in some instances we would like to see changed.

However, all we ask is that the assurances Mr. Basford has made publicly about his department consulting with industry be made mandatory where standards are being established, or where regulations or amendments are being considered.

Thank you for this opportunity of appearing before you. We would be most pleased to answer any questions, Mr. Chairman, which you or the other members of this committee may wish to ask us on this bill.

**Senator Carter:** Mr. Chairman may I start the ball rolling by asking Mr. Scott what he visualizes by "consultations"? Do you visualize a delegation having verbal consultations, or are you thinking of written representations?

**Mr. Scott:** I would like to refer that question, Mr. Chairman, if I may, to Mr. Jamison.

**Mr. Lyn G. Jamison, Executive Vice-President, Packaging Association of Canada:** Senator Carter, as to "consultation", I think we would not have verbal consultation first of all. We would first receive a draft statement or outline of what the department would have in mind in drawing up the regulation. At that time, we would be given the draft and allowed to study it in the light of the marketing requirements, production requirements, distribution requirements and possibly the material requirements. We would then come up with our points of view. Then we would meet in a round table discussion with the department and give them full information relating to all these things so that they would be able to consider them in the light of our objections. That is how we would visualize it.

**Senator Carter:** You would want to see the draft regulations before they are actually published in the *Gazette*, before they are actually proclaimed?

**Mr. Jamison:** Before they become public property, so that there can be an exploration to avoid some of the problems outlined by the Grocery Products Manufacturers, and in order to take in futures, because this is what we are concerned with—futures, what packaging will be like in the future. We have some idea.

**Mr. Scott:** To add to what Mr. Jamison has just said, Mr. Chairman, the market place does change, packaging changes, materials change. We think that with the expertise of the member companies of the Packaging Association and other interested individuals in our industry, we can help the minister if we see these draft regulations and avoid pitfalls that at some time in the future may be somewhat more difficult to look after. I think this is exactly our point.

**Senator Macnaughton:** The same point was made by the other delegation this morning. In effect, you would like to be the expert advisers to the Government. You are the people who will operate it.

**Mr. Scott:** Yes, sir.

**The Acting Chairman:** Mr. Scott, I draw the committee's attention to page 3 of your memorandum. There is a quotation you have given, from Mr. Basford's address to the House committee on February 16. You interpret it as a clear undertaking to provide consultation. I then draw the committee's attention to clause 12(2) of the bill, which is an amendment made by the committee which reads as follows:

(2) The Minister may, in carrying out any research or studies pursuant to subsection (1), consult with or seek the advice of any department or agency of any government, any dealers or any organization of dealers or any organization in Canada of consumers.

How far do you think that goes towards meeting the point you seek to make in your presentation?

**Mr. Scott:** Mr. Chairman, I do not believe it goes quite far enough. Mr. Whitten presented our brief to the Standing Committee on Health and Welfare of the House of Commons and I should like to refer this to Mr. Whitten.

**Mr. John A. Whitten, Vice-President, Christie Brown and Company Limited:** Mr. Chairman, the amendment was actually included to provide for more detailed study of the possibility of subsequent unit pricing action. It arose in that session following considerable discussion of that type. But I believe this also leaves the onus entirely on the minister. The word "may" is still in this clause so that in this case we would have the same basic objection to each of them so far as we are concerned.

**The Acting Chairman:** What you suggest, then, is that the subclause in question should be amended by changing the word "may" in line four to the word "shall"?



**Mr. Whitten:** Yes.

**Mr. Scott:** Precisely.

**The Acting Chairman:** Would you say that the agencies or organizations that are proposed to be consulted by this subclause are sufficient in number? Do you have any objection on that count?

**Mr. Whitten:** No, sir. I think that that would be extensive enough. The minister made the point that each regulation would naturally involve a particular group of interested bodies which could supply pertinent information.

**The Acting Chairman:** You think the descriptions there are adequate for at least the industry you represent?

**Mr. Whitten:** Yes, sir, I do.

**Senator Molson:** Mr. Chairman, the word "shall" might present some difficulty to the department. Would it not be worthwhile considering using the words, "shall, where practicable," or "shall, where possible"?

**The Acting Chairman:** My purpose in asking that question, Senator Molson, was only to make crystal clear that the suggestion raised by these gentlemen, and the reason for it, is that how we deal with it will depend not only on this evidence but on other evidence we will receive in future, including evidence from the department. So all we really want to do is to clarify the position.

**Senator Heath:** As a point of interest, Mr. Chairman, may I ask Mr. Scott in view of the fact that it sounds as if his organization is interested in tying the consultations very closely into the regulations and making this mandatory, a written part of the legislation, what is his opinion of the English position? I suppose this is rather a philosophical point of view, but I understand the English legislation leaves everything pretty well open to the manufacturers, producers and packagers and so on, so long as they are within the intent of the existing legislation. If they go against that, then "boom"! Now nothing is particularly regulated there. At least that is my understanding. I have not discussed the point with anyone. But that is completely different from tying groups in by regulation, but leaving everything open. Then you are really at the mercy of the courts if anything goes wrong. But you have a tremendous amount of latitude, which perhaps gives a great deal of scope for innovation and invention and so on. Have you considered that aspect at all?

**Mr. Scott:** First of all, Mr. Chairman, I am not precisely familiar with the English law in that area. I should like to make the point that throughout the packaging industry in Canada both suppliers and users of all types from coast to coast have compiled over the years a tremendous amount of expertise. We know what packaging costs, as an example. We know the kinds of technology involved. We are familiar with what is happening today and we hope, with the prognosis for tomorrow, that we

will be able to continue on with the kinds of developments necessary to fund and field the types of products that are on the market today. We have a wide range of products today which, 15 years ago, were just not on the marketplace.

What we are getting at here, Mr. Chairman, is that if it can be written into the act, which is really in fact a packaging and labelling bill, then as such we can aim that and help, if we are included. We do not suggest that we dictate at all. We are simply saying that we have a lot of expertise we understand the need for sensible regulations and we are more than prepared and willing to act in that kind of capacity as a consultant.

Both the industry and technology are changing at a fantastic rate, and I think perhaps we are better versed to keep up with this kind of technology where it may well affect consumers in years to come.

**Senator Carter:** Mr. Chairman, you referred to the minister's commitment, and you read from page 3 of the presentation. Does not section 19 cover that?

**Mr. Scott:** I should like to refer that question to Mr. Whitten.

**Mr. Whitten:** This point was covered in the opening statement, Senator Carter, in that the problem with the regulation, once it is published as a proposed regulation, is that it is in effect a position that has been taken. I should like to refer this back to the creation of the present packaging regulations under the Food and Drugs Act some years ago. To my mind those are still some of the best regulations ever written. They have covered and still cover successfully those products which were then visualized—and I might say visualized very adequately.

They came about very largely as we suggest here. There was consultation with the grocery products industry. There was a long period of consultation with the packaging association by Dr. Morel, who was then the director, before the first draft was published, and when it was published there was joint consultation and the result, I think, provided a way around the pitfall not only in the packaging then existing but to a very large extent on what has transpired since then.

Senator Macnaughton asked a question earlier, and I think there is a logical extension to the answer to that. Most of us in this industry are not thinking of the packaging which is on the market today but of the packaging which we expect will be on the market five years from now. It is very difficult, it would be well nigh impossible, indeed, for a Government agency, however well meaning, to take this into consideration and to limit it at that stage. It would very severely limit the consumers' quality in future years.

**Senator Carter:** I think I know what you are really objecting to. When I asked earlier what you envisaged by consultation, the reply was that the drafting regulations would be sent out to your association and to other organizations like your interested parties. It is only a question of procedure whereby the Minister instead of sending it out to you puts it in the *Gazette*. So it is this procedure you are objecting to, isn't it? It seems to me that it is the same thing but there is just a different method of doing it.



**The Acting Chairman:** Obviously I do not pretend to speak for the Association, but I think the point made in the original submission was that the industry prefers to consult with the officials before the drafts are made rather than after.

**Mr. Scott:** That is correct.

**The Acting Chairman:** I think that is the point made in their original submission.

**Senator Carter:** If I understood him correctly, he said that they would be furnished with draft proposals and then they would come and sit around the table and have a consultation after they had studied them. That is my understanding of the reply I got.

**Mr. Whitten:** Perhaps it is a semantic difference. I think what we were visualizing was a preliminary draft of proposed sections of regulations. I would assume that the intent of this clause is that the proposed regulation would be published in its finished form whereas what we are visualizing is something of a more preliminary nature, parts of which might be better drawn with the kind of consultation which we visualize.

**Senator Carter:** But they are not being published in the *Gazette* as regulations, only as proposals.

**Mr. Jamison:** I think, senator, when I made the comment I was trying to say the Department would turn around to a group of commodity packagers and say "We want to regulate packaging in this area; these are our theories on the subject of why we should do this; give us your point of view as to how it would affect marketing, distribution and manufacturing." They would give us all of their theories behind their thinking which we could then supply the answers to and give direction and also talk about the future, so that when they come to drafting the proposed regulation or eventual submission to the industry they will do it with full knowledge of all the pitfalls and other things involved. Then we would not have proposed regulations presented to us, because sometimes when regulations are presented, because of a firming up of attitudes and ideas, they are very difficult to change.

**Senator Carter:** Let us assume the Government followed your procedure and wrote to you and said "We are going to draw up regulations in this particular area," and then you write back and you say "These are points you should consider because this is what is going to happen" and so on. Then on the basis of that the Government draws up regulations. Would you not still have to make representations again at a later stage?

**Mr. Jamison:** Not necessarily. I think you would have the structure and then you would be filling in the blanks or smoothing off the rough spots so that eventually you would have a very workable permissive type of legislation rather than restrictive legislation. This is what Senator Heath was pointing out. The regulations should be permissive to allow us to take advantage of new methods, new systems, new materials and new processes.

**Senator Macnaughton:** It seems to me unless the Government is going to operate the industry itself it should be left to the people who created it. They are the people who can best anticipate developments. How on earth can it be left to the government unless they are to take over the whole of the industry?

**Senator Carter:** I would like to reply to Senator Macnaughton. The reason we have this legislation now before us is because we have done exactly that in the past; we have left it to industry to settle these points and they have not done it.

**Senator Macnaughton:** But the times are changing now.

**The Acting Chairman:** I think the difficulty arises out of the use of the word "proposes" in clause 19. I think what the witness is saying is that a proposal published in the *Canada Gazette* as to what the regulations should contain is in fact a decision that may be very hard to change. I assume that is a fair statement of what the idea is.

**Mr. Scott:** Yes, it is, Mr. Chairman.

**The Acting Chairman:** Arising from that I wonder whether this question does not suggest itself. Assuming that these are in fact proposals and not firm and final decisions, is there a better way to do it than the way suggested by clause 19? In other words, if they are proposals for discussion then what the bill suggests is that they should be published in the *Canada Gazette*, and in so publishing everybody affected, officially at least, has his attention called to the proposal and the opportunity is then given to make submissions and representations, and a reasonable opportunity by the very section itself is afforded consumers, dealers and other interested people to make their representations. It is a question of procedure and it is a question of how you handle what we now can see to be a very complicated situation. The question is simply this; is this a reasonable way to do it?

**Senator Molson:** Mr. Chairman, is not the key or the operative part of clause 19 the fact that the Government has the intent to make these amendments or to make these regulations or changes to regulations? Would it not perhaps be more suitable for the Government to announce its intentions to make changes and then give notice so that any interested manufacturer, consumer, retailer or whoever might be affected could get in touch with the Government and find out what is proposed? We all know that in certain instances proposals are very hard to change once they are set forth. It is easy to say that it gives everybody an opportunity to go ahead and take a whack at them, but this is frequently taken as opposition and sometimes even as political opposition. But discussion before publication can often be very easy, and, as has been suggested by the witnesses, the people affected are able to give advice that leads to regulations which are much better.

**The Acting Chairman:** In advance of the actual drafting? That is the point. That is why I put the question the

way I did and I think Senator Molson has brought it out very clearly.

**Senator Beaubien:** Mr. Chairman, could we not put something in there to say that there should be consultation with the industry before publication in the *Canada Gazette*?

**The Acting Chairman:** What Senator Molson suggests is that there should be a publication in the *Canada Gazette* of a notice of intention to amend certain groups of regulations which would alert the industries affected and would then result in consultation before the drafts were made.

**Mr. Scott:** Mr. Chairman, we would be very pleased if that should happen.

**The Acting Chairman:** Are there any other questions?

**Senator Beaubien:** Would it be in order to ask the Law Clerk to draw up some kind of an amendment?

**The Acting Chairman:** Yes. I think we will have a good deal of evidence on this point at further meetings of the committee and no doubt the matter will be taken up at that time. Mr. Scott, Mr. Jamison and Mr. Whitten, thank you very much for your help.

**Mr. Scott:** On behalf of my colleagues I thank you very much for your introductory remarks and for your co-operation.

**The Acting Chairman:** I understand there will be three other presentations made at the next meeting of the committee, which presumably will be a week from today at 9.30 in the morning, by the Canadian Manufacturers' Association, the Retail Council of Canada, and the Canadian Feed Manufacturers. The briefs will be distributed by the end of this week.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

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# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 19

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WEDNESDAY, APRIL 28, 1971

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First Proceedings on Bill C-215, ★

intituled:

“An Act to establish the Textile and Clothing Board and to make certain amendments to other Acts in consequence thereof”

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 22, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Aird, for the second reading of the Bill C-215, intituled: "An Act to establish the Textile and Clothing Board and to make amendments to certain other Acts in consequence thereof".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Aird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, April 28, 1971  
(21)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider the following Bill:

Bill C-215 "An Act to establish the Textile and Clothing Board and to make certain amendments to other Acts in consequence thereof".

*Present:* The Honourable Senators Salter A. Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Everett, Isnor, Kinley, Martin, Molson, Sullivan, Welch and White—(18).

*Present, but not of the Committee:* The Honourable Senators McNamara, Methot and Sparrow—(3).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

### *Department of Industry, Trade and Commerce:*

The Honourable Jean-Luc Pépin,  
Minister;

Mr. Bruce Howard, M.P.,  
Parliamentary Secretary to the Minister;

Mr. J.M. Bélanger,  
Chief, Industrial Policy Division,  
Office of the Industrial Policy Adviser;

Mr. L.F. Drahotsky,  
General Director,  
Office of the Industrial Policy Adviser.

At 11:00 a.m. the Committee proceeded to the next order of business.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, April 28, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-215, to establish the Textile and Clothing Board and to make certain amendments to other acts in consequence thereof, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Honourable senators, the plan for the meeting this morning is first to hear the minister in connection with Bill C-215, the Textile and Clothing Board bill. This is by way of assistance to the Minister having regard to his other responsibilities and demands on his time, geographically and otherwise.

After hearing the minister and whatever questions arise, we will continue our consideration of Bill C-180, the Consumer Packaging and Labelling bill. A few minutes ago I was asked how you package and label a consumer. I assume it should really be called "the Consumer Goods Packaging and Labelling bill". We will return to that as soon as Mr. Pepin has finished his remarks and has answered any questions there may be.

Mr. Pepin, this is your opportunity to give a full explanation of the bill. You may choose your language of communication, and you may change en route, while going through your explanation.

**The Honourable Jean-Luc Pepin, Minister of Industry, Trade and Commerce:** Thank you very much, Mr. Chairman for giving me this opportunity to address your committee on the Textile and Clothing Board bill. My job is lightened because of the excellent presentation by Senator Cook on second reading, and I thank him for his assistance in that respect.

I take it for granted that all members of the committee are now familiar with the subject, and also that they have paid me the honour of reading the statements I made on May 14 last and when introducing the bill on second reading in the House of Commons, so I will not bore you with that. Those of you who want to be very conscientious in the fulfillment of your responsibilities could pay me the additional honour of reading all the statements and analyses made during the House of Commons committee study of this bill, during which much information was given. Although I am sure most of you have already read it. Instead of repeating what has already been said, I will try to single out the most important features, of the bill and emphasize the most important aspects of the matter.

If I were to be asked the main reason for introducing the bill, I would say it is because there is a crisis in this

industry. Everybody in it—producers, manufacturers and the unions—have said to the federal Government, "Make up your mind. Tell us what you expect this industry to become in the future. Give us a framework. Give us a pattern of operation. Give us an indication. Do you want the industry to disappear? If you want the industry to disappear, tell us so, because we, the owners of these plants, will close them and put our money elsewhere."

It is in answer to this request that this bill is introduced now. The most important aspects are the objectives. I am not following a written paper so you can interrupt me at any time. If you ask me what the basic objective is, I find it in the words of my statement of May 14:

To create conditions in which the Canadian textile and clothing industries can continue to move progressively towards viable lines of production on an increasingly competitive basis internationally.

I put the words "continue to move" because I would not like anyone to have the impression that this is, globally speaking, an outmoded industry. Those of you who have seen some of these plants know very well that the facts are the opposite. In many cases these are plants as efficient as any you will find in the world. Too many people have the impression that the textile and clothing industry is outmoded and backward. This is not the case. If you think so, we will arrange for you to visit some of the plants. I am not here to say that all of them are totally efficient, but I will not accept, either, the thought that as an industry this is a backward sector of the Canadian economy. I am not saying that. So, the idea is movement.

Some of these plants have already reached the maximum or the optimum efficiency. Some other areas of this industry will never reach it. They have no possibility of doing so. The idea there will be to phase out these sectors as elegantly and in as humanitarian a way as possible. This is why you find in the bill some measures to cushion the disappearance of some sectors of this industry.

**Senator Isnor:** What is the main reason for their not being successful?

**Hon. Mr. Pepin:** In some cases they cannot meet the international competition. They should not even try. There is a division of labour in the world and others can do these things better than we can ever hope to do them ourselves. It would not be in the best interests of the Canadian population for us to try to do things that so obviously can be done at a better price elsewhere.

This is accepted by members of this industry. As a matter of fact, decisions have been made based on that

line of thought. Plants are closing now in anticipation of the policy. When the manufacturers, the producers, the owners of these plants issue a communiqué saying that this particular part of their operation will be phased out, they say, "In accordance with the policy that the federal Government has introduced, we, in anticipation, have decided to do that."

This is one of the reasons why I complain. On one side, the policy is being used to justify phasing out, to justify the closing of some plants or parts of a plant; and on the other side I am accused by others of having established legislation that is protectionist. I say to these people, "Make up your mind; it cannot be both at the same time." Anyway, the first idea is the idea of movement, that this industry is moving and will continue to move. The Government is not giving here a *chèque en blanc*, a blank cheque, for inefficiency. Not at all. That is the first idea.

The second idea I would like to leave with you is that this legislation, Bill C-215, is global. It has commercial, financial, social and aesthetic aspects. It embodies a global policy.

It has commercial aspects, as you have seen. It will try to accentuate the export aspect of this industry. As you have been told by Senator Cook already, some important movement is taking place with respect to exports. In some cases it will also try to control the imports from low-cost countries. I will come back to that in a moment. It will try to rationalize the tariff. It will also see to it that methods of inquiry on dumping are improved. So, the first aspect of this bill is a commercial one.

Secondly, there are also financial aspects to the bill. There are already subsidies for research and development in the textile industry. As you have been told already, the General Adjustment Assistance Program, GAAP, will be applied to the textile and clothing industry not only to develop exports but also to make it possible for them to rationalize with respect to the domestic market. This is an important change in the previous use of the GAAP.

There are also some social aspects to this bill, as we have already indicated. You have already been told by Senator Cook of a sort of pre-retirement program that is included in the bill. You have seen how well qualified it is. The gentleman must have been 54 years of age. He must have been in the industry for a number of years. In the last period of his activity he must have used all his unemployment insurance benefits. He must be willing to recycle himself. He must be willing to move if there is the possibility of a job for him elsewhere. There are all kinds of conditions.

**Senator Benidickson:** This is part of the Honourable Mr. Mackasey's program.

**Hon. Mr. Pepin:** That is it. It has been acclaimed elsewhere as a most innovative, social minded piece of legislation from that point of view. But I emphasize how cautious we have been, because someone can very well say, "Why do this for the textile industry and not do it for other sectors?" This is a very good question. There

are some precedents to this legislation, as you may know. In part, this was done under the automobile agreement. It was also done in the DEVCO legislation in Cape Breton. But this is new, and we have moved into it with great care. People can very well say that what is good enough for the textile industry is good enough for the electronics industry or the aviation industry; and that if it is good enough for the manufacturing industry it must be good enough for the fishing industry and for agriculture also. This is why we have moved very carefully. We were well aware that on the basis of this legislation there would be requests for extension of these clauses to other segments of the industry. So, there is a social aspect to this legislation.

I also said that there was an aesthetic aspect, in the sense of the "Fashion Canada" program and centres for productivity in the clothing and textile industry. The purpose of these aesthetic measures is to bring up the fashion content of this industry. I look around and I see many senators wearing their coloured shirts this morning. Well, this is part of the fashion preoccupation of this industry.

**Senator Connolly (Ottawa West):** A new look in the Senate.

**Senator Carter:** Have you anything in the bill to keep them from going out of style too soon?

**Hon. Mr. Pepin:** I was told yesterday that we might return to the white shirt. Let us not rush into that.

**Senator Connolly (Ottawa West):** Some of us have never left it.

**Hon. Mr. Pepin:** I just emphasize that, because in these days we all realize that men are getting much more fashion minded than they have ever been. We are beginning to look like a bunch of peacocks.

**Senator Sullivan:** Are they men?

**Hon. Mr. Pepin:** Yes, why not? What is good enough for the girls must be good enough for the men, too.

**Some Hon. Senators:** Oh!

**Senator Molson:** That is a good question.

**Hon. Mr. Pepin:** Some of what is good enough for the girls must be good enough for the men, but not all.

Let me remind you what I have tried to indicate. First of all, I have tried to indicate that this bill means movement. It is not a static thing. We are not trying to freeze the industry. On the contrary, we are trying to push it. The second point I have indicated is that this is a global policy. It is probably the first attempt ever made by the Government to look at one industry globally, from all angles. From that point of view, this is original. Some of you may not like it for that very reason. I do not know.

The third point that I would like to deal with is in answer to the question: What would be the most debatable, the most...

**Senator Beaubien:** Controversial.



**Hon. Mr. Pepin:** Yes, thank you very much—the most controversial aspect of this policy. Obviously, the answer is in clause 26, which says that in cases of serious injury or threat of injury from low cost import countries the Government would be willing to accord special protection, unilaterally, when necessary, in order to facilitate strengthening of the more viable lines of production.

Here I can only repeat what I have already said elsewhere, that we must have a determination of serious injury or threat of injury. Not only must we have that, but the Textile and Clothing Board must, in addition, demand—request from the companies coming to ask for this protection, plans that would indicate that they intend to continue to move towards the viable line. Again it is not a blank cheque, not by a long shot. They would have to demonstrate all of that.

It is only then that protection can be considered. So it seems to me that the maximum protection is really taken. There are a number of safeguards written in, and I think of clause 26 in particular. You must have prior and formal determination of serious injury. Injury must result from imports. Imported goods must be like, or directly competitive with, goods being produced by producers seriously injured. The use of the control is limited to the extent and for the period necessary to prevent or remedy the injury. In other words, we have extended ourselves as much as possible to prevent this from becoming a protective type of legislation.

My experts will give you as many facts on that as you would care to have, but I can assure you that this is the most liberal textile policy now available in the world. If you say that we have to be purer than the purists, then maybe you will disagree with this bill, but in a world of relative sinners we are terribly virtuous.

**The Chairman:** That is a nice combination of words, Mr. Minister.

**Hon. Mr. Pepin:** I am supposed to be a professor; I am sometimes accused of being an academic; but I have found in my short experience in politics that there are a number of businessmen and farmers who are much more academic than I am. They talk about free trade and protectionism in more theoretical terms than I ever found in any textbook on these subjects. I am trying to be realistic.

**Senator Isnor:** Mr. Minister, from the viewpoint of manufacturers, which is more important, the import or the export business?

**Hon. Mr. Pepin:** In this case exports represent about 5 per cent of the production of the industry. Globally speaking, the imports at the moment represent about 30 per cent of the domestic consumption. That gives you an idea.

**Senator Isnor:** What I am interested in is the home market compared to the export market.

**Hon. Mr. Pepin:** Would you repeat that, please?

**Senator Isnor:** I am making a comparison between the future export business and that of the home market.

**Hon. Mr. Pepin:** I was going to come to that in a moment. I was going to say that we have to judge this policy in relation to the world of textiles and in relation to the policies of other countries in the world. I was going to say that we cannot judge this thing *in abstracto*, in a vacuum. We have to compare it to what other countries of the world are doing. If the world of textiles was a liberalized one, if Canadian companies had full access to the world to sell their textile goods, it is obvious that this bill would be different. But that is not the case. Textile goods and agricultural goods are the two areas of world trade which have not been liberalized.

**Senator Desruisseaux:** Are we even more liberalized than the United States?

**Hon. Mr. Pepin:** That is my firm conviction, and we will come back to that, if you want to make a comparison.

I was saying that this bill must not be debated *in abstracto*. It must be debated in a concrete way. I was saying that we have taken all kinds of precautions, and I was indicating some of those precautions. The Government is not abandoning its responsibilities, because, after considering the real damage and after looking at the plans introduced by the company, the board can only make recommendations to the Government as to the degree of protection needed, and then the Government must make that decision.

**Senator Benidickson:** It is presumably for more efficiency.

**Hon. Mr. Pepin:** Yes. The fourth remark I want to make is in a rather philosophical vein again. It is that this bill is a balanced one. The bill says in clause 18 that the Textile and Clothing Board will look at the interests of all parties—producers, employees, consumers, workers—and at all aspects, including Canada's international obligations and interests. All aspects will be taken into consideration.

Let us call it a balancing act. If you question the consumers, if you reason with them, they will say that it is important that some people should have sources of revenue. If you question importers, they will say it is important to be sure of a certain domestic production. Even the most anti-protectionist importers will recognize that it is good to have domestic sources of supply. So we have looked at all the interests and we have tried to balance them in the most viable way possible.

On the subject of free trade I should like to caution you again. I have looked, for example, at all the representations made to the federal Government in the 1st few years by the Canadian Chamber of Commerce, by the Canadian Federation of Agriculture and by the Canadian Labour Congress. I should like to tell you, and again I could cite pages, that everybody in Canada is in favour of free trade. Everybody! I have not met one person who is against free trade. Everybody is in favour of free trade—but everybody qualifies it immediately: "Inasmuch as it is possible." And usually what is not said is: "Inasmuch as we are not affected by it."

**Senator Sullivan:** That is right.

**Senator Beaubien:** That has always been the American point of view.

**Hon. Mr. Pepin:** So do not give me that free trade business too much. I have always believed in it as strongly as anybody here. But you have always to qualify that. I would suggest for your amusement that you read the last presentation of the Canadian Federation of Agriculture to the Cabinet in Winnipeg. It was presented a few months ago. It starts out by saying that the Canadian Federation of Agriculture is in favour of free trade, especially in industrial products. I am almost quoting. It goes on to say that the Canadian Federation of Agriculture feels that at times quotas and subsidies are necessary. So I say "Amen" to that. Anybody can say "Amen" to that. But it is the "inasmuch as it is possible" that is always difficult to define.

The same thing applies in the House of Commons and in the Senate. Every Member of Parliament is against Government intervention, except in his riding. In his riding nothing must happen that will be disadvantageous to his electors. However, if a plant is about to close, then, irrespective of his party, whether he be Conservative or Liberal, he will move in to ask the Government to intervene to prevent that. I am just suggesting here as humourously as I can that this is not an academic debate, so if you talk of free trade, talk about it in terms of a desirable objective that must take into consideration the facts of life. This is really what we have tried to do, and I hope you will agree that we have done a reasonably good job.

The fourth of my five observations, Mr. Chairman, is that the system of control of imports from low-cost countries will still be based on the search for voluntary restraint agreements from exporting countries. In other words, unilateral action of a protective nature will never be used unless and until all efforts have been made to convince the exporting country that it is in their own best interests to accept voluntary restraint. I have done that on a number of occasions. I have said to them, "Look, don't you prefer to have a regular market in Canada for years to come instead of going out for the fast buck, for the fast sale?" And most countries of the world prefer to have this orderly marketing than immediate advantages.

Senator Cook referred to the 18 countries of the world with which we have voluntary restraint agreements, and this search for voluntary restraint agreements will remain the pillar of the system. It is only *in extremis* that we will act unilaterally, and then only if voluntary restraints are found to be impossible. Bear in mind that the bill is not so revolutionary because the Government already has the power to impose a surtax, which is not very pleasant. So, as I say, the bill is not so terribly revolutionary in the sense that nothing of that kind existed before.

I might also say to you that a number of countries with which I have been negotiating have said to us, "Why don't you, like all others, have the possibility of estab-

lishing quotas?" I could name countries where I have been told that Canada is the only country that does not have the proper equipment to deal with these problems, and they said to us, "Why don't you have a quota system?" Presumably these countries would hope to have more exports to Canada under a quota system than they have under voluntary restraint agreements. Presumably, were we to enforce a quota agreement, then, if they were not particularly well served on their quota system they would be the first to ask for voluntary restraint agreements. I have no illusions on that subject. I just wanted to indicate that a number of countries in the world have said to us, "Why don't you have the possibility of establishing quotas?" I mention this because in some countries of the world the policing of voluntary restraint agreements is rather difficult. They say, "Why don't you do it? After all, it is your job. You are the one who asked us to restrain ourselves. So why do you not have the proper agreement to see to it that this is done properly?"

**Senator Isnor:** How would you establish a quota system in the case of, say, Japan, from whom we import certain articles such as wearing apparel and shirts?

**Hon. Mr. Pepin:** There are different possibilities, as you know, and we have not established quotas as yet, so we have not defined how we would go about it if we had to. I am just emphasizing here that we hope not to have to do it too often. As I said, it is only *in extremis*, and after using the voluntary restraint approach, that we would consider that. My experts could go into the different possibilities. You could have a general quota, or a quota by country. You could have different ways of administering the quota by distributing licences domestically. There are different possibilities there.

**Senator Connolly (Ottawa West):** A quota is an imposed restraint, and the voluntary system is an accepted one.

**The Chairman:** Yes, it is by agreement.

**Hon. Mr. Pepin:** Usually when you use a voluntary restraint agreement, everybody smiles a little because they know there was a little bit of pressure on the exporting country to accept that.

**Senator Connolly (Ottawa West):** But we have no imposed quotas? We have no quota system in this country, is that not so?

**Hon. Mr. Pepin:** No, not in the textile and clothing industry anyway. This would be new from that point of view. But we have surtaxes. As you know, there is one on shirts now. The surtax is a method by which you say everything which comes in at a certain price will be taxed at a higher level.

**Senator Benidickson:** And percentage wise it is fairly substantial. It can be \$2 on \$3.

**Hon. Mr. Pepin:** Yes.

[Translation]

**Senator Desruisseaux:** Mr. Pepin, that is what protects the preferential tariff, or a tariff...



**Hon. Mr. Pepin:** No, all that is over and above the tariff.

**Senator Desruisseaux:** Yes, but it is a substitute.

**Hon. Mr. Pepin:** You have to understand the problem we face with respect to countries where production costs are low. The problem cannot be solved by means of tariffs. In other words, their capacity to produce at lower prices is so great that it is not possible to prevent imports everywhere in Canada merely by imposing tariffs.

[English]

Another remark I wanted to make—and this would require a longer analysis on your part—concerns a comparison of our present and future legislation on textile and clothing imports with the legislation of other countries of the world—the United States, Britain, the EEC, Sweden, Switzerland and Japan. I have all that here. The conclusion of the study is that we have been more liberal than anybody else. If you compare the degree of penetration of the Canadian market with the degree of penetration of the United States market or the European market, you find that ours is usually on the top because, as I say, we have taken a more liberal approach to these things than has anybody else. I am not emphasizing these things too much because you can very well say, "It is because we have better reasons to do it," and I go along with this argument. Canada is so dependent on international trade, and 25 per cent of our gross national product is international trade, as opposed to 4 or 5 per cent in the United States. Consequently, we have to take in more than others take. And this is not contradicted by businessmen in this industry. They just say that there must be a level that makes sense and that must be accepted, if you want to keep the viable sectors of this industry going in Canada.

**Senator Burchill:** Did I understand you to say that 25 per cent of our total manufactured goods are exported?

**Hon. Mr. Pepin:** No, I said 25 per cent of our gross national product is made up of exports. But if you look at the manufacturing side, 50 per cent of manufactured goods must be exported from Canada, which gives a very clear indication of the degree of our dependence on international trade, and this explains our international trade policies very well too.

**Senator Connolly (Ottawa West):** May I ask a question? You spoke about the posture of Canada being liberal in respect to trade.

**Hon. Mr. Pepin:** In textile and clothing matters.

**Senator Connolly (Ottawa West):** Is this virtue recognized in your Gatt negotiations and things like the Kennedy Round? Do other countries recognize that this is the philosophy with which Canada approaches these talks?

**Hon. Mr. Pepin:** That depends on their interest. For example, as you may know, I have explained this policy to a number of countries so they would not say that they were caught unawares. They say, "That is your interest." As a matter of fact, we have some of it in our own. But when it comes to defending their trade interest with

Canada they will not generally admit these things. They will say that we tend to take a rather protectionist attitude. You are familiar with international negotiations. I do not have to tell you how it is done.

**The Chairman:** They should know that a rose by any other name...

**Hon. Mr. Pepin:** At the same time we say two things. We say that our textile and clothing policy in this bill is the most liberal that exists in the world today, and we recognize why we have good reason to take that position. It is always in the spirit of balancing advantages and disadvantages that we talk.

**The Chairman:** There is no conflict with GATT in what you are proposing to do?

**Hon. Mr. Pepin:** On the contrary, we are the only one implementing Article XIX of GATT which says that you have to prove damage or the possibility of damage. The Americans do not.

**Senator Connolly (Ottawa West):** Do the other parties to GATT recognize the posture that you are taking?

**Hon. Mr. Pepin:** Really, I did not have a chance to discuss that with the various countries.

**The Chairman:** To the extent that there is provision in GATT and there is a basis for dealing with a situation like this, we must recognize that they do recognize it.

**Hon. Mr. Pepin:** When I went to see Mr. Miyazawa the Minister for Industry in Japan, he said: "We are always interested in one thing, that you use Article XIX of GATT, that you prove there is damage or the possibility of damage."

**Senator Connolly (Ottawa West):** The only reason I raise this question is that if the other parties think that Canada is in fact wedded to the idea of removing trade restrictions, hidden or otherwise, then our position at the negotiating table is made more credible whenever we have to deal with problems affecting ourselves.

**Hon. Mr. Pepin:** This gives me the opportunity of saying that the bill by itself is fairly neutral. It says simply "This is the way we are going to go about it. We will consider this factor and that factor." The bill is essentially a framework bill. A decision of the Government based on the recommendations of the Textile and Clothing Board will be the important thing. This is where a protectionist or liberal line in theoretical terms will be established.

**Senator Cook:** The bill is an enabling bill.

**Senator Connolly (Ottawa West):** There is no doubt too that the board does not force the Government to act in a vacuum. It is going to act now as a result of a finding. Heretofore this has been a problem. There have been crises and various governments have had to take strong action at certain times, sometimes without the full knowledge, or at least the amount of knowledge, they would have with a finding of this board.



**Hon. Mr. Pepin:** I repeat that we do not know what the line will be, but I do not think we have any reason to believe that it will be dramatic either way. The same balancing act that presided over the writing of the bill will preside over the implementation of the bill. I can tell you that we have in recent months negotiated with a number of countries on voluntary restraint agreements, and in most cases, as Senator Cook said in his speech, we have come to terms with them.

At the moment we are negotiating with the Japanese. They have not used the legislation as a reason for not negotiating with us. As a matter of fact, we are negotiating with the Japanese earlier than at any time in the past.

**Senator Connolly (Ottawa West):** Did you say "easier"?

**Hon. Mr. Pepin:** "Earlier." As you recall, these things are usually done in December, for the year ending.

**Senator Carter:** Is it fair to say that despite our GATT philosophy and our efforts under GATT, this bill is based on the assumption that we do not see any great liberalization of the textile industry in the foreseeable future?

**Hon. Mr. Pepin:** I think that is a good assumption. Again, the philosophy of the bill is this, that there are factors in this industry that are viable, that can become viable—areas in the textile and clothing industry where Canada can make a contribution, can produce without impairing the interest of consumers. There is an area there. Let us put our bets on that. Let us help this to go forward. Let us support it when needed.

Then there is another area where opportunities are almost non-existent. Let us have some social cushion to help with the phasing out of these things.

**Senator Carter:** Will that phasing out take place?

**Hon. Mr. Pepin:** It is taking place now.

**Senator Carter:** My question is, will it take place geographically or everywhere in that phase of the industry?

**Hon. Mr. Pepin:** I think it will take place everywhere. Wabasso in Trois Rivières is phasing out part of its plant. Bruck Mills in Sherbrooke is phasing out part of its plant. When Bruck Mills, which is a very good company, phased out some of its operations, they said to the employees, "Look, in anticipation of the Government textile policy we have decided to phase out this thing because we do not think it is viable." They say it is going to be bad and everybody regrets it. But at the same time they say, "We are going to emphasize this particular aspect of our production, and although we are regretfully throwing out 150 people now, in two or three years' similar workers will be employed by the company in these viable sectors. As a matter of fact there will be more than the 150 people that we have unfortunately to throw out now."

You see, this is it. This is painful. I have been told by some people that I am heartless. But my contention, my answer, is simply that maybe it is better to do it now than have to do even more in three, four or five years'

time. Maybe it is better to take the pain now than to have to take more later.

**Senator Cook:** But you do provide just assistance?

**Hon. Mr. Pepin:** Yes. That is about all that I wish to say.

**The Chairman:** I should like to ask a question. Is the effect of this bill to intervene between the Government and policy decisions to the extent that the board must first act before the Government can make any determinations on policy in relation to the textile trade?

**Hon. Mr. Pepin:** Please continue your line, because it is not too clear to me yet.

**The Chairman:** The provisions of this bill ascribe certain duties to the board.

**Hon. Mr. Pepin:** Yes.

**The Chairman:** That board may go into action on a notice of complaint.

**Hon. Mr. Pepin:** Yes.

**The Chairman:** Or on a reference by the minister. They then conduct an inquiry and make a report and recommendations.

**Hon. Mr. Pepin:** That is it.

**The Chairman:** The Government then makes a policy decision as to whether it will accept those recommendations under this bill.

**Hon. Mr. Pepin:** Right.

**The Chairman:** Does this then mean that the policy decisions in every case must wait until the board has acted, has conducted a hearing and made its recommendations?

**Hon. Mr. Pepin:** Yes.

**The Chairman:** In other words, there is no scope for independent action by the Government?

**Hon. Mr. Pepin:** No, that is quite right. We have to wait until we have the views of the board on the protection needed.

**The Chairman:** I would say that is essential, having regard to Article XIX of GATT.

**Hon. Mr. Pepin:** Yes, but that does not mean that nothing will be done unless the board or the Government delivers an opinion. There are many cases where the companies will themselves know that they are in a viable sector of the industry and do not need the opinion of the board. For instance, the carpet industry is viable and its members do not need the opinion of the board; the companies have an advantage. In other cases, for example, a particular company does not have to have the recommendation of the board and a decision of the Government to go to GAAP for financial support.

**The Chairman:** That was not my point. What is the starting point? In this legislation it is the reference to the board.

**Hon. Mr. Pepin:** Yes.

**The Chairman:** And that can be by complaint or it can be initiated by the Government.

**Hon. Mr. Pepin:** Yes.

**The Chairman:** Once that starts it has to take its course and there has to be a recommendation or a statement that they recommend that no action is necessary.

**Hon. Mr. Pepin:** Yes. I am trying to be careful because, first of all, the board will not decide on every aspect of this industry. The Government may very well wish to enter into a restraint agreement with Hong Kong on a particular aspect of imports where the board has not yet made a recommendation.

**The Chairman:** This is just my view. I would not think it is all necessary in connection with negotiating restraining agreements to go to the board. This is an area for Government action.

**Hon. Mr. Pepin:** I wanted to make sure that you understood that.

**The Chairman:** Yes, I understand that.

**Senator Molson:** You are speaking, Mr. Chairman, of voluntary agreements.

**The Chairman:** Yes. They do not need to go to the board for that.

**Senator Molson:** There would be no change in that aspect, is that correct?

**The Chairman:** Under this legislation the board may start to function on a notice of complaint, on a reference by the minister on some question, or itself initiate the procedure.

**Hon. Mr. Pepin:** The Government could not take unilateral action without the board; that is the whole purpose of the exercise.

**Senator Benidickson:** That is new under the provisions of this bill.

**Hon. Mr. Pepin:** Yes.

**The Chairman:** That course is necessary.

**Hon. Mr. Pepin:** And the recommendation of the board is the protection which the Government takes to itself and gives to the population before proceeding unilaterally.

**Senator Benidickson:** I would like to pursue that with respect to certain other types of board which have been established since approximately 1967, including the Anti-Dumping Tribunal.

**The Chairman:** Senator Benidickson, I have a note to ask the minister questions on that point. The Anti-Dump-

ing Tribunal was established during the 1967-68 session, but dumping had to be established as a basis for their inquiry as to whether any industry or trade was suffering. However, in the 1969-70 session amendments to the act were passed under which the same power was given to the Anti-Dumping Tribunal as is now being given to the Textile Board. How are their areas of operation decided when the jurisdictions are split like this?

**Hon. Mr. Pepin:** I will have an expert explain that. I think your interpretation is right, Mr. Chairman, but it is a question of determining what goes where. Mr. Drahotsky might speak to your question.

**Mr. L. F. Drahotsky, General Director, Office of Industrial Policy Adviser, Department of Industry, Trade and Commerce:** I am not aware that the Anti-Dumping Tribunal now has the power to initiate inquiries as to injury. If you are referring to the recent amendment to the Anti-Dumping Act, this merely provides the Governor in Council with the power to refer to the Anti-Dumping Tribunal cases with respect to which the Government wishes to have injury determinations. It is true that the Governor in Council may now ask the Anti-Dumping Tribunal to undertake an injury inquiry with respect to products which in fact may not be dumped, for which there is no prior determination of the Department of National Revenue that these in fact are being dumped.

**The Chairman:** The following statement was made by me in the course of the evidence of Mr. Gauthier, Vice-Chairman of the Anti-Dumping Tribunal in the Committee hearing on Bill S-6:

But, what we are talking about this morning is a situation in which there is no dumping. We then look at the circumstances under which these imports come into Canada, and the allegations that their entry is threatening or causing injury to Canadian production. This is a new authority.

Is that not the type of authority which will be granted to the Textile Board?

**Mr. Drahotsky:** No, there is a slight difference, in that for the Anti-Dumping Tribunal to undertake an injury inquiry it has to be so directed.

**The Chairman:** That is right.

**Mr. Drahotsky:** By the Governor in Council.

**The Chairman:** That is the only procedure.

**Mr. Drahotsky:** There are two possibilities, however, with respect to dumping goods: following an inquiry by the Department of National Revenue and a finding that goods are being imported at dumped prices; or, under the amending provisions, at the request of the Governor in Council, the cabinet.

The Textile and Clothing Board will be able, in fact, to undertake injury inquiries and make injury findings on their own initiative. That is the difference. In other words, their powers will be broader than those of the Anti-Dumping Tribunal.



**The Chairman:** Let us be realistic. The minister used that word and I like it. You say that anybody other than the Anti-Dumping Tribunal can function in relation to dumping where the basis of the inquiry is as to whether or not there has been dumping as defined in the Anti-Dumping Act and in relation to Article XIX of GATT?

**Mr. Drahotsky:** No, there is only one body, namely the Anti-Dumping Tribunal, which has the authority to make injury findings, injury attributable to dumping.

**The Chairman:** So that the Anti-Dumping Tribunal retains that authority completely?

**Mr. Drahotsky:** That is correct.

**The Chairman:** The Textile Board then operates in the area of damage only?

**Mr. Drahotsky:** Injury attributable to goods imported at prices which cause injury to Canadian industry.

**Senator Carter:** But not necessarily dumping?

**The Chairman:** No, that is quite true, because it must go to the Anti-Dumping Tribunal if dumping is part of the allegation.

**Mr. Drahotsky:** That is correct.

**The Chairman:** Your explanation as to the difference, then, is that the Anti-Dumping Tribunal can deal with injury cases only by reference by the Governor in Council.

The Textile and Clothing Board can function either on complaint from somebody affected or on reference from the minister, or on its own initiative.

**Mr. Drahotsky:** That is right.

**Hon. Mr. Pepin:** Clause 26 is very useful. It is an extension of what you have been talking about with Mr. Drahotsky. Clause 26 says:

Section 5 of the Export and Import Permits Act is amended by adding thereto the following subsection:

"(2) Where at any time it appears to the satisfaction of the Governor in Council on a report of the Minister made pursuant to

(a) an inquiry made by the Textile and Clothing Board with respect to the importation of any textile and clothing goods within the meaning of the Textile and Clothing Board Act, or

(b) an inquiry made under section 16 of the Anti-dumping Act by the Anti-dumping Tribunal in respect of any goods other than textile and clothing goods within the meaning of the Textile and Clothing Board Act.

So before we add something to the Export and Imports Permits Act list we have to have a *nihil obstat*, to use a Catholic term, of either the Textile and Clothing Board or the Anti-dumping Tribunal, depending on the subject matter: if it is textile and clothing, from the Textile and Clothing Board; if it is something else, from the Anti-dumping Tribunal.

**The Chairman:** But what I am pointing out is that the authority given to the Anti-dumping Tribunal last year is limited only by the statement that it is in relation to importations that they may make the injury determination. That is the authority of the Textile Board in this bill. Therefore, to the extent that the Governor in Council may make a request, he could go either to the Anti-dumping Tribunal or the Textile Board.

**Hon. Mr. Pepin:** Depending on what he wants to have determined.

**The Chairman:** Well, in connection with textiles.

**Hon. Mr. Pepin:** In connection with textiles, yes.

**The Chairman:** You can go the other way.

**Senator Cook:** He cannot go to the Anti-dumping Board unless it is in connection with dumping.

**Hon. Mr. Pepin:** If he wants to have dumping determined he goes to the Anti-dumping Tribunal; if he wants to have prejudice determined he goes to the Textile and Clothing Board.

**The Chairman:** What I am pointing out is, if he wants to have prejudice established he may go to either board, if he goes through the Governor in Council.

**Hon. Mr. Pepin:** The experts say "Yes," so you are an expert!

**Senator Sullivan:** You may very much want to.

**The Chairman:** You mean by osmosis.

**Senator Benidickson:** Before you leave the subject, although it was not where I proposed to start any questioning, I should like to point out that for years we lived with the Tariff Board jurisdiction of 1932. For years it was a great subject of philosophic difference in Parliament if we interfered very much, by increasing or reducing protection. We lived with this for a great number of years. What bothers me is that we introduced the Anti-dumping Tribunal, and we did this within very recent years. We had the Machinery and Equipment Advisory Board in 1967. That had some elements of protective possibilities in it. We had what the minister referred to, the Motor Vehicles Tariff Order of 1965, with the so-called free trade pact. Well, it has not been free trade, in that the prices of automobiles in this country and in the United States differ, although they may be produced by the same company.

We have referred to the Anti-dumping Act, and of course the amendment that came before the Senate in the subsequent year. Now we have another board, which seems to have some additional form of policing with respect to dumping, or have aspects that are protectionist.

**The Chairman:** Prejudiced?

**Senator Benidickson:** Protectionist. Why have this proliferation within such a short period of time, when we lived for so long with the Tariff Board jurisdiction of 1932?



I recall that in 1945 a government that I supported, or was supposed to support at that time, had a very small majority of twelve. More than twelve of us said we would not support a rather modest increase in tariffs at that time. The minister withdrew his proposal. In 1953 there was another proposal by the same government with respect to machinery, that there be some increase in protection. There was protest. In that case, instead of withdrawing anything they simply did not introduce in the House of Commons a resolution that normally would have followed the budget.

This has gone on. In 1960 and 1962 we had considerable controversy about what was "class or kind" of items. That involved a difference between parliamentarians on the matter of protection—more protection or less. You will recall that the Senate at that time opposed some of the legislation in the early 'sixties. However, the government of the day insisted that that legislation be proceeded with.

Then we go along quietly for some time, but in the last three or four years we have had these various new boards and new items of legislation, which to my mind have a very strong flavour of opportunity for the prohibition of the entry of goods, which I will call perhaps "anti-consumer" in their interest. Why do we suddenly have all these boards, and to what extent do they overlap?

**Hon. Mr. Pepin:** I think the best answer I can give is to send you a copy of the speech I made the other day to the Importers' Association in Montreal.

**Senator Benidickson:** I have your speech made in Windsor, but I have not the one made in Montreal.

**Hon. Mr. Pepin:** The one in Montreal was on imports. My plea really was for maximum flexibility, in the sense that you cannot, as possibly existed in the past, deal with all these problems with a single instrument. In many cases the instrument you need is exactly the opposite of the instrument you need in another case. For example, you give a protectionist leaning to the machinery program. I would not accept that. The machinery program is one by which imports are encouraged; there is remission of duty to encourage imports, but not to encourage them when somebody in Canada is producing the same thing. That is, if I have ever seen it, a use of intelligence. You encourage imports of machinery not produced in Canada by giving a remission of the 15 per cent, or whatever it is, and protect your own domestic producer by not doing so if the machinery is produced in Canada.

Senator Benidickson, we keep on importing into Canada 50 or 60 per cent of the machinery we need. So I do not think the machinery program could be interpreted as a protectionist measure.

**Senator Molson:** That is processing machinery, Mr. Minister.

**Hon. Mr. Pepin:** If you talk about the automobile pact, that was an entirely different approach. There we went to conditional free trade, and the results are there for everybody to see. We have now more than \$6 billion

worth of trade with the United States in automobile parts. The contention I have is that in the past the instrument was really a sledge-hammer: now we operate with a scalpel. I think with this variety of instruments you underline that theoretically, anyway, the Government is in a position to do a more precise job than it was in the past with a single instrument.

Mr. Drahotsky, would you like to add something?

**The Chairman:** Just before he speaks, is the sum total of what you are saying that this is an area for specialization?

**Hon. Mr. Pepin:** You have the objective and you try to achieve it in the best possible way. You cannot do it with one instrument.

**The Chairman:** No, you need a lot of roads.

**Senator Benidickson:** You are going further, and perhaps this word that we often hear, "rationalization", has some relevance, including the program of your colleague, the Minister of Labour.

**Hon. Mr. Pepin:** That is it. If you could, in five years from now, have a meeting here to review this, we could say that because of this textile and clothing bill we have now in Canada a more concentrated textile industry, with lower tariffs, in order to favour the coming into Canada of the foods that we are not producing, which could very well and probably will happen. I think that we will all rejoice in that. But you cannot use the entire dumping tribunal to do this work. You cannot use the machinery program to do this work. You need a special instrument, and this is what we are talking about.

**Senator Benidickson:** Am I right in thinking that when the Tariff Board considered the predicament of the textile industry, they ended up by using the test of the merit of a higher or lower tariff by comparing our costs, our form of manufacture, our styling and other matters of that kind more with the United States than with the underdeveloped or developing countries? I was going to ask you a further question. You did appear before the Senate Foreign Affairs Committee. I am not a member of that committee, but Senator Aird, the chairman of that committee, was good enough to send me your evidence at that time. I was rather surprised that there was very little said about acrimony or great difficulty with some of these developing countries, particularly in the Pacific rim, where we are expanding our export trade. You referred to a couple of publications, foreign trade magazines and so on, which I have looked at, and I find there is not very much evidence in public print of really unfriendly bargaining in some of these matters. Is that generally true?

**Hon. Mr. Pepin:** Really I do not think we should be ashamed of our conduct at all, with respect to these countries. When I was in Japan, the Minister of Industry and Commerce of course brought up the difference in the commercial balance between Canada and Japan. I said, "Would you like to trade that situation? I will trade it with you at any time." We are exporting to them huge

quantities of raw materials and semi-processed material. They are exporting to us huge quantities of manufactured products.

**Senator Benidickson:** Including textiles.

**Hon. Mr. Pepin:** You have to put that in the balance.

**Senator Benidickson:** Including shirts.

**Hon. Mr. Pepin:** Including shirts. When I said to the Japanese minister, "Would you like to trade? We will export to you \$500 or \$600 million worth of manufactured goods and you will export to us a billion dollars worth of raw and semi-processed. Can we trade on that?", he burst out laughing, because he knows very well that Japan is much better off with \$500 or \$600 million worth of trade to Canada in manufactured product, than Canada is with raw and semi-processed materials at the level of \$1 billion. So you have to include that in the equation. I do not think we should be ashamed of our conduct in textiles in the past. I am not, anyway.

**Senator Benidickson:** I am glad to have that explanation on the record.

**The Chairman:** There is just one other question I have—for your expert, maybe. I notice in the Anti-dumping Tribunal Act that the tribunal is made a court of record and in your bill this is not done. Is there an explanation why?

**Hon. Mr. Pepin:** Yes, there is one. Mr. Drahotsky or Mr. Belanger?

**Mr. J. M. Belanger, Chief, Industrial Policy Division, Office of Industrial Policy Adviser, Department of Industry, Trade and Commerce:** Mr. Chairman and honourable senators, we were told by our legal counsel that it was not a court of record. The only reason we have had to put certain things in is because of the powers of inquiry. But we are not a court of justice *per se*. We considered that possibility, because there is one clause with regard to the Customs Act. The Anti-dumping Tribunal has the right to requisition customs documents by defining themselves as a court of justice and a court of record.

**The Chairman:** I think part of the answer is that the Anti-dumping Tribunal, in dealing with dumping aspects and injury in a combination, may make an order which is final, and it is provided that it be subject to appeal to the Exchequer Court. Here the Textile Board cannot make an order; it may make a recommendation.

**Mr. Belanger:** The determination of injury is, but it is supposed to be a final determination.

**The Chairman:** In this bill?

**Mr. Belanger:** It is different; it is part of the process of getting to the recommendation. It is not an acting document *per se*, whereas in the anti-dumping tribunal it is directly there.

**The Chairman:** I notice in this bill that the board shall make a written report to the minister setting out the results of the inquiry and containing a recommendation

as to whether in its opinion special measures of protection should be implemented. Notwithstanding that, the minister is not bound to accept that; he makes his own decision. Is that right?

**Hon. Mr. Pepin:** That is right.

**The Chairman:** So this may be why you have this basic difference.

**Mr. Belanger:** But it is not as important as in the Anti-dumping Tribunal. In the Anti-dumping Tribunal, its determination of injury is the final one, it is the end-all of it. Here it is only as part of the process of getting to the examination.

**Senator Molson:** Could we ask the minister how long he thinks this process might take in any given but not too complicated case presented to the board?

**Hon. Mr. Pepin:** You are quite right. It will depend on the degree of complication, or the number of applicants. In the first case we had, in the yarn application where there were only five or six applicants, it took three and a half months. The board itself can make full use of everybody around who knows anything about this subject. First of all, they will receive the views of the producers and the plans of the producers. They have their own little staff, as you know. They can consult also with experts in my department, in Finance, in External Affairs. All this continues to exist.

**Senator Molson:** I am just wondering about delays. From your point of view, do they look as though they will be of a reasonable length, in order to make the actions efficacious?

**Hon. Mr. Pepin:** The purpose will be to do it as rapidly as we can. That is one reason why I would like it if you told me that you wanted to meet again in the coming days—because I am very keen to see this legislation through, as you can very well imagine.

**Senator Benidickson:** Are we likely to see you again before this committee?

**Hon. Mr. Pepin:** Any time you say—in private or in public.

**Senator Benidickson:** Some people have voiced concern that the powers contained in this bill to establish the Textile and Clothing Board go well beyond those that would be necessary to deal solely with textile and clothing matters. Does this come back to your reference to clause 26?

**Hon. Mr. Pepin:** Yes, senator.

**Senator Benidickson:** What would that include? Footwear is explicitly excluded. Would it include carpets and things of that sort?

**Hon. Mr. Pepin:** No, carpets and things of that kind are included in textiles and clothing. There is no problem there. The real problem was well defined in Senator Cook's speech, when he explained what the Export and



Imports Permits Act applied to as understood now. It applies to three things. This is what Senator Cook said in his speech at page 855:

The Export and Import Permits Act makes it possible for the Government to control imports of: (1) articles which are scarce in world markets;—

So we can put on the Export and Import Permits Act articles that are scarce in the world.

**Senator Benidickson:** That is a fairly wide power, is it not?

**Hon. Mr. Pepin:** Yes, but I do not think it has been abused.

**Senator Benidickson:** It has not been used yet. The act has not been passed.

**Hon. Mr. Pepin:** I am sorry, but this is the Export and Import Permits Act as it is now. It can do that now. So, "articles which are scarce in the world markets" is one.

Then we have:

(2) certain products under domestic price support;

Milk products, for example, which are under domestic price support can be put on that export list.

(3) any article, when necessary to implement an inter-governmental arrangement or commitment. However, in its present form, the act cannot be invoked to control injurious imports, unless one of the three conditions is met.

Is that clear? So that is the Export and Import Permits Act as it is now.

In the House of Commons—and I have all the quotations here—Mr. Harkness, for example, said that this was wide enough to bring in quotas on textiles and clothing. He has said that. I have the quotation. The department has always taken the position that it was not included now. So in order to get this power of having unilaterally-decided quotas on textiles and clothing we have had to have clause 26.

In the past people have also said in the house and elsewhere, "Why not apply it to all kinds of goods? You know, if it is good enough for textiles and clothing it must be good enough for other goods as well. You may need the same authority for other types of goods." So we have taken the bull by the horns and we have also put other goods in the legislation. As you know, Mr. Baldwin did not like it. It seems to me, since everybody is aware of it, that this is a legislative procedure which is quite acceptable, but some people are more severe on these matters than I am.

**Senator Benidickson:** I realize, Mr. Minister, that you were adamant in the matter of the suggestion that the board itself might be enlarged, but it would seem to me to be important that the membership of the board be widened. I have much respect for what Senator Sparrow said in our chamber the other night when he emphasized regional representation, but I am not keen on regional representation. I am slightly nervous about the representation as proposed, although I have the highest respect

for the three men you have in mind to constitute the board. One is a man with whom I have dealt for a long time in the Civil Service; the second is an ex-manufacturer; and the third is an eastern economist. In no way do I slight their abilities, but what concerns me is that there seems to be no one on the board who would represent the consumer who has been, for example, buying shirts at, say, \$3.25 and may have to pay \$5.25 for them. I believe the bill is so important that the membership of the board should be widened.

**Hon. Mr. Pepin:** But is there anybody in the world who is specialized as a consumer?

**Senator Benidickson:** Would you repeat to this committee your strong objections to widening the board?

**Hon. Mr. Pepin:** The main argument was that we did not want representatives either from unions or from employers. We did not want the "representative" type.

**Senator Cook:** They could appear before the board as advocates, at any rate.

**Hon. Mr. Pepin:** Yes, everybody is entitled to come and put his case before the board.

We have really appointed people known for their good judgment and knowledge of economic problems in general. We did not even want somebody specialized in textiles, because we wanted him to take a wider view of these things.

I am very pleased with and proud of the three we have found. Mind you, they are certainly working for their money. The only suggestion that I would accept is that we might have done this on a wider geographical basis. I am quite sure that will be taken into consideration in future.

**Senator Aird:** Mr. Minister, how does the board operate? Does it operate by majority vote?

**Hon. Mr. Pepin:** They develop a consensus.

**Senator Aird:** It is a unanimous decision, then?

**Senator Benidickson:** No. This board would be like many other boards, as I understand the act, because it would have the right to delegate one of its members to actually do the investigating.

**Hon. Mr. Pepin:** They always sit as a group.

**Mr. Belanger:** They have the right to investigate. That comes under their powers of inquiry.

**Senator Benidickson:** It is like the National Energy Board, where one member of the board may go out and conduct an entire hearing and then come back and discuss what he has heard with his colleagues.

**Hon. Mr. Pepin:** I do not think they do that very often. I have seen them at work and they seem to work very much as a team. There is no provision for a vote in the group and that means that they have to come to terms with themselves.



**Senator Sparrow:** Mr. Minister, you just mentioned that in future you would want to look at regional representation. Is that what you said?

**Hon. Mr. Pepin:** No, I said that Senator Benidickson underlines the fact that these three gentlemen are from central Canada. Mr. Annis could not readily be identified in geographical terms. There is another member who is from Quebec, and another one from Ontario. I merely say that the next time round somebody will want to look at the possibility of choosing someone from the Maritimes or from the western provinces.

**Senator Benidickson:** Or from among those who are now so involved in Pacific Rim trading.

**Senator Sparrow:** Might I ask then what is your objection to regional representation? The reason I ask that question is that the bill refers to "not acting unilaterally," but you can act unilaterally not to act under the recommendation of the board. This becomes extremely important particularly if you have a recommendation by the board and then a recommendation comes forward to retract that, and then you can act unilaterally not to retract any provision that was made. This becomes, I believe, rather important in that there should be regional representation. I certainly would not want to see in the bill specific guidelines for representing agriculture or consumers, or this kind of thing, but at least for choosing the members regionally. Assuming there were four from the four regions of Canada plus an additional one to give you the odd number, they would certainly be able to concern themselves by acting unilaterally not to act. In the committee of the other place, or in the house, I believe you made the statement that this was setting a precedent, and this was your concern. But I see under the bill which deals with national farm products they are doing exactly that. They are making provision for regional representation under that act which, in turn, is very similar to this type of legislation.

**Hon. Mr. Pepin:** The reason I said what I said about regional representation is not to get a better board, but to get more popular support for the board. If there had been a westerner included, then maybe westerners would have felt a bit better about it. That is my only reason. It is not a question of competence at all. You must bear in mind that the board can only make recommendations with respect to the degree of protection to be afforded by the Government, and that eventual decision will be taken in Cabinet where regional representation is a known fact.

**Senator Sparrow:** These may or may not be regional representation.

**Hon. Mr. Pepin:** In the Cabinet? I assume there will always be regional representation in Cabinet.

**Senator Sparrow:** But there have been some situations where there has not been regional representation in Cabinet.

**Hon. Mr. Pepin:** May I continue for a moment? The other point is that my adamant position in the house, that Senator Benidickson referred to, was taken on an

amendment to the bill which suggested representation of the provinces on that board, and I said, "To hell with that," because the provinces had been saying to the federal Government, "That is your responsibility," and you are not going to throw back the responsibility to them after that. This is why I was so adamant.

**Senator Sparrow:** I agree with your statement on that, but you are not then opposed to the fact that the bill should state that there should be regional representation. You are not opposed to that?

**Hon. Mr. Pepin:** If you do that you will have to have five members, to make sure that the various regions are represented, and then a sixth to make sure that the national interest is taken into consideration. If you operate on that basis, there is no end to the number of members you will have to have on that board. Then perhaps you will have to represent southern Ontario, as opposed to northern Ontario, and so on, in the conventional sense.

**Senator Sparrow:** But I am talking of regions now. If there are four regions in Canada, you would require the fifth.

**Hon. Mr. Pepin:** Are there four regions?

**Senator Sparrow:** Are there not four?

**Hon. Mr. Pepin:** Well, British Columbia has always claimed to be a region by itself.

**Senator Sparrow:** Well, how many regions do you say there are?

**Hon. Mr. Pepin:** Well, it would mean that there would be five, at least—and we could have a debate as to whether it should be four or five.

**The Chairman:** We will not have that debate here!

**Hon. Mr. Pepin:** You see, what will happen is this. If you want to represent the regions, then the consumers will come up, and the producers will say, "Certainly we are interested; we are spending the money." And the employees will say that they too have an interest. There is no end to it if you follow that course. What, in fact, I said was that it would have been wise and shrewd on the part of the Minister to see to it that this argument was eliminated. But I looked for good people before I asked myself where they were from.

**Senator Sparrow:** With regard to the national farm products, they have it in there. That is what I am getting at.

**The Chairman:** I am not sure that this is relevant senator.

**Senator Sparrow:** I believe it is relevant to his argument.

**The Chairman:** As I understood the Minister's argument today, it simply was that he explained that it may

well be that somebody from the west will or may be appointed. There is no prohibition against that. Whether you call him a regional representative in those circumstances or not, I do not know. He is a member of the board and he may be from the west, but there is no prohibition against that.

**Senator Cook:** And anybody who has an interest can come before the board and make representations.

**Senator Molson:** We have to hope, Mr. Chairman, that there are still impartial Canadians who can sit on a board and not be criticized because of the part of the country they come from.

**Hon. Mr. Pepin:** Mr. Annis has been associated for such a long time with the national aspect of these things

that it would be very difficult for me to say which region of Canada he comes from. I have no idea.

**The Chairman:** We know him very well.

Now, honourable senators, the arrangement was that we would hear the Minister this morning, and that then we would revert to dealing with Bill C-180. So, Mr. Minister, I thank you very much for being with us this morning.

**Hon. Mr. Pepin:** I want to say that if my presence can be helpful to you in speeding up the passage of this bill, I shall endeavour to be as helpful as I can.

**The Chairman:** We will let you know.

The Committee then proceeded to the next order of business.

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# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

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No. 20

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WEDNESDAY, APRIL 28, 1971

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Second Proceedings on Bill C-180,

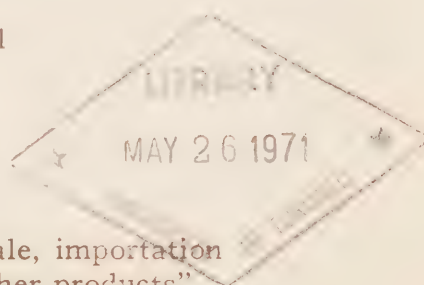
intituled:

"An Act respecting the packaging, labelling, sale, importation  
and advertising of prepackaged and certain other products"

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(Witnesses:—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Heath, seconded by the Honourable Senator Kickham, for the second reading of the Bill C-180, intituled: "An Act respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products."

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motions, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, April 28, 1971.  
(22)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce proceeded at 11:00 a.m. to further consider the following Bill:

Bill C-180 "An Act respecting the packaging, labelling, sale, importation and advertising of pre-packaged and certain other products".

*Present:* The Honourable Senators Salter A. Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Everett, Isnor, Kinley, Martin, Molson, Sullivan, Welch and White—(18).

*Present, but not of the Committee:* The Honourable Senators McNamara, Methot and Sparrow—(3).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

### *The Canadian Manufacturers' Association:*

Mr. H. J. Hemens, Q.C., Vice-President,  
Secretary and General Counsel,  
Du Pont of Canada Limited;  
Mr. R. F. Bonar, Legal Counsel,  
Colgate-Palmolive Limited;  
Mr. R. Rhodes, Vice-President and  
General Manager, Food Services Division,  
General Foods Limited;  
Mr. D. H. Jupp, Ottawa Representative,  
The Canadian Manufacturers' Association;  
Mr. G. C. Hughes, Manager, Legislation Dept.,  
The Canadian Manufacturers' Association.

### *Retail Council of Canada:*

Mr. A. J. McKichan, President;  
Mr. K. Lane, Assistant on Buying  
to the Vice-President of Merchandising,  
Simpson-Sears Ltd.;  
Mr. N. A. Stewart, Company Packaging Supervisor,  
T. Eaton Co. Ltd.

### *Canadian Feed Manufacturers' Association:*

Mr. C. L. Friend, Executive Secretary;  
Mr. J. D. McAnulty, Director.

At 12:25 p.m., the Committee adjourned until Wednesday, May 5, 1971 at 9:30 a.m.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, April 28, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-180, respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products, met this day at 11 a.m. to give further consideration to the bill.

**Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have further delegations this morning in connection with our consideration of Bill C-180. We have with us The Canadian Manufacturers' Association represented by Mr. H. J. Hemens, Q.C., Vice-President, Secretary & General Counsel, Du Pont of Canada Limited; Mr. R. F. Bonar, Legal Counsel, Colgate-Palmolive Limited; Mr. R. Rhodes, Vice-President and General Manager, Food Services Division, General Foods Limited; Mr. D. H. Jupp, Ottawa Representative, The Canadian Manufacturers' Association; and Mr. G. C. Hughes, Manager, Legislation Department, The Canadian Manufacturers' Association.

Now, Mr. Hemens, are you going to make the initial presentation?

**Mr. H. J. Hemens, Q.C., Vice-President, Secretary and General Counsel, Du Pont of Canada Limited:** Honourable Senators, we are pleased to have the opportunity of appearing before your Committee this morning and discussing with you Bill C-180, the Consumer Packaging and Labelling Act.

I would like to introduce the other members of CMA's delegation. On my right are: Mr. Bonar, Mr. Rhodes, Mr. Hughes, and Mr. Jupp.

Copies of the association's submission in both official languages have, I believe, been made available to you. The submission is based on the bill as first introduced in the House of Commons and so does not reflect the amendments recently made by the house. I will deal, of course, with these amendments in this statement, but I must first tell you that our comments in the brief on clauses 12-23 do not reflect the fact that these clauses have been renumbered 13-24 respectively and that our comments on clauses 7(2)(a), 7(2)(c), clause 9, clause 14 and clause 17(1)(d) are now largely inapplicable because of these amendments.

I would like to highlight CMA's position on Bill C-180, taking into account the amendments made by the commons and the evidence which has come to light since the Bill was introduced last November.

The association is aware that there have been complaints about certain packaging and marketing practices and we recognize that Bill C-180 is a well motivated attempt by the government to control these practices. However, on the whole, we think the Bill is an overreaction and contains some important technical defects from a legal standpoint. The association's brief and my remarks today are directed towards improving C-180 as a piece of legislation and are, therefore, oriented towards a legal analysis of the bill. There are three areas which are of concern to the association. They are: standardization, the use of delegated power and the use of criminal law in C-180 and particularly in clause 20 of the Bill.

First, turning to clause 11 and standardization. Most of us are aware of the great number of package sizes and shapes of pre-packaged products and that this may disturb some consumers. There has been a fair amount of publicity on this point. Today, we do not want to deal at length with the pros and cons of standardization, because, as I have said, most of our comments are directed to a legal analysis of the bill and we have approached clause 11 in this light. Nevertheless, there are practical difficulties of standardizing which must not be overlooked. We believe that some other witnesses have pointed out problems that may arise through standardization, problems such as the necessity to increase the number of production lines and possible problems with the development of new products and new packaging techniques. Secondly, although there may be a negative side to proliferation of package sizes and shapes, the simple desire and enjoyment of having a variety of sizes and shapes from which to choose is and should be an important feature in our society. This section is concerned not with proliferation but with undue proliferation. The word "undue" is a term that we have had some problem with in the Combines Investigation Act.

I would now like to deal with the use of delegated power in C-180. From a legal standpoint, our most serious criticism lies in this area. Let us deal first with clause 3. It is our opinion that clause 3, which would allow regulations to override other statutes, is an unwarranted delegation of parliamentary authority and should be regarded very seriously by this Committee. We do not think that a good explanation has been given for this rather unprecedented provision. No doubt, there are good administrative reasons for having such a provision. We can see certain problems in having to amend other acts of Parliament when regulations under C-180 conflict with some provision in those other acts. However, all in all we think that it is more important for regulations not to have the power to amend any act of Parliament. There

are two recent and eminent authorities in support of the proposition that there should be no authority to amend statutes by regulations: the Report of the House of Commons Special Committee on Statutory Instruments, known as the McGuigan Report on Statutory Instruments, and the Report of the (McRuer) Royal Commission Enquiry into Civil Rights.

Leaving clause 3, there are certain other objections we have to the regulation-making powers in C-180. Generally speaking, we think sound legal principles indicate that conditions precedent to the exercise of the regulation-making power and the precise ambit of the power once those conditions have been met, should be specified in the legislation. Usually, the condition precedent will be the wrong which the regulations are intended to correct: the ambit of the power will usually be an exercise of the power sufficient to remedy the wrong. These desirable principles have not been observed in the drafting of clauses 10, 11 and what is now clause 18. In clause 11 dealing with standardization, for example, we do not think that the criteria clearly define the wrong to which these regulations are directed. We also find it objectionable that clause 11 would give the Governor in Council unlimited power to limit package sizes and shapes once the conditions precedent for exercise of the regulation-making power have been met. In our opinion, sound legal principles indicate that the Governor should only have sufficient power to remedy the wrong.

Furthermore, while we are concerned with clause 11, I should like to support and even emphasize the view expressed before the committee by the Grocery Products Manufacturers of Canada. In respect to the standardization of advertising it would be most desirable and even necessary, if any useful objective is to be achieved, that those who package and know packaging—to wit, the manufacturers—be consulted before regulations are issued. Under the present wording such consultation is permissive; it should be mandatory.

With respect to clause 10, commented on at page 7 of our brief, the association is of the opinion that the Government is not justified in prescribing the form and manner of applying labels or prescribing the form and manner of showing any required information unless it is to prevent consumers from being confused or misled. We think, therefore, that confusion of consumers should be a condition precedent for valid exercise of the power to regulate.

Before moving on to the use of criminal law, we think it is worth while to note by way of general comment that, when the Minister of Justice recently introduced the Statutory Instruments bill, he indicated that regulation-making powers which might trespass unduly on personal rights and liberties, should not be granted except after careful deliberation. Can we suggest, Mr. Chairman, that corporations as legal personalities, as taxpayers and as entities substantially contributing to our wealth-making process, also have rights and liberties worthy of careful protection.

With respect to the use of criminal law in Bill C-180, we have a few criticisms. We believe it is undesirable to

use criminal law to regulate commercial activity where that activity does not contain any real element of blameworthiness. For example, the broad definition of "misleading representations" found in clause 7 creates the possibility that there may be an offence where there is no real blameworthiness. In this connection it is important to recognize that symbolism found in most advertising does serve a useful purpose and is not intended to deceive consumers. Because of the constitutional difficulty the federal Government experiences in regulating many areas of commercial activity, there is a danger that in attempting to control what it considers undesirable commercial activity, it will needlessly create criminal offences. Perhaps it would be desirable for a civil tribunal to have jurisdiction to hear various types of complaints under consumer legislation. This tribunal could have power to issue, cease and desist orders and in this way criminal sanctions could be avoided.

If criminal law is used, the acts or omissions which constitute offences should be defined with certainty. I would refer you to our comments on clause 4(2) at page 5 of our brief in which we point out the uncertainty of the words "in distinct contrast."

With respect to misleading advertising, the association considers it desirable to have only one statute dealing with the subject. We note that the Combines Investigation Act presently has criminal provisions dealing with the subject and that clause 7 of Bill C-180 also contains criminal sanctions for misleading representations.

Clause 15(1) gives an inspector power to seize and detain products in various circumstances, including when he reasonably believes that a package label contains a misleading representation. This would permit an inspector to act both as policeman and judge in respect of a matter which in the Combines Investigation Act must be dealt with exclusively by the courts. Clause 18(1)(g) also empowers the Governor in Council to deem certain prescribed exceptions or symbols as false or misleading representations unless the contrary is proved in court. This effectively throws the burden of proof in a criminal matter onto the defence.

For these reasons we would prefer to see all matters relating to misleading representations dealt with in the Combines Investigation Act.

One of our most important comments relating to the use of criminal law concerns clause 20. Clause 20 has certainly puzzled the Association and for the reasons I shall explain, we consider this clause highly objectionable from a legal point of view. Nor do we think that the enigma of this clause has been removed by the explanation given to the House of Commons committee by the official from the Department of Justice.

Our main problem in understanding this clause is that from an evidentiary point of view we do not understand how a corporation can be guilty if it has not been prosecuted or convicted. We do not think that this question has been satisfactorily answered in the evidence that has been given. A second criticism of clause 20, which has not been brought to light, is the injustice which may arise in the case of a private company. In our brief on



page 10 we referred to the recent case of *Hartman vs. The Queen*, involving sec. 134 of the Income Tax Act which is identical in wording to clause 23. In that case Judge Bendis referring to the injustice which can arise, said:

Unfortunately this is one of the instances where the courts are unable to grant relief. It is a matter for the legislature to remedy this situation.

We suggest that a subclause should be added to clause 20 to overcome the possible injustice which may arise in the case of a private company.

A final comment on clause 20 is that the Association thinks that the word "knowingly" should be inserted before the word "directed" in line 28 on page 15 of the bill, so that whatever was done would have to be done knowingly in order for there to be an offence under the act.

We would like to make some comments on the seizure and detention provisions. We think Mr. Basford is to be complimented for amending the seizure provisions so that an inspector may now seize only such a number of products as is required for purposes of evidence, unless in his opinion the public interest requires that he seize a greater number. We still consider, however, that it would be desirable to add a provision, similar to section 61 of the Hazardous Products Act, giving a person a general right to apply to a court for restoration of his goods seized. We also hope that in the administration of the seizure provisions and, indeed, the entire act, no more hardship will be invoked upon companies than is necessary to protect the public interest.

Finally, I would like to make a comment on clause 19. In view of the fundamental rights involved in this legislation, particularly respecting standardization, we recommend that an independent tribunal should be established to hear representations of interested persons with regard to the proposed regulations and that this tribunal should report and make recommendations on its hearing to the minister, which report should be made public. I should add that with regard to regulations, the Association is of course pleased that the government has seen fit to provide in the bill for publication of proposed regulations in the *Canada Gazette*.

Mr. Chairman, this completes my outline of the Association's views on this legislation. I hope you will find our comments assist you in your consideration of this Bill.

**The Chairman:** Mr. Hemens, I am interested in your statement suggesting that this proposed legislation should not invoke the element of criminal law. Under what authority could the federal Government act if it were not on the basis of criminal law?

**Mr. Hemens:** Mr. Chairman, that is the inevitable and perennial question. I can only give a personal opinion. There are great possibilities of action under the trade and commerce provisions, which I do not think have been fully tested.

**The Chairman:** Do you mean the regulation of trade and commerce?

**Mr. Hemens:** That is right.

**The Chairman:** I agree that maybe they have not been fully tested. However, to the extent that they have, they have not been a very fruitful source of authority for the federal Government.

**Mr. Hemens:** I believe the last test, Senator Hayden, had to do with an appeal to the Privy Council. Since that date such appeals have been abolished, and I have a suspicion that we might get a different ruling from the Supreme Court.

**The Chairman:** There seem to be quite strong statements in judgments in our courts, both the Court of Appeal of Ontario and the Supreme Court of Canada, that criminal law is continually enlarging itself in its application and that this is particularly so in the area of commercial operations. There are decisions. What is that case?

**The Law Clerk:** That is the *Proprietary Articles Trade Association* case.

**The Chairman:** Yes. If we assume that criminal law in our day and age is a growing thing in its applications, then applying it in a more extended field of commercial operations cannot in itself be objectionable. You would have to consider the merits of the particular application, would you not?

**Mr. Hemens:** I hold a different view, senator. I feel that the whole trend of society today is really to confine criminal law to what are distinctly *mala in se*, with some possibilities of *mala prohibita*.

**The Chairman:** I do not incline to that view. You used the word "blameworthy", which I am not prepared to accept as being an adequate description of the element necessary in criminal law. The question is the relationship to the public interest of what is proposed to be done. If it is against the public interest and the Government has authority to legislate, then that is an area in which criminal law could be invoked as an aid to protecting the public interest. Do you not agree with that?

**Mr. Hemens:** Not entirely, sir; I never have done.

**The Chairman:** Let us see. Maybe you will go 95 per cent?

**Mr. Hemens:** I have the firm conviction, first of all, that the public interest ought to define the region of criminal law, but I do not believe that the criminal law is necessary to protect the whole of the public interest. If so, then the Constitution of Canada really only requires one provision in favour of the federal arm. That is the right to enact that an offence against what they have enacted is a criminal offence. Surely, the whole of Canada is not composed of criminals, actual or potential? To say, as appears here, that a failure to have a particular reference on a label in distinct contrast is a criminal offence, rather appals me.

**The Chairman:** Let us go a little deeper than that, Mr. Hemens. This bill deals with the disclosure of pertinent information, the failure to give which may mislead those who are dealing with the article or seeking to buy and use it. Disclosure, will you not agree, and the requirement of disclosure, would be a proper subject matter in the public interest to be supported or sanctioned by criminal law?

**Mr. Hemens:** That is a very difficult question to answer.

**The Chairman:** Well, how else would you do it?

**Mr. Hemens:** I think you can do it by prohibitions, by cease and desist orders, the failure to comply with which would be contempt of court. There are innumerable means of dealing with this, means that have been used effectively in other countries. For example, a great deal of this sort of legislating in the United States is done under the regulations for trade and commerce and is civil in nature, not criminal.

**The Chairman:** Their provisions in relation to the enactment of criminal law are different from ours. There the major authority for enacting criminal law is vested in the state.

**Mr. Hemens:** But the federal Government also has powers of enactment of criminal law, as witnessed by the Sherman Act.

**The Chairman:** That is where the state authority has not entered the field.

**Mr. Hemens:** That could be, sir.

**The Chairman:** Let us get back to this subject matter. I am trying to appreciate what you say. Are you saying the subject matter of this bill should not be based on criminal law? Is that what you are saying?

**Mr. Hemens:** I am saying, in great part, that I personally—and I think this is the view of the association—am opposed to the generic or general use of criminal law as a means of establishing useful or desirable commercial practice.

**The Chairman:** I am not getting into a general discussion; I am talking about this bill. The subject matter of the bill is to secure for the public who are buying the product full disclosure in relation to the quality and quantity. In this particular case, is not that a good subject matter for criminal law, for creating an offence of the failure to do that?

**Mr. Hemens:** I am not going to answer that directly. I am going to answer it indirectly by saying that to the extent that there is fraud, or anything resembling fraud, it should be criminal law. To the extent that it is not fraudulent, or does not involve fraudulent practices, I do not believe it should be criminal law, sir.

**The Chairman:** Then what you are saying is that if I write another clause into this bill and provide that fail-

ure to make disclosure constitutes fraud, I have met your objection?

**Mr. Hemens:** No, sir, because I would argue that you are going to have to add a rather better definition; you are going to have to have a *mens rea* implication in that.

**The Chairman:** No, the *mens rea* comes into who may be charged in relation to the offence.

**Mr. Hemens:** Essentially, the *mens rea*—and I hesitate to dispute this with a man of your ability and reputation—has to do with the fact of a knowledgeable or knowing contravention.

**The Chairman:** Do not let us deal with the word “knowingly” at the moment, because there may be some areas of this bill in which we may ultimately decide the word “knowingly” should apply, so do not let us hang our argument on that. What kind of a sanction would you suggest, then, if we require certain disclosures as to quantity and quality to be exhibited on the labels of products that are covered by this bill?

**Mr. Hemens:** I think I must speak generally because the question is general. Generally speaking, assuming lack of fraud, a cease and desist order would satisfy nearly every requirement.

**The Chairman:** Then do you say that the disclosures required in this bill are necessary in order that the consumer may not be deceived as to what he is getting?

**Mr. Hemens:** The disclosures set out in this bill are essentially quantity...

**The Chairman:** And quality?

**Mr. Hemens:** If I recall correctly, sir—and maybe my friends could assist me on this—quality requires that your label does not allow the impression to be obtained by a consumer that something is contained in the product that is not in fact there, or that it conceals something in the product that is in fact there. Is that not correct?

**The Chairman:** Are you suggesting that if you find in the disclosure statements that might be concealing, or the effect of which may be to lead the consumer astray as to what is the quality of the product, that is not a kind of misrepresentation and fraud?

**Mr. Hemens:** I think there you make it into a question of degree, sir.

**Senator Benidickson:** Is this “knowingly”?

**Mr. Hemens:** I must always get back to knowingly.

**The Chairman:** Of course, but the man who is required under this bill to make this disclosure is the man who makes the product and offers it for sale. In those circumstances, he knows what he has put in, he should also know the weight.

**Senator Cook:** Or he could be careless and reckless, and does not stop to inquire. He may not do it knowingly, but he does it just as badly.



**Mr. Hemens:** I do not think we quarrel seriously—at least, I do not, although my colleagues may disagree with me—as to a misrepresentation about weight, for example. If the label says that the package contains a pound and there are in fact only 14 ounces, obviously somebody is being gypped. I think it is fair enough, that whoever does the gypping...

**The Chairman:** That is fraudulent.

**Mr. Hemens:** I think it gets very close to being fraudulent.

**The Chairman:** Well, you are certainly trimming your words.

**Mr. R. F. Bonar, Legal Counsel, The Canadian Manufacturers' Association:** One of the concerns, Mr. Chairman, is the fact that clause 10, to which we are referring, really has no condition precedent attached to it. It is simply a statement that certain things shall be shown on labels, and there is no criminal aspect set as a condition precedent to implementing regulations pursuant to that clause. However, the clause does bear a sanction that is a criminal sanction, which is imprisonment.

**The Chairman:** Well, that is one way of enforcing observance of requirements in relation to disclosure, is it not?

**Mr. Hemens:** Does it not get us pretty well back to the Middle Ages, when if you did not do what the king suggested you had to do you went to gaol, and that was the beginning and the end of it, or you got your head chopped off?

**The Chairman:** And that was the end of it! Surely, we do not have to go that far. I think you will agree with me that the area of criminal law is substantially enlarging.

**Mr. Hemens:** I think it is regrettably enlarging.

**The Chairman:** I assume you are familiar with the *Proprietary Article Trade Association* case?

**Mr. Hemens:** I have been, sir.

**The Chairman:** I would think so. The judgment of the Privy Council in that case is very interesting. May I just take a moment to read it? Lord Atkins said:

In their Lordship's opinion s. 498 of the Criminal Code and the greater part of the provisions of the Combines Investigation Act fall within the power of the Dominion Parliament to legislate as to matters falling within the class of subjects, 'the criminal law including the procedure in criminal matters' (s. 91, head 27).

The substance of the Act is by s. 2 to define, and by s. 32 to make criminal, combines which the legislature in the public interest intends to prohibit. The definition is wide, and may cover activities which have not hitherto been considered to be criminal. But only those combines are affected 'which have operated or are likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others'; and if Parliament genuine-

ly determines that commercial activities which can be so described are to be suppressed in the public interest, their Lordships see no reason why Parliament should not make them crimes. 'Criminal law' means 'the criminal law in its widest sense'; *Attorney-General for Ontario v. Hamilton Street Ry. Co.* It certainly is not confined to what was criminal by the law of England or of any Province in 1867. The power must extend to legislation to make new crimes. Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State. The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: Is the act prohibited with penal consequences? Morality and criminality are far from co-extensive; nor is the sphere of criminality necessarily part of a more extensive field covered by morality—unless the moral code necessarily disapproves all acts prohibited by the State, in which case the argument moves in a circle. It appears to their Lordships to be of little value to seek to confine crimes to a category of acts which by their very nature belong to the domain of 'criminal jurisprudence'; for the domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the State to be crimes, and the only common nature they will be found to possess is that they are prohibited by the State and that those who commit them are punished.

**Mr. Hemens:** May I comment on that, Mr. Chairman? I forget the date of that case. It is a few years back. Lord Devlin, for example, I am confident would not adhere to that statement on what is criminal and what is not criminal, and Lord Devlin is one of the authorities in this philosophical field.

**The Chairman:** Answering that first point, is it material for our consideration what a particular judge may or may not think, rather than looking at the decision of the highest court that dealt with this problem?

**Mr. Hemens:** I thought you referred to Lord Atkins as an authority.

**The Chairman:** No, I referred to him as the one who wrote that judgment.

**Mr. Hemens:** In response to the second part of your statement, I believe there is a strong feeling in legal circles—and I do not have a judgment to support it—that a reference to the Supreme Court of Canada today on the definition of "regulation of trade and commerce" would come out rather differently from that judgment at this time.

**Senator Connolly (Ottawa West):** That is interesting. Why do you say that?

**Mr. Hemens:** I have talked to a number of lawyers, sir. I am not sure I have not talked to you about it, as a matter of fact. I am not sure you do not participate in some little part.



**Senator Cook:** We will disqualify Senator Connolly.

**Senator Connolly (Ottawa West):** That is one of the reasons I asked the question. Do you think that there is a switch in the climate of opinion, whereby the federal authority might take jurisdiction under the trade and commerce section?

**Mr. Hemens:** I believe so. It is a personal opinion, shared by some lawyers with whom I have discussed it.

**Senator Cook:** Is not the area between criminal law and civil law such a grey one now that one spills over into the other?

**The Chairman:** It may be grey, but I think the boundary line is elastic. I wonder whether the federal authority can make use of that elasticity to keep pushing out and cover a greater area all the time. The only place—and this is my view—where you can challenge that is as to what is the genuine purpose of the legislation. Is it a colourable attempt to acquire jurisdiction under the guise of criminal law, whereas the main purpose is something else? The best illustration I can think of is the Oleo Margarine case to which I have referred before, where you had a prohibition on manufacture, sale and importation of Oleo margarine in 1885, and it was only in 1948 or 1949 that the Supreme Court of Canada said that that law in relation to manufacture and sale in Canada was unconstitutional and that it was a colourable attempt to acquire jurisdiction over the subject matter for a purpose other than the public interest. And the Privy Council upheld that. Outside of over-reaching, my own feeling is that the limits within which the federal authority can legislate criminal law are pretty broad.

**Mr. Hemens:** One of the things we are trying to suggest is that this is a dangerous and undesirable use of the criminal law authority. Let me refer to the Economic Council of Canada report on Restrictive Trade Practices and Anti-Trusts. They are suggesting, and suggesting very strongly—and the indications are that the minister is going to accept some of their suggestions—that there be few criminal aspects to that, and that most of it will appear under a civil situation rather than a criminal situation. That is a direct response to Lord Atkins, in fact.

**The Chairman:** The comment here, in this *Canadian Constitutional Law in a Modern Perspective*, is:

The decisions of the Privy Council have forced the federal government to employ its criminal law power when dealing with restrictive trade practices. This, of course, means that prosecutions for such offences as price fixing must be dealt with as criminal prosecutions, employing the procedures appropriate to that law.

Then there are several more cases referred to here, with which I am sure you are familiar. There is *Regina v. Goodyear Tire and Rubber Co. Ltd.*, (1956), where the Lord Atkins decision was followed, and there is a later case, *Regina v. Campbell* (1965), which went right through to the Supreme Court of Canada; and the

Supreme Court of Canada upheld the Court of Appeal of Ontario and also accepted the Lord Atkins judgment.

**Mr. Hemens:** I think it may be that we are talking at cross-purposes, Mr. Chairman.

**The Chairman:** I think we are. It must be so, if that you are saying is that the federal authority has not jurisdiction to enact criminal law of this kind.

**Mr. Hemens:** No, I do not say they have not jurisdiction. I say they ought not to exercise that jurisdiction in this area.

**The Chairman:** Now we have got the definition in focus.

**Mr. Hemens:** I am sorry if I have misled you.

**The Chairman:** I understood your original statement was that there was not anything blameworthy in this and therefore it was not an area for criminal jurisdiction.

**Mr. Hemens:** That is a philosophical argument, sir. I think you have the jurisdiction, but I do not think it ought to be exercised for these purposes.

**The Chairman:** Now we have got our terms defined. I do not want to monopolize this, but I have a couple of questions I want to ask you. They deal with standardization. That section on standardization bothers you and, frankly, it bothers me, though that may be for a different reason.

It might well be suggested that the standardization of containers in clause 11 is a colourable attempt to ride on criminal law to achieve this result. Once you have the provision with respect to disclosure put on the label, as required here, would you say we could assume that that covers every aspect of information which it is material that the purchaser possess in order to know what he is getting and whether he is getting what he is paying for?

**Mr. Bonar:** I think there is a presumption that people are able to read before they buy. In that circumstance, if the bill properly requires a weight designation, a quantity designation, to be printed on each package, it will follow that if the consumer takes the time to read it...

**The Chairman:** He is fully informed.

**Mr. Bonard:** ...he is fully informed. Since there is ability under the regulations to prescribe the placement of the net weight marking and so forth, getting down to the point of the size of type and the location on the panel, it would be an extremely careless or uncaring individual who would be deceived about the contents of the package.

**The Chairman:** I do not think it is any part of our job to legislate against carelessness on the part of a person who is given the information, but will not read it and will not use it.

What I wanted to put to you was whether it really mattered, quantitywise, how many containers there are and how many shapes and sizes, so far as informing the public as to the quantity and other material information

required by this bill is concerned. If you have 100 or 50 containers, what difference does it make so long as the same information appears on the labels—that is, the net weight and all the other information required? Is that not full disclosure? In circumstances of undue proliferation, how can the size of a container be said to be likely to mislead the consumer?

**Mr. Hemens:** First of all, Mr. Chairman, we do not believe that there is essentially undue proliferation. I know of no manufacturer who is going to have more packages than he is required to have in order to get the greatest possible sales, because it costs money to have different packages and to keep inventories. However, there have been expressions of views to the effect that if you have "X" number of different sized packages of toothpaste somebody will be misled. If a person can read and can do a simple task of division, addition or multiplication, I do not believe that there is in fact any misleading or any failure to disclose, providing you have the quantity and the price there.

**Senator Carter:** You are basing the argument on the idea of misleading. What about confusing?

**Mr. Hemens:** How can you be confused, senator? Here is a pound at 84 cents. Here is half a pound at 45 cents.

**Senator Carter:** But if you have 17 ounces at 32 cents and 11 ounces at 19 cents, how do you distinguish between the two?

**The Chairman:** Senator, what is the purpose here? This bill requires the net weight to be put on the goods. Therefore, it is information that the people sponsoring this legislation feel the consumer should know. Now why is it being given to the consumer?

**Senator Carter:** Because as it is now the consumer has to carry round a computer to compare the value in one package with the value in another.

**The Chairman:** Then your argument has nothing to do with undue proliferation, because with those quantities appearing on the different labels you say there is confusion.

**Senator Carter:** I say there is confusion if an ordinary person cannot make a ready and easy comparison as to the value in each package.

**The Chairman:** Then what do you suggest should be added to the label, because that is where it should go?

**Senator Cook:** I think the argument should be that it should only be sold in stated quantities. In other words, you cannot sell a broken pound, such as 13 ounces. It should be either 8 ounces, 16 ounces or 32 ounces, and so on.

**The Chairman:** But some people shop only for a day at a time, some shop for two or three days, some shop for a week and some for a month. As a matter of fact, when I was in England recently I suggested to someone that supermarkets had certainly been a boon to the buying public. I was informed that in many areas the housewife

still goes out to shop every day, firstly, because she likes to do so—she meets people there—and, secondly, because she only wants to commit herself for a day. Moreover, the origin of that day-to-day shopping was that consumers did not have refrigeration in relation to items that were perishable, so they developed this habit.

Now, if you cannot discern between a five-ounce tube of toothpaste and an eight-ounce tube when you are told what the rate is and what the price is, I do not know how you are ever going to deal with the situation.

**Senator Connolly (Ottawa West):** Mr. Chairman, the problem is not so simple as that. Let me be the devil's advocate for a moment on this point. The problem as suggested by Senator Carter is that when the consumer goes into the supermarket he sees various commodities in variously sized packages containing different rates and bearing different prices. In order to make a value judgment he has to make an arithmetical calculation. He may see a 17-ounce jar of pickles at one price and a 7-ounce jar of pickles at another price. He makes one calculation there. Then he goes to dry cereals and is faced with the same problem. But even within the pickle area, for example, the various producers set up their produce in different-sized jars. In other words, there is a multiplicity of calculations in order to find out how much one is paying per ounce or per pound, depending upon the product one is buying. It seems to me that the proliferation here, which is not by one company but by a great number of companies, can give rise to the confusion that Senator Carter mentions. It may be that the answer is to require products to be labelled at so much per unit. That might help a housewife and it might achieve the aim of the department without requiring a limitation being placed on the number of containers.

**The Chairman:** But, Senator Connolly, if you look at what clause 11 says in dealing with undue proliferation, you will see that it says:

...the effect of such undue proliferation of sizes or shapes is to confuse or mislead or be likely to confuse or mislead consumers.

Here are the important words:

...as to the weight, measure or numerical count of a prepackaged product,...

If the weight is stated on the product as this bill requires, if the measure or numerical count is contained on the package, then how can we assume that it is likely to mislead or confuse?—because the bill purports to require full disclosure.

**Senator Connolly (Ottawa West):** As a matter of fact, my whole point was that the confusion was with respect to cost.

**Senator Carter:** Yes.

**Senator Connolly (Ottawa West):** And the word "cost" is not there.

**The Chairman:** There is nothing about cost in this bill.



**Senator Carter:** I think it should be there. I do not see what point the clause has without the word "cost".

**Senator Blois:** Mr. Chairman, the trouble there is that the manufacturer does not set the price. The retailer does. How could the manufacturer possibly act in accordance with this bill if the word "cost" were contained in that clause? We all know that retail stores vary their prices on identical articles.

**The Chairman:** If they were handling the same product at the identical price, another arm of Mr. Basford's department might well come into play, and there might be some suggestion that they were acting in concert.

**Senator Cook:** This clause is innocuous. What they really mean is that it is misleading as to value, and value is not in there.

**The Chairman:** We are dealing with the clause as it is, and it is meaningless as it is.

**Senator Connolly (Ottawa West):** Mr. Chairman, perhaps the word "cost" is purposely omitted from that clause. It may be a question of jurisdiction.

**The Chairman:** You cannot justify the clause on the basis that it may be confusing as to cost, if you do not make "cost" a term in clause 11.

**Senator Carter:** I do not think cost is the important factor. I think value is. What the consumer is interested in is comparative value.

**Mr. Hemens:** But what is value?

**Senator Carter:** What the consumer is getting for his money compared with something else.

**Senator Cook:** Or what he is not getting for his money.

**Mr. Hemens:** But the manufacturer, under the law, is forbidden to set unit prices.

**Senator Cook:** Nobody is talking about setting unit prices, Mr. Hemens. But when the consumer goes into a store he is so confused by the number of sizes, weights and so on, and values, that he does not know what he is getting for his money. That is what we are talking about. We are not talking about anybody setting a price.

**Mr. Hemens:** We have talked about this confusion. Where is the evidence of confusion?

**Senator Kinley:** Are there inspectors going around to check these packages? Is the liability not the customer's? Who is going to enforce this law anyway?

**The Chairman:** Well, senator, even the supermarkets themselves have comparative shoppers.

**Senator Cook:** I am not saying that I agree. I am just saying that the section as it is now does not mean much.

**Mr. Bonar:** Well, senator, the section is so broadly based that if the Governor in Council determines there is this element of confusion, the scope for control of package size and shape is just absolute. I agree there is great

uncertainty about what exactly the section is getting at, but there is very great danger in the fact that it is uncertain.

**Senator Cook:** But, as the Chairman says, if the weight, the count and the measure are put on the tags, how can anybody be confused unless they are illiterate? And there are not very many illiterate people around today.

**The Chairman:** Well, we do not want to belabour the horse to death. We have stressed this point and we have your views.

Now, we have dealt with two of the points, Mr. Hemens. You talked about delegated power, and I do not think we need spend too much time on this, because this committee has taken the position time after time that it is not going to give authority to amend a statute by regulation. If the effect of clause 3 is to permit the amendment of this statute by regulation, well I can tell you there will be a struggle in this committee on that point because we have asserted that position time after time.

**Mr. Hemens:** I think it goes beyond that. The regulations under this act could, in fact, substantially repeal another act.

**The Chairman:** This is what I am going to refer you to. There is an act called the Fertilizers Act, which was originally passed in 1957. There are regulations under that act administered by the Department of Agriculture. So they have not only the statute, but they have the regulations which provide for disclosure of the contents, for the guaranteed analysis and for labelling. The moment this bill we have before us becomes law, the Fertilizers Act and the regulations under it dealing with labelling will be ineffective. In dealing with a product like fertilizer, who is likely to know most about it? The labelling disclosures are very full; they require the name and the address of the manufacturer. As a matter of fact, the labelling disclosure required is almost in line with what is in this bill so far as the language is concerned. So immediately this bill becomes law we have rendered ineffective the Fertilizers Act and the regulations under it. That is the difficulty in split jurisdiction. In the grocer's brief the other day they listed about 18 or 20 statutes which deal with the same subject matter, and yet the only one that is exempted from the application of this bill is the Food and Drugs Act.

The question we then have to ask ourselves is: Do we think there should be great exemptions? Because if we approve of this, it would appear to me that we are saying to ourselves, in effect, that the labelling and disclosure provisions in existing legislation—even, as I say, in this Fertilizers Act—are inadequate. It is a very large order to say that. The provisions for labelling in the Fertilizers Act are in section 16, which covers a little more than a full page in all as to the items that must be developed, and included in that are the weights and the registration number, because these fertilizers must be registered with the Department. It covers every detail. So it is going to be a large order for us to say—and I am using this as an



illustration—that we should wipe out, by approving this legislation, the provisions of other acts that have stood the test of time for many years.

**Senator Cook:** You would have to examine every other act to see which should prevail.

**The Chairman:** That is right, because the moment we agree to this bill we wipe out all the others.

**Mr. Hemens:** And some you may not have thought of, because of the regulations to come.

**The Chairman:** That is right. Is there anything else you want to add?

**Senator Welch:** Are we going to deal with the Fertilizers Act under Bill C-180?

**The Chairman:** The Fertilizers Act was passed in 1957, chapter 27. Its provisions in relation to labelling, etcetera, would become ineffective the moment Bill C-180 becomes law in the form in which we have it before us.

**Senator Welch:** The reason I ask that question is because I think that fertilizers are not properly marked as to what is in them. It is most confusing. As a matter of fact, I do not think there is anything in writing on the package to tell you what is in it.

**The Chairman:** I do not pretend to be an expert on fertilizers. All I can do is read what they say about the labelling, and they require more information on the label than would be required under Bill C-180.

**Senator Kinley:** Of course, fertilizer is a bulk product.

**The Chairman:** Let us see what section 16 of the Regulations says. It says:

16. (1) Subject to subsections (2), (4) and (5), every package containing a fertilizer shall have a label affixed to it on which shall be printed
- (a) the name and address of the manufacturer of the fertilizer or of the registrant or, in the case of a fertilizer that is not registered under these Regulations, the name and address of the person who caused the fertilizer to be packaged;

This is to some extent required under Bill C-180.

Then it goes:

- (b) the brand of the fertilizer, if any;
- (c) the name of the fertilizer;
- (d) the registration number of the fertilizer, where applicable;
- (e) the guaranteed analysis prescribed in section 15;
- (f) in the case of a fertilizer-pesticide or a specialty fertilizer, the directions for use;
- (g) where the fertilizer is a fertilizer-pesticide, the cautionary statements required by the Minister as set forth on the certificate of registration;
- (h) the weight of the fertilizer;

This is also a requirement under Bill C-180.

Then it continues:

- (i) where the fertilizer is other than a specialty fertilizer and has intentionally incorporated in it or is represented to contain boron, copper, manganese, molybdenum, or zinc or, in the opinion of the Minister, has a natural high content of one or more of these lesser plant nutrients, the following cautionary statement:

Then there is a cautionary statement that must appear.

It reads as follows:

- (2) Where a fertilizer is sold in bulk, the information required by this section shall be shown on the shipping bill or on a statement accompanying the shipment.
- (3) The information required by subsection (1) to be shown on a label of a registered fertilizer shall be the same as the information set forth on the certificate of registration.

And so on. I would say they are requirements. I am not discussing what is done in practice; I am talking about the requirements. All this bill does is set out the requirements.

**Senator Welch:** On a fertilizer bag you may have "10-10-10", or "10-12-6", or any other formula. That indicates the proportions of phosphorus, nitrogen and potash, but it does not say so.

**The Chairman:** If they are in violation of the act, then they are violating the act.

**Senator Isnor:** Coming back to the brief, it is suggested on page 6 that a subclause should be added to overcome a possible injustice. Have you any suggestion to make in regard to that?

**Mr. Hemens:** May I take a moment to explain subclause (3) of clause 20? The first thing that causes the problem there is the difficulty in interpreting subclause (3), which starts off by saying that where a corporation is guilty of an offence under this act, any officer, director, et cetera, is liable on conviction to be found guilty of the same offence. It goes on to say whether or not the corporation has been prosecuted or convicted.

I do not know how you find a corporation guilty of an offence without having prosecuted or convicted the said corporation. As a matter of fact, I understand that an officer from the Department of Justice pointed out that to act under subclause (3) you would have to prove before a judge that the corporation is guilty of an offence before you could prove that the officer was. We then have the strange anomaly of prosecuting the corporation without giving any right to the corporation to defend itself. I suggest that is contrary to fundamental principles.

**The Chairman:** You need not labour your criticism of this subclause because it obviously limps badly.

**Mr. Hemens:** I was giving a direct answer to the honourable senator who asked the question. We were concerned with a case under the provisions of the Income Tax Act where a private company and an individual

were in fact the same person. He was subject to two convictions for the same offence, one as the corporation and the other as the principal officer of that corporation.

**The Chairman:** It seems to me that if you inserted the word "knowingly", so that it read "should knowingly direct", and if you struck out all the words after the word "presided", you might accomplish the objective very well. Are there any other questions?

**Senator Carter:** Before we leave the Fertilizers Act, on page 14 of the bill, subparagraph (h) of clause 18 reads:

subject to any other Act of the Parliament of Canada...

Which would be the Fertilizers Act.

...extending or applying any provision of this Act to or in respect of any product—specified in the regulations that is not a prepackaged product but is ordinarily sold to or purchased by a consumer.

Does that not mean that the act can include all of these measures in the Fertilizers Act or exclude any?

**The Chairman:** The first answer would be the obvious one, that you would be amending legislation by regulation. This deals with what may be regulated. The definition of the word "product" in this act is so broad that it just about covers everything. It is defined in Bill C-180 this way:

(j) "product" means any article that is or may be the subject of trade or commerce, but does not include land or any interest therein;

Under that definition, under the Fertilizers Act, fertilizer would be a product, the subject matter of trade and commerce.

**Senator Carter:** But they would be amending the Fertilizers Act only if they excluded something. If they embrace what is in the Fertilizers Act it would not be an amendment by regulation.

**The Chairman:** The Fertilizers Act is excluded by the requirements here as to what shall be put on a product. The effectiveness of the Fertilizers Act is gone. If they wanted to exclude the Fertilizers Act they would have to add it to those three where they have already excluded the Food and Drugs Act.

**Senator Sullivan:** Why did they exclude that?

**The Chairman:** They felt that the requirements of the Food and Drugs Act were sufficient in the matter of exposure and that the public were adequately protected.

**Mr. Bonar:** I might mention that the cosmetics portion of the Food and Drug Administration falls within Bill C-180. The Food and Drugs Act in toto is not excluded; it is just that portion of it.

**The Chairman:** It refers to a product that is a device or a drug. To the extent that you have cosmetics covered by the Food and Drugs Act, they have been included in the bill.

If there are no other questions, we will proceed with the next hearing.

**Mr. Hemens:** May I say thank you very much, Mr. Chairman.

**The Chairman:** We now have before us representatives of the Retail Council of Canada. We have with us: Mr. A. J. McKichan, President; Mr. K. Lane, Assistant on Buying to the Vice-President of Merchandising, Simpsons-Sears Ltd.; Mr. J. Voigt, Vice-President, Merchandising, Dominion Stores Ltd.; and Mr. N. A. Stewart, Company Packaging Supervisor for the T. Eaton Co., Ltd.

**Mr. A. J. McKichan, President, Retail Council of Canada:** Mr. Chairman, may I first extend an apology on behalf of Mr. Voigt of Dominion Stores. He had hoped to be a member of our delegation today but unfortunately has been caught up in a difficult labour situation, and I ask the indulgence of the committee in this respect.

Mr. Chairman and honourable senators, it is a pleasure to be here today. We hope that we can be of help in your consideration of this significant bill. As you are aware, this council had the opportunity of appearing before the Commons committee when it considered the bill. We have attached as an appendix to our submission today a copy of the submission we made to that committee. As in the case of the manufacturers, we have not attempted to change references to a number of clauses in the original submission, which referred to the bill as presented to the Commons.

We have singled out for special treatment what we consider to be the most important point to retailers in that submission. We hope we may also discuss with you other of the concerns that we previously raised.

As demonstrated in our submission, we do not believe that the retailer or other third party should be held responsible for errors in labelling perpetrated by some predecessor in the distributing process, unless there is connivance between that person and the originator of the misleading material—or, I might add, unless the merchandise is imported by the retailer, who would be primarily responsible.

In our submission we remark on the fact that the United States Fair Packaging and Labelling Act, the British Trade Descriptions Act and, indeed, the Canadian Food and Drugs Act, provide relief in such circumstances. We recommend the introduction of similar relief in the current bill.

Perhaps, Mr. Chairman and honourable senators, I might refer you to page 4 of our submission to this committee. On page 4 of our submission we set out a suggested amendment to the original clause 19(2), which will now be clause 20(3).

**The Chairman:** That is subclause (1) and (2).

**Mr. McKichan:** Yes, sir. I might add, Mr. Chairman, that we brought this matter to the attention of the minister, not only during the House of Commons submission but also by letter. We were to some extent gratified that the minister, in replying to our letter, said that it would be the practice and intention of his department to place



the responsibility for violations on the source of the infraction. We are, of course, grateful for this assurance. On the other hand, we know that with personnel changes the original intent may become modified by practice.

**The Chairman:** Further, Mr. McKichan, how can any person charged with the administration of an act give you an assurance that if what you have done is an offence under a statute he will not prosecute you?

**Mr. McKichan:** Yes, sir. That is why we brought this matter to your attention today. As a matter of practicality we feel that it is somewhat unreasonable to expect a retailer to police every one of the thousands or, indeed, the hundreds of thousands of articles which may appear on his shelves. With the best will and intention in the world the retailer will not be able to guarantee that all his products meet the fairly detailed provisions of this statute.

**The Chairman:** Do you think the insertion of the word "knowingly" in clause 20(2) would remedy your problem— "...who knowingly contravenes..."?

**Mr. McKichan:** It would go a long way, sir, to meeting our concern. It would then involve the question of whether the action of a servant in fact prejudices the position of the employer.

**The Chairman:** Well, those are the tools through which a corporation operates, is that not correct?

**Mr. McKichan:** Yes, indeed.

We would also draw your attention to the following significant points:

Other parties, when appearing before you, have argued that reliance continue to be placed on the false and misleading advertising sections of the Combines Investigation Act, rather than on the regulatory, and largely discretionary, powers to be granted under the Packaging Act. In his appearances before the House of Commons committee, the minister—we believe with considerable justification—argued that adoption of this course might breed uncertainty and confusion. In our submission, we propose what we hope is a constructive compromise between these positions: we suggest that the disciplinary powers continue to be embodied in the misleading advertising sections, but that in amplification of these provisions and for the guidance and information of the trade, the department produce guidelines or trade directives establishing the labelling practices which it would regard as falling within the false and misleading category. It would then be open to any manufacturer, who felt aggrieved by the tenor of any such directive, to test it by ignoring it and thus inviting prosecution under Section 33 (d) of the Combines Investigation Act.

We still believe, Mr. Chairman, that there may be merit in utilizing to a greater degree than contemplated by the bill the technical expertise of the trade and the Standards Council, or some other independent body, in the determination of whether consumer confusion on packaging existed and, if so, steps to be taken to correct it.

**The Chairman:** You are suggesting that that be dealt with in legislation?

**Mr. McKichan:** We feel, sir, that the bill itself might contain a directive for a reference to the Standards Council, rather than a directive to the department to make the finding of when, first of all, proliferation had occurred and, secondly, if the proliferation caused confusion. Of course, at present the power, is permissive, but we feel that it might be a useful forum for determining these conditions, rather than relying on departmental discretion.

**The Chairman:** You mean something akin to the Board of Review provided in the Hazardous Products Act?

**Mr. McKichan:** Yes, sir. We regard the amendments made in sections 14 and 16—these are the inspection and seizure clauses—

**The Chairman:** These are the present clauses?

**Mr. McKichan:** Yes, sir—as improvements on the original proposals. The alternative to giving an inspector power to seize products, where he believes seizure is in the public interest, would be to require the minister to obtain an order from a magistrate—either before the seizure or, perhaps more practically, within a week or other short period after seizure, authorizing such seizure. We would have preferred either of these courses, but, if not adopted, we shall monitor how the proposed system work in practice, and if, in fact, it is unsatisfactory we will in due course of time propose changes in it.

Concern has been expressed to you by others on the terms of the former clause 19(2)—now clause 20(3). I know you have discussed that question at length and I do not propose to take up more of your time in relation to it.

It is perhaps also appropriate to comment on an addition made to the text of the bill at the committee stage, whereby in clause 10(b)(iii) the word "age" has been added to the words "nature, quality, size, material content," et cetera. There is here power to establish by regulation such information of this nature as is required to be shown on the labels. Insertion of the word "age" was, we understand, introduced to take account of arguments for the date-coding of products, particularly fresh or frozen food products.

**The Chairman:** Or candies, maybe?

**Mr. McKichan:** Yes, indeed, sir. We understand that concern, was particularly directed towards frozen foods. We should, at this point, simply mention that the informative and useful system of date-coding of frozen foods is one which has been closely studied by our members for some time. To date an economical, useful and practical system has not been devised. We do not despair of its being introduced, but feel we should add the warning that the present state of knowledge has not provided us with a practicable system.

We shall be happy to speak to any other clauses of the bill in which members of the committee are particularly interested.



All of which is respectfully submitted.

**The Chairman:** I take it that the reference to disclosing the age means the date the product was manufactured?

**Mr. McKichan:** Yes, sir, we assume that to be the case.

**The Chairman:** It does not refer to the useful life of the product?

**Mr. McKichan:** We did not understand that to be the intention, in view of the discussions before the House of Commons committee.

**The Law Clerk:** It would be open to the Governor in Council.

**The Chairman:** "Age" may be a word of such an indefinite nature that it might mean the life of the product.

**Mr. McKichan:** Yes, indeed.

**The Chairman:** We will have to consider that. Are there any questions?

Thank you very much, Mr. McKichan. You can see that we are becoming educated in this regard.

We now have the Canadian Feed Manufacturers' Association, represented by Mr. Friend, the Executive Secretary, and Mr. McAnulty, a director.

**Mr. C. L. Friend, Executive Secretary, Canadian Feed Manufacturers' Association:** Gentlemen, with the submission you have a pamphlet copy of the Feeds Act under which we operate and to which we make reference.

**The Chairman:** This is a summation of points?

**Mr. Friend:** Yes. We are pleased to present the views of the Canadian Feed Manufacturers' Association regarding Bill C-180 to this committee, particularly in view of the fact that our presentation to the House of Commons committee was well received. However, unfortunately, it did not achieve any change in the draft of Bill C-180 in respect to the items with which we are concerned.

In the interest of saving time maybe we can dispense with reading the paragraph referring to the size of the industry.

**The Chairman:** Yes, we have noted that.

**Mr. Friend:** The industry, as such, under the present legislation is working in respect of labelling and packaging under the Department of Agriculture's Feeds Act. The requirements under this act are co-ordinated with the requirements of the Food and Drugs Act as they pertain to poultry and livestock feeds containing drugs or medication.

The function of the Department of Agriculture in its inception was that of protecting the farmer-consumer, and thereby became very early in this century the first department of consumer affairs regarding agriculture. The act, as administered by the Department of Agriculture, has been of benefit to the farmer as well as our industry.

If I could just interpolate briefly, the sections dealing with packaging and labelling under the Feeds Act are sections 25 and 33.

We understand the aims of Bill C-180 are to standardize and control the packaging and labelling of household products. As our industry and those we service are users of products as input items in a further production scheme, we submit that the products we buy and sell are not household products, and we request that the definition of "product" and of "sell" be more definitive, so as to exclude the feed manufacturer or farmer as a consumer.

As our industry currently complies with these regulations under the Food and Drugs Act and the Feeds Act, we can foresee considerable problems, particularly as we interpret the definition of "product" under clause 2(j), which states:

"Product" means any article that is or may be the subject of trade or commerce, but does not include any land or any interest therein.

**The Chairman:** There is no question about that, that you would be covered.

**Mr. Friend:** Oh, no question.

**The Chairman:** Unless there is some exception.

**Mr. Friend:** It came recently to my attention that in the act in the States, where they have product labelling, their definition of "product" is "household or personal goods" rather than an all-comprehensive product definition.

Under the definition in this bill it would make very little sense to apply labelling requirements to a boat load of grain, a truck load of formula feed, a shipment of Canadian or United States corn, or many more items too numerous to mention. On the question of bagged or packaged feeds, presently controlled under the Feeds Act, which of the regulations will our industry have to follow—those of the Feeds Act or those of the proposed legislation contained in Bill C-180? We foresee a considerable conflict and duplication of effort, time and money.

We urge that you consider this whole question of under which act the feed industry will be working—either the Feeds Act, as it pertains to packaging and labelling, or this new Bill C-180. The possibility of having to serve two masters at the same time looms very large on the horizon and can only complicate matters and hinder our industry in respect to package information under the two acts.

**The Chairman:** You understand from our discussion earlier today that the effect undoubtedly would be that you would be under Bill C-180.

**Mr. Friend:** I do not believe Bill C-180 would give as much information as the Feeds Act presently does.

**Senator Burchill:** It is in the same category as the Fertilizer Act.

**Mr. Friend:** Yes.

**The Chairman:** As I told you, the grocery people gave a list of about 18 bills. I have collected them now. I have not analyzed them all, but I have been through a number of them, and the provisions seem to be quite extensive, although I am not an expert. As to the requirement, you can see what that would lead to. As to the content of the products, and I would think its requirements of, say, the Fertilizer Act and the Feeds Act are more in the interest of the public than the meagre amount of information required in this bill.

**Senator Isnor:** Did I hear you correctly to say that you were not an expert?

**The Chairman:** I meant on fertilizers.

**Senator Carter:** Did these witnesses make these representations before the House of Commons committee?

**The Chairman:** Yes, he said so, and he said they were well received, but nothing happened. Are there any other questions?

Thank you very much, gentlemen. We understand the problem, I think you will agree.

**Mr. Friend:** Yes. The point is to get the action now.

**The Chairman:** Well, we are not known to be an inactive committee.

We will now adjourn until next week, when we expect to include in the appearances the minister, if he wishes to come, and his staff when we are dealing with this bill. consideration of the Copyright Bill.

**Senator Carter:** We have a brief from the Fisheries Council. When will they appear?

**The Chairman:** We were in touch with them, and they said they were not appearing.

**Senator Carter:** They just submitted their brief?

**The Chairman:** Yes.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 21

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WEDNESDAY, MAY 5, 1971

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Third Proceedings on Bill C-180,  
intituled:

“An Act respecting the packaging, labelling, sale, importation  
and advertising of prepackaged and certain other products”

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(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Heath, seconded by the Honourable Senator Kickham, for the second reading of the Bill C-180, intituled: "An Act respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products."

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motions, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, May 5, 1971.

(23)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to *further* consider the following Bill:

Bill C-180 "Consumer Packaging and Labelling Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Flynn, Isnor, Kinley, Lang, Macnaughton, Martin, Molson, Sullivan, White and Willis—(18).

*Present, but not of the Committee:* The Honourable Senators Casgrain and Methot—(2).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

### *Consumers' Association of Canada:*

Mrs. Jean M. Jones, President;  
Mrs. B. D. Lister,  
Executive Member, Ottawa Valley CAC;  
Mrs. Frances Balls,  
Executive Secretary.

### *Department of Consumer and Corporate Affairs*

Mr. J. B. Seaborn,  
Assistant Deputy Minister,  
Consumer Affairs Bureau;  
Mr. G. R. Lewis, Chief,  
Commodity Labelling Division,  
Standards Branch.

### *Department of Justice:*

Miss O. C. Lozinski,  
Departmental Services Section.

After discussion it was agreed that, if possible, the Honourable Mr. Basford would appear Wednesday, May 12, 1971 with respect to the above Bill.

At 12:25 p.m. the Committee adjourned to the call of the Chairman.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, May 5, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-180, respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products, met this day at 9.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have for further consideration this morning Bill C-180, and we have a representation from the Consumers' Association of Canada. Mrs. Jean M. Jones, President of that organization, is going to make an opening statement, after which she will answer our questions.

**Mrs. Jean M. Jones, President, Consumers' Association of Canada:** Mr. Chairman and honourable senators, as an association representing consumer interests in Canada, we are pleased to present our views on Bill C-180 to you. Having read our brief to the House of Commons committee studying the Consumer Packaging and Labelling Act, you will be aware of our major concerns—misleading packaging, confusing labelling, lack of information. These concerns have been expressed for many years by consumers who talk and write to CAC at local, provincial and national levels. These problems are consistent across Canada; a strong packaging and labelling bill is required to at least the number and types of problems now occurring.

We are pleased that Bill C-180 requires the declaration of net quantity on all products. Consumers often ask us why certain products such as chocolate bars and hand-soaps are not labelled as to quantity.

The Consumers' Association strongly supports section 7 which provides control of false or misleading representations. We have been concerned that the provisions under the Combines Investigation Act for misleading advertising would not be applicable to labels on products. Section 7 of the Packaging and Labelling Act assures consumer protection in this area.

Section 10 of this bill will allow many different types of information to be included on a package. We believe this enabling legislation essential in order that consumers be properly informed about products they are buying.

Section 11 will also answer a need by reducing package proliferation, a great annoyance to consumers, and we

welcome the addition of section 12 commending in particular its allowance of research by the Minister, related to unit pricing, date and storage marking, and shapes and sizes of containers.

We note that changes have been made in the parts of the act relating to inspection and seizure. These changes appear to be adequate for enforcement of the act.

CAC considers Bill C-180 to be a well thought-out piece of legislation which will give Canadian consumers protection from misleading or confusing packaging, which will allow for more informative labelling and which will provide a fair and equitable marketplace, one in which consumers can buy products on the basis of informed and rational choice.

We would ask the committee to proceed with all possible speed in its consideration of this act. We believe the act should be implemented in as short a time as possible in order to correct many of the abuses now prevalent in the marketplace.

**The Chairman:** Are there any questions?

**Senator Carter:** The witness emphasized clause 11, which would reduce package proliferation. We have been having some difficulty in finding out just what is package proliferation. Could the witness give us some idea of the number of sizes and weights, and what is necessary as a minimum?

**Mrs. Jones:** I think we could very quickly demonstrate what we consider to be proliferation. I think Mrs. Lister is the person to demonstrate that for us.

**Mrs. B. D. Lister, Executive Member, Consumers' Association of Canada:** I have not got examples here today, but I will read off some of the things that we consider to be proliferation. Spray starch would be one. I demonstrated to the parliamentary committee five different examples of spray starch. All the cans looked the same size, but they ranged from 12 ounces to 16 ounces. Also they were all different prices. For the housewife to make a comparison she would have to be an expert mathematician.

**Senator Cook:** What is spray starch?

**Mrs. Lister:** It comes in a can. It is the ordinary method of starching garments. You spray before you iron. It comes in an aerosol can. They looked the same size, but they ranged from 12 to 16 ounces and they were all different prices.

**The Chairman:** I was wondering what is the difference between the spray starch in these cans in this range you have mentioned from 12 to 16 ounces. What is it to which you object? Is it the number or what?

**Mrs. Lister:** I think that a product such as spray starch which comes in that size of tin should have a standard weight. The consumer could compare the price per ounce. But if she has to choose one at 12 ounces, one at 14 ounces, one at 15 ounces and another at 16 ounces and start dividing the ounces into the price, then it is difficult to come to a price per ounce.

**The Chairman:** Mrs. Lister, let us see what you approve of. You approve the requirements in clause 4 of the bill as being a step forward in the disclosure of necessary information to the consuming public who are buying. What this requires is a declaration of net quantity of the product in terms of their numerical count or unit of measurement and as a Canadian unit of measurement set out in schedule 2—that is if we eventually accept the European system. This requires a net quantity. If the label contains the statement of net quantity of whatever the package contains, then that will tell you what is in the package. I do not see anywhere here, in any of these clauses, reference to price.

**Mrs. Lister:** I am not saying that the price should be standard. I am saying that the consumer cannot make a decision on what is the best buy.

**The Chairman:** Why not? You mean that she cannot do arithmetic? I have not found a woman who was not fast in mental arithmetic when she wished to buy something.

**Mrs. Lister:** But if she has to make a choice between five cans of spray starch and she is buying 50 items for her grocery cart, she has to make mental calculations and her shopping expedition is liable to end up by taking hours.

**The Chairman:** Well, don't they?

**Mrs. Lister:** Not for busy people.

**Senator Beaubien:** Once she bought a can of one size, would she not be able to recognize the other sizes? After all, you only get caught once.

**Mrs. Lister:** She would have to divide the number of ounces into the price for each tin to decide which gave her the best buy.

**The Chairman:** Supposing the price for 12 ounces was 48 cents.

**Mrs. Lister:** A 15-ounce can might be 53 cents and a 16-ounce can might be 54 cents. It becomes a very complicated matter.

**The Chairman:** I understand you to say that you wish to avoid all that by having one standard weight.

**Mrs. Lister:** Yes.

**The Chairman:** In other words, instead of having from 12 to 16 ounces in cans of spray starch, you want one size?

**Mrs. Lister:** One standard size, 16 ounces.

**Senator Carter:** We have raised these points ourselves.

**Mrs. Lister:** Could I go on to paper towels?

**Senator Cook:** You are not arguing for one standard size?

**The Chairman:** Yes, that is what the witness wants.

**Mrs. Lister:** In spray starch there is just that one similar-looking tin, but if they put out a super large size and a small size, i.e. two ounces, and they were standardized...

**The Chairman:** You want standardization in two senses, as to weight and uniform packaging?

**Mrs. Lister:** Yes.

**Senator Beaubien:** If you took the four or five sizes and divided the prices, what would be the difference?

**Mrs. Lister:** The 12-ounce tin was six cents per ounce, the 15-ounce tin was 4.6 cents per ounce, the 14-ounce tin was 3.6 per ounce, the other 14-ounce tin was 4.9 cents, and the 16-ounce tin was 3.1 cents per ounce.

**Senator Molson:** None of those were on special sale?

**Mrs. Lister:** No.

**Senator Cook:** Can spray starch come in different quantities?

**Mrs. Lister:** If the consumer cannot make a price comparison to start with, then she cannot get off first base.

**Senator Beaubien:** Would it not depend on the quantity they want?

**Mrs. Lister:** There is very little difference between the 14 and 16 ounce cans, but there is when you are paying for it.

**Senator Connolly:** What you want primarily is a standard position in respect of price. Do you also want a uniform price for a particular size?

**Mrs. Lister:** Well, it would facilitate things.

**The Chairman:** What she has said is that she is not asking for standardization in price. She is asking for standardization in weight and in packaging. In other words, you would have uniform packaging and standardization in weight. Is that a general statement or are you limiting your comments only to spray starch?

**Mrs. Lister:** That is a general statement.

**Senator Benidickson:** I apologize for arriving late. Before I came in was there any reference to the number of articles that might be reduced as a result of this process?

**The Chairman:** No. We have been talking only about spray starch, which comes in various containers from 12 to 16 ounces.



**Senator Molson:** With reference to the spray starch, do the cans represent the weight of the starch or the weight of the starch and the propellant?

**Mrs. Lister:** I am not sure, sir. I really don't know.

**Senator Molson:** The unit price in that case might not be a very valuable calculation.

**Mrs. Lister:** It might be how long the tin lasts, in other words.

**Senator Cook:** Did I understand you to say that there is some difference as to quality?

**Mrs. Lister:** Yes.

**Senator Cook:** That is another problem.

**Senator Blois:** Mr. Chairman, I think one point is being overlooked. In talking to some of the manufacturers of starch I understand that the weight varies according to the starches and the weight of the propellant can vary as well. That would affect the price. They may not be the same quality. You cannot expect to have the same price if you have a difference in quality.

**Mrs. Frances Balls, Executive Secretary, Consumers' Association of Canada:** We are not asking for the same price. We are saying that if the weight of the tin were standardized we would be able to compare the prices.

**Senator Blois:** But you are overlooking another point, if I may continue. The starch is the heavier material and if there is more starch than propellant in one can compared to another, you will not have the same weight in the two cans made by different manufacturers. Some manufacturers would only put in something to lower the quality of the starch. You are defeating your own purpose by asking for this particular thing. I am not against marking it this way, but you are overlooking the quality factor, I think. You have to pay more if there is more starch and less propellant.

**Mrs. Jones:** My understanding is that the aspect of content relates to the starch content and not to the weight of the propellant. Perhaps we are leading to some confusion by concentrating on spray starch only. We are talking of that only as one example where there is such proliferation within a very narrow range of sizes and that proliferation defeats the efforts of the consumer to examine the quality. You really are in a position then, if you have the same quantities in two different cans, after use to know whether brand A, for example, really allows five more starchings than brand B. But you do need to start with this base of some kind of common factor between the two products. Then you can proceed to all the other issues that we are discussing.

**The Chairman:** You had some other examples, I believe.

**Mrs. Lister:** Yes. Another is paper towels. This is really one of the most confusing things. I had six different brands. They were all different prices. The number of

sheets per package ranged from 150 to 240. The size of the sheets ranged from 9.4 inches by 11 inches, to 11 inches by 11 inches. This means that not only can the consumer not compare the number of sheets in the package and the unit price of each sheet, but she cannot compare at all because each sheet is a different size.

**The Chairman:** Not in the same package.

**Mrs. Lister:** Oh, no. Each different brand has a different sized sheet and a different number of sheets per package.

**Senator Molson:** If you had the weight of the roll on the package that would be a better indicator than you have at present.

**Mrs. Lister:** Yes, it would, because it would indicate the quantity.

**Senator Molson:** Yes.

**Mrs. Lister:** And you would then be able to compare the price.

**The Chairman:** Senator Molson, this bill requires, according to clause 4, that there must appear on the label a declaration of net quantity of the product in the form and manner required by or prescribed under this act and in terms of numerical count. The count would mean the number of sheets, and I would assume the size of the sheets. That is part of the quantity. This legislation does require that, but in that clause requiring that information it does not limit the sizes of the packages. It is clause 11 that you referred to, Mrs. Lister, and it is not against proliferation. It is against undue proliferation. So the bill does not go as far as you are urging it should go.

**Mrs. Lister:** But this gives an example of the need.

**The Chairman:** Maybe you can tell us what you regard as being undue proliferation, which is the language of the bill.

**Mrs. Lister:** I think the sizes of those starch cans are an example.

**The Chairman:** Which is the one that makes it undue proliferation? Do you mean anything over one?

**Mrs. Lister:** No.

**Senator Molson:** It is just too many.

**Mrs. Lister:** Too many, yes.

**Mrs. Jones:** Within a narrow range. Mrs. Lister already indicated that for a large and a small unit this is reasonable, and I think really we are examining this matter of undue proliferation where it is within a small range and is really not meeting the needs of the large or the small family.

**Mrs. Balls:** A good example of this is in the packaging of soaps, where you have king size, family size and giant size. You no longer have large, medium and small. Who is to say which is the largest size as between king, family and giant?

**The Chairman:** The people who use them.

**Mrs. Jones:** That is a type of proliferation.

**Mrs. Lister:** I have some toothpaste here. This might give you an example. Here is the super size. Here is the family size. This is the giant size and this is the regular size. Now, the smallest is the regular size. The largest is the super size. The family size is next to the super size.

**The Chairman:** What happened to the giant?

**Mrs. Lister:** The giant is smaller than the family size and smaller than the super size. Would you be interested in knowing the price per ounce?

**Senator Carter:** Definitely.

**Mrs. Lister:** The Super size is 15.5 cents per ounce. The family size is 14 cents per ounce. The giant size is 22.5 cents per ounce and the regular size is 27 cents per ounce. So your best buy is the family size.

**The Chairman:** The super is the dearest?

**Mrs. Lister:** No, the dearest is the regular. But the family size is a better buy than the super size.

**The Chairman:** It is the old story of buying in volume and paying less.

**Mrs. Lister:** No, it is not, because the largest is less than the second largest.

**Mrs. Balls:** The super costs more per ounce than the family size.

**Senator Connolly (Ottawa West):** Can you tell us how many ounces there are in each package?

**Mrs. Lister:** There are  $8\frac{3}{8}$  ounces in the super. There are  $5\frac{3}{8}$  ounces in the family. There are  $2\frac{1}{8}$  ounces in the giant, and  $1\frac{1}{8}$  ounces in the regular.

**Senator Connolly (Ottawa West):** Those are ounces that you have quoted.

**Mrs. Lister:** Yes.

**Senator Blois:** These are all made by the same company?

**Mrs. Jones:** Yes. Another brand family would not necessarily have the same sizes. They would use different terminology.

**Senator Connolly (Ottawa West):** They would have different sizes of packages and different quantities of material.

**Mrs. Balls:** And they would use fifths of an ounce rather than eighths of an ounce.

**Senator Molson:** The cost of those containers is pretty much the same from the smallest to the largest.

**Senator Connolly (Ottawa West):** There is no doubt that there is confusion in that set-up. This is the point you wanted to make. First of all, you know what the quality is, because you know the product you are buying,

but what you cannot determine readily—and I take it this is the burden of your message here—you cannot determine readily which is the best but in that group of four products put out by the same manufacturer.

**Mrs. Lister:** Yes.

**Senator Cook:** You would not retain only one package, would you? You would have a choice?

**Mrs. Lister:** You would have to have a choice. People use different quantities.

**Senator Connolly (Ottawa West):** Would you agree that from time to time the requirements of the market vary, and therefore the manufacturers feel that they should meet the demands of the public with respect to various sizes of containers for various quantities of their product that are merchandized?

**Mrs. Lister:** I maintain that if the consumer is confused then her demand cannot be registered, because in the confusion the demand is lost. She might think this is the best buy, being the largest, whereas if she could make the choice of the best buy she would probably buy this one, therefore letting the manufacturer know that this was the one which was in the largest demand.

**Senator Connolly (Ottawa West):** You say that you want perhaps two of those four put on the market. Some of the people who have been here have told us that there should be a change to suit the convenience of people and they agree that these two which you want from that group will be manufactured, but perhaps a year from now people will want a different size from the two that are put out. Would you agree that that kind of change should be made?

**Mrs. Jones:** We are not at all demanding that there not be response from industry to changing consumer demand. We are asking that industry be responsive to the consumer demand.

**Senator Connolly (Ottawa West):** You want to eliminate the confusion.

**Mrs. Jones:** I think one reason we particularly welcome the introduction of section 12 is that there would be research into the matter of containers.

**Senator Connolly (Ottawa West):** Do you say there is no response from the manufacturer now to the demands of your group?

**Mrs. Jones:** Specific industries give some response, but I think Mrs. Lister's point is that it is very difficult for the consumer to register her demands. When she is in this confused state, she does not know how to register an intelligent decision which demands her doing a certain amount of arithmetic, and concluding that she wants a certain size because it is reasonably appropriate for the size of her family and it is the best buy.

**The Chairman:** Mrs. Jones, if this bill becomes law in the form in which it is, all the information you would get would be as provided at the top of page 3: Quantity



numerically or by weight. As to the additional contents of the label, you would get that by section 10, which you have approved here this morning. At the top of page 6 you have section 10(b)(iii)—such information respecting the nature, quality, age, size, material content, composition, geographic origin, performance, use or method of manufacture or production of the prepackaged product as may be prescribed. You have approved of that?

**Mrs. Jones:** Yes.

**The Chairman:** I take it you have approved of these requirements of disclosure on the basis that this would give full disclosure to the buying public. What additional factor does the undue proliferation add if you are still going to have more than one size? You still have to do the arithmetic which you are talking about?

**Mrs. Balls:** If you have all products of different manufacturers the same size...

**The Chairman:** I see. In other words you would restrict the individuality of the manufacturer?

**Mrs. Balls:** No, we would not restrict the individuality of the manufacturer. We would ask that consumers be given such information so that they could make a true comparison of the basis of price and quantity.

**The Chairman:** Undue proliferation does not do that for you.

**Mrs. Balls:** We have right now legislation controlling canned goods. Those are the only products on the market which allow a true comparison. You will still find people buying the more expensive and the less expensive because tastes vary.

**Senator Molson:** Those are agricultural products you are speaking about.

**Mrs. Balls:** Under the Agricultural Standards Act.

**Senator Connolly (Ottawa West):** What I am driving at is this: Under certain acts you have regulations with respect packaging, and you tell us now that in respect of the regulations issued by the Department of Agriculture for canned goods that perhaps they are the best available.

**The Chairman:** The most informative.

**Senator Connolly (Ottawa West):** The most informative and the most helpful to you.

**Mrs. Balls:** Yes, and the dairy products.

**Senator Carter:** The manufacturers or the packagers when they were here and when we questioned them as to why they have this wide range of packaging and weights, said it was done on the basis of market research and there was a demand for different sizes to meet different sized families and requirements. That is the way they explained it and I would like to ask you two questions. Have you analyzed the complaints to see what size of families they come from, and how many different sizes are necessary to meet the different family conditions?

**Mrs. Jones:** Again, I would refer to our satisfaction with section 12, which demands such research as you mention. I think it would be presumptuous and ridiculous for us to suggest that we could predict for all the products the number of sizes of containers there should be. This is going to be very complicated. You are not going to decide that it takes two sizes for every product. There will have to be consideration given to what the product is.

**Senator Carter:** Do you think three sizes and three different weights would satisfy a large family, an average family, or a couple living together in old age. If you satisfied these groups do you think that would be sufficient?

**Mrs. Jones:** I think I can only respond to that by saying I would have to consider the question in relation to the product under discussion. That is why we need general enabling legislation to allow for this.

**The Chairman:** Well, Mrs. Jones, the different shoppers who go in have different purposes to serve and they have different sizes of pocketbooks. In many instances they want a product like toothpaste, but what they buy is in relation to the money in their pocketbook and the other things they have to buy. They may find based on experience, that is they buy the regular size and they are very careful in its use, they will get longer mileage out of it than if they were to buy the larger size and perhaps the children are rather careless in the use of it.

There is another aspect too, and here I am not testifying for myself, but for travelling you want a small-size article, especially when you are travelling by air. Therefore, the tendency would be to buy the larger size for home use and a smaller size for travelling. These are factors to be considered when you are trying to restrict. Now you have approved section 11, and all that section says is that the Minister may make regulations on standardization of packaging, and that he has to be satisfied that there is undue proliferation as to the weight, measure or numerical count of the prepackaged product, and that that is likely to confuse the consumer. It does not say anything about price. All it says is that the consumer is likely to be confused and misled by the net weight, by the measure or by the numerical count. All you have been telling us here this morning is about arriving at value, so it would appear that this does not help you at all.

**Mrs. Balls:** Yes, it does. If the quantity is the same, you can compare on the basis of price. The two are completely interrelated and you cannot separate them.

**The Chairman:** Then you are getting back to the question I asked Mrs. Lister in the beginning, and I understood you had modified your position. I asked, "Do you want a standard size, for instance the 16-ounce one?"

**Mrs. Balls:** We want standard sizes.

**The Chairman:** That would make then for simpler arithmetic, would it not? But the moment you add anything else, you say it becomes complicated.



**Mrs. Balls:** Not necessarily. It depends on the product. You can have three sizes in a product as long as each brand is the same in quantity within each size range.

**The Chairman:** Then you are restricting the scope and the individuality of the individual manufacturer?

**Mrs. Balls:** The canned goods people do a great deal with their products even though they have standard sizes.

**The Chairman:** That is right, but now you have to tell us why that should be extended to every pre-packaged product.

**Mrs. Balls:** Because the consumer is confused and is telling us that that is what he wants. I am sure the consumer is writing to the department as well as to us, and I am sure he is writing to the companies. If the companies' names and addresses were on the products, they would get many more complaints than they do now.

**The Chairman:** Well, you can assume that they will be receiving them, because this bill will require that they have their names and addresses on their products.

**Mrs. Balls:** We are getting reaction from consumers that they do not like this kind of package proliferation.

**Mrs. Jones:** If I might add to what Mrs. Balls is saying, we have been having this reaction from consumers for ten years. In 1969 we really reviewed our resolutions over the previous ten years in relation to packaging and labelling, and there were over 50 individual resolutions representing a great number of individual complaints. We saw the need in 1969 for some comprehensive legislation in relation to packaging and labelling, and we see Bill C-180 as that kind of legislation, and that is why we are so firm in our support of it. It is answering the needs that we had identified over ten years from consumers across the country. Even in 1970 we still had four national resolutions on packaging and labelling out of the five that we had in relation to food products. I think this is some measure of the consumer concern, and the fact remains that we have not had the opportunity of expressing this concern individually to the manufacturer because we have not known how to locate him, and also because consumers are just learning how to make their voices heard.

**Senator Connolly (Ottawa West):** In the case of the toothpaste of which you have samples here, there is no question about quality because presumably the quality is the same in each package. What you are complaining about, I take it, is that the consumer or purchaser cannot determine the unit price because of the difficulty in working it out, and that difficulty arises out of the fact that one package contains 8½ ounces, the next size has 5½ ounces, the next one has 1½ ounces, and the smallest one ¾ ounce. So the arithmetic to do that is too difficult for the ordinary consumer or purchaser unless she takes a lot of time to do it.

**Mrs. Jones:** I think the study made in the States a few years ago has already been brought to your attention.

That was a study where college-graduate women attempted to make the "best buy" choice in a number of items and only a minority made even a good showing. We really feel we have something more valuable to do with our time than standing in front of a toothpaste counter figuring this out. You can see that this is a task if you are looking at only one brand, but we can see the difficulty that arises when you are looking at a number of different brands. As Mrs. Lister pointed out, units are not even in eighths, they are sometimes in fifths and even in sevenths. To us they seem designed to confuse.

**Mrs. Balls:** And they will be in grams as well as in ounces.

**Senator Connolly (Ottawa West):** I think you have made your point very clearly.

**Senator Molson:** Could I ask Mrs. Jones if she feels satisfied that if the discretion in these matters passes from the manufacturer and the marketer to the Minister and his department, that the consumer is going to be more satisfied and have less cause for complaint? It is a very wide responsibility.

**Mrs. Jones:** I would question that we say that all responsibility passes to the Minister. I think we see consultation and much responsibility being left. It is within a different framework.

**The Chairman:** No, there is complete discretion in the Minister.

**Senator Molson:** There is complete discretion. This was raised before.

**Mrs. Jones:** Well, I think we have sufficient confidence that we are not transferring that kind of authority and responsibility through this legislation.

**The Chairman:** I notice that the bill, on page 7, provides for consultation in relation to research and studies to which you have referred a number of times. It says:

The Minister may, in carrying out any research or studies pursuant to subsection (1), consult with or seek the advice of any department or agency of any government, any dealers or any organization of dealers or any organization in Canada of consumers.

Your manufacturer is not a numeration, Senator Molson. The word "dealer" includes manufacturer.

**Mrs. Jones:** Section 11 also says that if there is undue proliferation the Governor in Council "may" make regulations. It does not say that he "shall."

**The Chairman:** It refers to any recommendation of the minister.

**Senator Flynn:** If we transfer responsibility to officials, then they use their power.

**Mrs. Jones:** It says that he shall consult with manufacturers and consumers.

**Senator Flynn:** Once you transfer responsibility to officials of a department, or to technocrats, you are not afraid to go even further.

**Mrs. Jones:** We take seriously the allowance for consultation with consumers, and we see it as our responsibility to be consulted.

**Senator Flynn:** And the department will do the same.

**Senator White:** Are you saying that, as far as the consumer is concerned, it could not be any worse than it is now?

**Mrs. Jones:** You are so right.

**Senator Connolly (Ottawa West):** I take it that Canadians would want to have access to imported products. The foreign manufacturer might make up his product in different quantities from the one that is prescribed here. Would you want the foreign manufacturer to be tied down by the regulations?

**The Chairman:** They are, under the bill.

**Mrs. Balls:** Yes, we would.

**Senator Connolly (Ottawa West):** In other words, you would force foreign manufacturers to conform to the requirements?

**Mrs. Balls:** There is a great deal of work being done by the International Standards Organization in this respect to try to standardize this kind of thing throughout the world.

**Senator Connolly (Ottawa West):** At our first meeting we had as witnesses representatives of the Grocery Products Association. I refer specifically to section 7(2) (b), on page 4, which reads:

Any expression, word, figure, depiction or symbol that implies or may reasonably be regarded as implying that a prepackaged product contains any matter not contained in it

They produced for us various examples of Jell-o products. One example represented strawberry, another cherry and another pineapple. They said they had symbols so that people could understand what they were buying. If they saw that it was lemon they would know that it was lemon-flavoured Jell-o. If they saw a cluster of grapes then they would know that it was grape flavoured. They said there was actually no lemon in the product, that it was only a flavouring, that there was no grape in the product, but that it was only a flavouring. They went on to say that some people do not see as readily as others, that they could not read without their glasses, or they did not have sufficient time. Would you say that the reasonably sophisticated buyer would be confused by the fact that on the Jell-o package there was a picture of a lemon but there was no lemon in the product but only lemon flavouring? Would you say that is confusing?

**Mrs. Jones:** We are concerned about these representations, particularly in relation to fruit. We are particularly concerned that the word "flavour" is often in much smaller print than the symbol of the apple, orange or pineapple. The label is likely to be dominated by the

name of the fruit and the picture, and the word "flavour" is often in a colour that does not stand out. This is a matter of concern even to the reasonably sophisticated shopper. We feel that we are responsible for the unsophisticated shopper. The individual should be adequately informed and not misled.

**The Chairman:** There might be an exception. If you saw a luscious-looking cherry symbol and you saw the word "flavouring" in small print, that might be an exception. Let us assume that equal status is given to the cherry and to the word "flavour," then there would not be any deception.

**Senator Connolly (Ottawa West):** This clause prohibits this being done. If there is no cherry in the product you cannot use the symbol of the cherry in the Jell-o because it is only a Jell-o flavour. It is a chemical product to give it that taste.

**Mrs. Jones:** We are aware that this is the situation, that they may not use the natural fruit.

**Mrs. Balls:** The provision in the bill does not prohibit that particular thing. It is not written into the bill.

**Senator Connolly (Ottawa West):** It is written in the bill. It refers to any expression or symbol that may be regarded as implying that a prepackaged product contains any matter not contained in it. The matter that is not contained in it is anything from that cherry. That would be eliminated from that label under this clause.

**The Chairman:** I understand from Mrs. Jones that that is the position of her association. Mrs. Jones, is there anything else that you wish to bring forward?

**Mrs. Jones:** No. I can respond to any further questions.

**The Chairman:** Are there any further questions?

**Senator Carter:** Is it your complaint that it is too difficult to determine price because of the quantity in the various packages? Is this basically your concern, apart altogether from the misleading material that might be contained on the package? Basically, what you are concerned about is the comparison with prices.

**Mrs. Jones:** And we see standard prices as facilitating that comparison.

**Senator Connolly (Ottawa West):** You agree that in the market place it is impossible to specify a unit price?

**Mrs. Jones:** No, we do not see this as being impossible. We have accepted that there is provision for further study and research on unit pricing.

We are studying it ourselves and are looking at the American experience in experiments in unit pricing. We are very interested in the experiment of the Ottawa wholesale grocers here in experimenting with unit pricing, and we had anticipated this voluntary introduction of unit pricing by the large supermarkets because it is obvious from the American experience that they can do it economically, and they are seeing the value of it. We are looking at the problems that unit pricing might pre-



sent to the small storeowner and manager, and this is why we are not pressing that that be included in the provisions at this point. We can see the possibility of rather rapid voluntary introduction by the distributors who can readily introduce this kind of pricing into their operation as it stands now, and that would mean no extra cost to the consumer. This is why we are supporting the gradual introduction.

**The Chairman:** Well, there is nothing in this bill that suggests any requirement that you state the price.

**Mrs. Jones:** No.

**Senator Connolly (Ottawa West):** No, there is not.

**The Chairman:** So we are not looking at that question. That question might present some problems as against the provinces who have control of property and civil rights. That is an additional question that might have to be resolved. That may be why you do not have any mention of a price.

**Mrs. Jones:** And we have not been critical that it is not mentioned.

**The Chairman:** I understood from Mrs. Lister that you were not asking for that.

**Senator Carter:** On the point that this might come under provincial jurisdiction, Mr. Chairman, if we forget about prices and use the word "value," would that bring it under the federal jurisdiction?

**The Chairman:** That would bring a multitude of problems. There would be tremendous problems, because who would assess value?

**Senator Carter:** Value would be determined in terms of the quantity you get for the same price. There are different qualities for the same price. Or if there were two different brands of the same size, then you could compare the difference in quality with the difference in prices. I would define "value" in the bill as what you get for your money.

**The Chairman:** You mean the market price.

**Mrs. Balls:** I may feel that I get more for my money with one product than someone else feels she gets for her money with another product. It would depend on my own values.

**The Chairman:** That is right.

**Senator Carter:** I mean the per-unit price. I am speaking in terms of weight and volume per unit price.

**The Chairman:** But Mrs. Balls has been suggesting that she may buy a different brand of toothpaste, for example, and might even pay a little more for the particular brand as against another brand because she feels that it has something in it that gives her more value out of it.

**Mrs. Jones:** But she wants to know that she is paying more. It is that value that she places on it.

**The Chairman:** She wants the dealer or the manufacturer to do the arithmetic for her.

**Senator Carter:** Except where this bill will enable what is being done under the Fruit, Vegetables and Honey Act, or whatever act it was they referred to, to be applied to other products, I do not see that this bill helps them very much.

**Mrs. Balls:** The Canada Agricultural Products Standards Act does a great deal for consumers.

**The Chairman:** Do you realize, Mrs. Balls, that when this bill becomes law the labelling and packaging requirements in this bill will override that other bill?

**Mrs. Balls:** Yes, and we are very happy that it will happen.

**The Chairman:** But this bill would not appear to give as much in the way of labelling and packaging as these other bills, and on your own statement it does not.

**Mrs. Balls:** No, I did not say that.

**The Chairman:** I understood you to say that on canned goods you got information that we are discussing that you now want in this bill, and you do not get it in this bill.

**Mrs. Balls:** The information we want is in this bill. We were saying that the Canada Agricultural Products Standards Act is one of the acts which give us the information we want.

**Mrs. Jones:** For those products only.

**Mrs. Balls:** This will will override it, as you say, and we are happy that that is so, because it is better to have one act than to have many acts.

**The Chairman:** You are happy with clause 11 and the undue proliferation?

**Mrs. Balls:** Yes.

**The Chairman:** As being the great magical wand?

**Mrs. Balls:** No, we did not say that.

**The Chairman:** Making everything clear and doing all the arithmetic for you.

**Mrs. Balls:** We did not say that.

**Mrs. Jones:** It is only one of the provisions that we support, and we want to have the extension of the protection and information of the existing legislation expanded to the other products. With this umbrella legislation we do not see where there is any reduction of any existing information or protection we have.

**The Chairman:** How do you know? Have you read the other acts? Have you read the statutes that have been in force, some of them for ten or fifteen years? Have you seen how extensive are the labelling and packaging provisions in them?

**Mrs. Jones:** In the preparation of this matter much study was given to them, yes.



**The Chairman:** I have read them, and my own feeling in the matter is that the packaging and labelling provisions in these other acts are very thorough. The provisions in the present law are more thorough than as contemplated in this bill unless the minister says that there is undue proliferation in sizes. That might bring the two closer in line. I am not saying it necessarily brings them together. You have no comment on that?

**Mrs. Jones:** I do not see any indication that there is going to be any retrograde step taken in passing this bill. I would anticipate that this bill would incorporate the good existing regulations.

**The Chairman:** I take it that you assume that the minister will exercise his discretion under clause 11, of necessity, and in all these different illustrations you have given he will declare undue proliferation in sizes.

**Mrs. Jones:** I would anticipate that he would also consult with the other Government departments, as indicated he may do. I think if we are going to be interpreting the word "may" in certain sections in one way, we should interpret that word "may" the same way in all sections.

**The Chairman:** However we interpret the word "may", ultimately, if there is any conflict, the courts will interpret it.

**Mrs. Jones:** The courts will, yes.

**The Chairman:** Are there any other questions? Is there anything more that you wish to say, Mrs. Jones?

**Mrs. Jones:** We should make one point. We are concerned that there be as few exemptions as possible, and we do hope that the regulations and the provisions will continue to indicate that significant penalties should be considered so that we really do have effective implementation of these provisions.

We are of this enabling legislation helping consumers to have a more equal position in the marketplace. We realize the importance of the regulations continuing to protect our interests.

**The Chairman:** The only exception from the application of this bill is contained in subparagraph (2) of clause 3, and that is that this bill, when it becomes law, does not apply to any product that is a device or drug within the meaning of the Food and Drugs Act. That is picking out just certain aspects of the Food and Drugs Act. For instance, cosmetics, which are under the Food and Drugs Act, would be subject to this bill.

**Mrs. Jones:** We hope so. That is a very sensitive area.

**The Chairman:** It is also a very important area, I would say.

**Mrs. Jones:** It is a very costly one.

**The Chairman:** Are there any other questions?

**Mrs. Jones:** No.

**The Chairman:** Thank you very much, Mrs. Jones.

**Mrs. Jones:** Thank you. We appreciate having had this opportunity to be here.

**The Chairman:** Honourable senators, now we have here representatives from the Department of Consumer and Corporate Affairs. We have no other delegation to be heard in respect to this bill. Mr. Seaborn, Assistant Deputy Minister, Consumer Affairs Bureau, is here. We also have Mr. Lewis, who is the Chief, Commodity Labelling Division, Standards Branch, from the Department of Consumer and Corporate Affairs; and then from the Department of Justice, Miss Lozinsik, Departmental Services Section.

At this stage I suggest that we start with Mr. Seaborn, with regard to the clauses and particular attacks which have been made on certain clauses, and invite his comments.

I have this additional comment to make, that regarding some of the points we might want to hear the minister when he is available next week. We would want to hear him particularly if our state of mind were such that we wanted to make some changes in the application of certain sections. I would think we would want to hear the minister before we went ahead and made the decisions. This is just a personal viewpoint which I am expressing.

**Senator Flynn:** Unless he would let us know that he would be in agreement with any proposed amendment. You do not suspect he would say "No"?

**The Chairman:** I was assuming that he would like to see this child given status, as it is given to us.

I should like to deal with some of the points which have been raised in the order in which they appear. In clause 3 we have had something which almost amounts to standards practice; that, is we will not permit proposals in a bill that would permit the amendment of the legislation by regulation. We feel that clause 3(1) does that. Have you any comments to make?

**Mr. J. B. Seaborn, Assistant Deputy Minister, Consumer Affairs Bureau, Department of Consumer and Corporate Affairs:** Your feeling, as I have understood it from reading the previous testimony, is that this act, if passed, should supersede the provisions of other acts.

**The Chairman:** Yes.

**Senator Connolly (Ottawa West):** I think what we are concerned about is not the supersession of other acts, but the supersession of other acts by regulation made under this act. Am I right about that?

**The Chairman:** That is right.

**Mr. Seaborn:** I do not think this is the case. The section says that the provisions of the act are applicable to any product notwithstanding any Act of the Parliament of Canada. That states generally this most recent act, which is one of broad application in packaging and labelling and which takes precedence over preceding acts. That, of course, is of the essence of Bill C-180, and one of its principal functions is to act as an umbrella for lawful uniform packaging and labelling and to bring uniformity

into an area where there is at the present time a wide variety of detailed labelling requirements set down for individually categorized products under the authority of a series of other acts, many of which have been referred to here.

It will certainly mean that the regulations passed under this act, in so far as it has prescribed certain details as to how something should be packaged and labelled, will take precedence over comparable details in the regulations passed under the authority of other acts. I am not aware, however, of other acts which deal with packaging and labelling, amongst other things, which prescribe the sort of detail which we will be prescribing here in the act itself. I think, only if there were that sort of detail prescribed in the act itself, would your fears be justified.

**The Chairman:** We can all read, Mr. Seaborn. Clause 3 (1) says:

...the provisions of this Act that by the terms of this Act or the regulations are applicable to any product apply notwithstanding any other Act of the Parliament of Canada.

We have about 18 different statutes of Canada. For instance, I have here the Fertilizers Act. In the Fertilizers Act, which is administered by the Department of Agriculture and which was assented to in 1957, you have extensive provisions in relation to standardization of products—the fertilizers, the guaranteed analysis, information that must be available and also labeling.

The labelling, notwithstanding what you have said, Mr. Seaborn, is, as I read it in Section 16 of the Fertilizers Act, much more inclusive than what we have in this bill. Therefore, it must be intended that we are going to get many of the provisions under this act in the regulations. We have them in the bill and in the Fertilizers Act. Our objection is that you give authority by regulations, under this act, to override the provisions of existing legislation.

**Senator Connolly (Ottawa West):** Existing statutes.

**The Chairman:** What we are saying is that if you are going to do that, you should do it by legislation and in that way Parliament would control it. In regulations Parliament does not control it at all.

**Mr. Seaborn:** Provisions under this act take precedence only to the extent that the present act and its regulations are applicable to a product. That is to say, as the clauses of the bill indicate, there are certain provisions relating to net quantity, to depictions and to the name and address of manufacturers. On those matters the bill gives authority to set forth regulations. Therefore, it is only in respect of those kinds of regulations, which of course cover a much more limited range than the labelling regulations under the authority of the Fertilizers Act, and the present one would take precedence. In fact, there is a very good correspondence between the two. The Fertilizers Act says that labelling shall include the name

and address of the manufacturer of the fertilizer. It says further on that it will contain the name. We are considering that that also be included as well as the weight.

The present bill, C-180, does not have anything to say about the registration number of fertilizers, the guaranteed analysis, or the directions for use of a fertilizer pesticide. These are all matters which are of limited but great importance in the field of fertilizers. There is no question, I would say, of Bill C-180 touching or in any way interfering with those labelling provisions of the Fertilizers Act.

**The Chairman:** Then, I would tell you exactly where that gets you. It gets you at the best position you can take. In other words, you are going to create a split jurisdiction. The provisions in the Fertilizers Act, for instance, which we have been talking about, are still going to remain in force and will have to be met. To the extent that those provisions in the Fertilizers Act may equal or may be similar to provisions in Bill C-180, then Bill C-180 will override in that regard.

Now, let us apply that for a moment. In the Fertilizers Act, you are supposed to indicate the name of the fertilizer. Well, under Bill C-180 you are required to make that disclosure also. Now you are required under Bill C-180 to give the weight, while under the Fertilizers Act you are also required to give the weight. Therefore, you have Bill C-180 laying down certain disclosure principles, while section 16 of the Fertilizers Act requires not only those disclosures but also additional and very protective disclosures to be made. So at best you have a split jurisdiction. But if, as Mr. Seaborn says, it is not intended to override, we would point out that under section 3 of this bill it is possible by regulations to override the existing law contained in the Fertilizers Act, for instance, and other acts. So this is the point we would like to have your help on.

**Senator Cook:** What is the state of the law in Canada going to be if you have to go to one statute, and then go to the regulations under another statute to see if that statute is still in effect or if it is overridden? You cannot have law like that.

**Mr. Seaborn:** Well, I can see that this could lead to exactly the kind of confusion that you are rightly worried about, where there might be one regulation under the Fertilizers Act which says that weight must be declared in one particular way, and then you have a regulation under Bill C-180 saying that it must be declared in another way. That is the sort of conflict that it would be extremely difficult for any manufacturer to meet with. But the point I would like to make is that it is essential—and we have recognized this as officials within the department and the government has recognized it, the Minister having done so publicly—that there be very close consultation between government departments, all of whom are in one way or another involved for their specialized products in matters of labelling. The intention, which has again been stated publicly, is as follows: in drawing up any regulations under this act, we will be in close consultation with other government departments who can potentially be affected, such as the Department of Agriculture which administers this act.



**The Chairman:** Well, if you will stop right there, that is the heart of the question, and everything you are saying emphasizes the point we are making. Here you have the Department of Agriculture which is charged with the administration of the act I have taken as an example, the Fertilizers Act. They are knowledgeable in that field, and the labelling requirements are much more extensive in the public interest than the disclosures you require under this bill. What you say in those circumstances is that the people who are administering Bill C-180 are going to go to those branches of the Department of Agriculture to be educated and so as to make their regulations more knowledgeable. Why duplicate that kind of work? You have that knowledge now in the Department of Agriculture based on experience that goes back perhaps 15 or 20 years.

**Mr. Seaborn:** Indeed, we have it insofar as a wide range of products is concerned in which the Department of Agriculture has great competence and great knowledge, but there are many other areas which are quite unregulated insofar as labelling and packaging is concerned.

**The Chairman:** Let us take one, for example.

**Mr. Seaborn:** The field of cosmetics is subject to limited regulation, some under the Food and Drugs Act, of course. There are fields such as dried packaged cereals which, to my knowledge, are not regulated under these.

**The Chairman:** Let us take cosmetics, then. I do not think you should have mentioned cosmetics, and I shall tell you why. The field of cosmetics is made specifically subject to Bill C-180, and the reason for this is that the administration is not as thorough as it should be in that area. So, therefore, we are not going to have the dual or split jurisdiction, and the authority by statute is taken out of those who administer the Food and Drugs Act and is put under this bill for packaging and labelling. This is being done by legislation, and that is exactly the point we are making.

**Senator Connolly (Ottawa West):** And this is what we like.

**Mr. Seaborn:** I do not think it is being put specifically under the bill. It has not been exempted from the direct application of this bill. Only two categories have been exempted precisely by legislation, and those are drugs and devices under the Food and Drugs Act.

**Senator Flynn:** Why is there this exception?

**Mr. Seaborn:** The reason for that exception is that it was felt that the most important consideration in the packaging and labelling of drugs and of medical devices was the health consideration. That took pre-eminence over the general area of economic considerations and potential economic fraud, which it is the purpose of this bill to prevent. Therefore, we accept the arguments of the Department of National Health and Welfare that it would be wise to exempt these and leave even the packaging and labelling of such goods in the hands of the

people who are highly skilled in the matter of protecting the health of Canadians.

**Senator Flynn:** The frontier of health is not very precise, and this may be true of drugs and devices. But when we come to food, then it becomes a major concern for the health of Canadians. That is why it is under the Food and Drugs Act.

**Mr. Seaborn:** Could I also add on the question of jurisdiction that there is no intention that the Department of Consumer and Corporate Affairs would take over the administration of acts such as the Canada Agricultural Products Standards Act and the Fertilizers Act. The intention is that over a period of time the departments which have administered such acts would bring their labelling requirements insofar as they did overlap between this bill and their own, into consonance with ours, to make them consistent, to achieve over a period of time that uniformity as to how you declare the net content and how you declare the name of the manufacturer.

**The Chairman:** I think, Mr. Seaborn, you are missing the point. You are saying that over a period of time the departments presently administering their own packaging and labelling would bring about uniformity as between their administration and that under Bill C-180. This is to say that the requirements under Bill C-180 are not consistent with the requirements in the existing law relating to other products. You talk about making them consistent by bringing the two statutes together. But you can do that by amending the Fertilizers Act, for instance.

**Mr. Seaborn:** Yes—the regulations.

**The Chairman:** By amending the regulations or by amending the act itself. You are going to develop a conflict in jurisdiction. You will have a split jurisdiction and split administration.

**Senator Casgrain:** In what year was the Fertilizers Act passed?

**The Chairman:** In 1957.

**Senator Casgrain:** We are now in 1971. Things are progressing, and the consumer is caught between the conflict of jurisdiction. She is the one who suffers.

**The Chairman:** These regulations have been brought up to date. The last revision was in 1969.

**Mr. Seaborn:** It is true that it would be possible to propose amendments in Parliament to the variety of acts which do contain some labelling provisions. But I wonder if this is the most effective way of achieving the result. If it is a question of bringing regulations under the various acts into line with each other, then the simplest way would be to have a general law dealing with the basic principles of packaging and labelling so that we could bring uniformity to the various acts.

**The Chairman:** Perhaps we need a uniform disclosure act.



**Mr. Seaborn:** To some extent Bill C-180 is a uniform disclosure act.

**The Chairman:** No, it is not. It does not go as far as the existing law in relation to other products.

**Mr. Seaborn:** Yes. The existing law in relation to specific products will continue to go well beyond the requirements of Bill C-180. I certainly anticipate that the Fertilizers Act, which deals not only with labelling but also with many other important matters, will continue to prescribe certain special inclusions on a label necessary to look after fertilizers. But they are not necessary to look after canned fruit and vegetables. Something different again is necessary to look after canned fish, for example. We believe there is a basic minimum of information which should be available to all consumers, and which we try to establish by putting forward these general rules for uniformity of all packaging and labelling, rather than having a variety which is confusing to consumers and manufacturers alike.

**The Chairman:** Let us take some of the provisions.

**Senator Cook:** Does that not mean that you can advance the very good argument of expediency in bypassing Parliament? If you can do it with this, cannot you do it with other regulations? You can amend other legislation by regulation.

**Mr. Seaborn:** I am not sure if there is a provision in any other act which would be nullified by the passage of this bill.

**The Chairman:** You have told us that the requirements in the Fertilizers Act, together with the regulations, parallel the requirements under Bill C-180; but Bill C-180 will govern.

**Mr. Seaborn:** As fixed by regulation under the Fertilizers Act and as fixed by Bill C-180.

**The Chairman:** If there is a difference between the two, then the regulations under Bill C-180 will govern. Why split it up and try to do it by regulation?

**Senator Lang:** Why not do it by amendment?

**Mr. Seaborn:** I know what is going to happen. Even assuming that this law is passed and we are enabled to write regulations for submission in Council, we will not be able to do it all at the same time. We will start to write regulations covering those areas which are not now regulated. My minister foresees the possibility that for a period of time, and where the labelling requirements under existing acts are relatively good, we will agree to remove them from the application of this bill and come to them later in conjunction with, say, the Department of Agriculture.

**Senator Flynn:** Would you indicate which regulations are not relatively good, the regulations of other departments that you would want changed?

**The Chairman:** We have had this kind of answer from almost every departmental representative who has

appeared before us. Every time we have raised this question, they say, "Oh, this is what we are going to do." We find that things just do not happen after a bill becomes law. I could recite a number of undertakings given in relation to certain legislation. The statement made in connection with one bill was, "Let this go the way it is. We are considering a new act and we will be able to deal with all these things shortly." I have been waiting five or six years for that new act. I made a resolution then that when we are dealing with a problem we will try to deal with it to the full extent. If we have a principle that you are not going to change statutes by regulation, then that is what I am going to follow.

**Senator Carter:** We know from experience, in this committee and in many other committees, that the argument of consultation which is always put forward does not always take place, or it takes place and then there is a personnel change or personality conflicts come in. On our Science Policy Committee we had numerous examples where different departments were set up to consult on a required basis and they consulted about once or twice a year.

**The Chairman:** The urgency decreases after the urgency to get the bill passed into law ceases.

**Mr. Seaborn:** Might I ask Miss Lozinski to speak to this? I do not pretend to have the legal experience that she does. I appreciate that this provision is one that causes you a great deal of concern.

**Miss O. C. Lozinski, Departmental Services Section, Department of Justice:** I should like to speak to it from a legal point of view. I should like to emphasize clause 3(1) as a rule of construction. When you have two acts which apply to the same products you must apply them both, except when you run into difficulty and you have actual conflict. Where conflict arises, you call upon rules of construction. There are some unwritten rules of construction, but they are contradictory in this case. A written rule in the statute is required. The reason why this particular bill is likely to conflict to some degree with the special acts which have been referred to is that the special acts do not deal with merely the characteristics of the particular products that they deal with. For instance, if you look at the regulation under the Canada Agricultural Products Act, it deals not only with the many characteristics of such products but also with the characteristics that these products have in common with all other products, namely, quantity, the manufacturer's name, and so on.

Since the special acts deal with these general aspects of products and this particular bill is intended to deal with general aspects of the prepackaged products, which are in a much wider class of products, some conflict may be anticipated. So on those general aspects this act is to take precedence.

**Senator Flynn:** Why? Do you not think you should have written the rules the other way, so that this act does not apply to any product which is already covered by another act?

**The Chairman:** That is right.

**Miss Lozinski:** It depends on the policy you wish to implement.

**Senator Flynn:** It is a question of policy, yes, but, in fact, you are admitting that the interpretation of this provision of the act is the one which we suggested.

**The Chairman:** The words of clause 3, subclause (1, Miss Lozinski, are absolutely clear. It says:

...the provisions of this Act that by the terms of this Act or the regulations are applicable to any product...

and "product" is defined as being any product in the bill. They would apply notwithstanding any other act of the Parliament of Canada. Therefore, in the regulations under this act the provisions of any other act dealing with disclosure are negated.

**Senator Connolly (Ottawa West):** Let us ask the witness the specific question. You have referred to the Fertilizers Act, Mr. Chairman, and you say that in the Fertilizers Act—and I am not familiar with it—there are specific provisions, not in the regulations but in the act itself, with respect to packaging and labelling. Is that so?

**Miss Lozinski:** Not, it is not so.

**Mr. Seaborn:** I would say it is.

**Senator Connolly (Ottawa West):** Is that a fact?

**The Chairman:** Yes.

**Senator Blois:** One witness says "Yes" and the other says "No". Which do we take to be correct?

**Miss Lozinski:** The substantive section of the Fertilizers Act is section 3, which says:

no person shall sell, or import into Canada, any fertilizer or supplement unless the fertilizer or supplement has been registered as prescribed, conforms to prescribed standards and is packaged and labelled as prescribed.

"Prescribed" in this act means as prescribed in the regulations. They are very general regulations.

**Senator Connolly (Ottawa West):** Mr. Seaborn, do you have the specific section which illustrates what I am talking about?

**Mr. Seaborn:** Section 16 of the regulations prescribes the detailing of labels, and that will contain much of the information that we are anticipating will be prescribed also. But these details are in the regulations section of the act; they are not in the act itself.

**Senator Connolly (Ottawa West):** I had understood that it was the other way, that there were details in the act but not in the regulations, but apparently that is not so.

**Senator Flynn:** From an administrative point of view, Mr. Seaborn, do you not think that, if you enact regulations that are found to be in conflict with regulations

adopted under another act, that would be a good occasion for consulting with and convincing the other departments to modify their regulations in order to make them in accordance with yours? Then you would be sure that there would be consultation and some kind of agreement. Otherwise I am quite sure you would not bother looking up all the other regulations before adopting yours. You would be generally sure of your policy and you would say, "Well, let them follow our own views."

**Senator Cook:** Surely, the least the taxpayer can expect is that he would not have to go to another act.

**The Chairman:** It certainly is the least he should expect.

**Senator Cook:** He should not have to decide that since this is under the Fisheries Act he had better look under another act to see where he stands.

**Mr. Seaborn:** And that is precisely what will happen, senator.

**The Chairman:** Where does it say that in the bill?

**Mr. Seaborn:** I come here not as a lawyer, Mr. Chairman. I have been asked to explain how things will work, and as an administrator I am saying how they will work.

**Senator Cook:** You mean, how you hope they will work.

**The Chairman:** You cannot say how they will work.

**Mr. Seaborn:** I cannot guarantee how they will work, no. I cannot guarantee either how a law will be interpreted by a court, but I can make fair assumptions.

**The Chairman:** You cannot guarantee what will be in the regulations either.

**Mr. Seaborn:** I cannot guarantee it, no, but I can give the best explanation of how I see this act coming into operation subsequently.

**Senator Lang:** Mr. Chairman, as I see it, the problem here has two components. First, there is the inclusion of the words "or the regulations" in clause 3, which inclusion, I would say, is repugnant to our whole legislative process. That should not stand, notwithstanding any sort of policy area. The second component of the problem, as I see it, is the overriding of other acts by the words of this act "notwithstanding any other Act". That, I think, is a question of policy.

**The Chairman:** But that moves us into the next item we have to consider, namely, subclause (2) of this same clause. In other words, we have to determine whether the exclusions under clause 3 should be greater than they are, and we have to determine whether all the existing law which operates in this field in relation to products should be excluded from the operation of this bill. They have only excluded certain features of the Food and Drugs Act. The representation made to us by delegates who appeared here was that the exclusions should be much broader. The grocery people attached to their brief



to us a list of about 18 different statutes that operate in this field now. I have picked out several of them here, such as the Forestry Act, Fertilizers Act and the Feeds Act.

**Senator Cook:** And there is the Fisheries Act.

**The Chairman:** Yes. There is the Fisheries Act, and I should tell you that the Fisheries Council of Canada appeared before the Commons committee asking that a provision be put in this bill to the effect that this act would not apply to any product that is a fish or marine plant product within the meaning of the Fish Inspection Act. The committee did not recognize their request.

**Senator Lang:** These are matters of policy, I think you will agree, Mr. Chairman, whereas the first point I mentioned is the repugnancy of the amendment by regulation of other acts.

**The Chairman:** Whether we add further exclusions may basically be a question of policy, but there is also the further question in it because we are creating law. Do we think it is proper in the circumstances to have split jurisdictions in administration, when you have an administration which obviously seems to be working very well in this field in relation to a great many products?

**Senator Cook:** It is not proper, certainly when it can be avoided. If it cannot be avoided, well...

**Senator Flynn:** We should certainly not have conflicts between two departments, in any event.

**The Chairman:** This is one of the things we try to avoid. We try to make the law clear, and when you have split jurisdictions you are really inviting a conflict.

**Senator Connolly (Ottawa West):** Mr. Seaborn, suppose the words "or the regulations" were removed from subclause (1) of clause 3, would not do all of these things that you suggest you will do anyway?

**Mr. Seaborn:** I would refer to my legal adviser on that. The bill has come from the Department of Justice. I should not like to say lightly that you can do this or that, because I may not be fully aware of the significance of certain changes.

**Miss Lozinski:** It would raise serious problems, because you will see that in subclause (1) we are talking about the provisions of the act that are made applicable by the act and by the regulations. Now, the provisions that are made applicable to all products by the act are the quantity marking in clause 4(1) and the location of the marking in clause 4(2). The requirement—I think it is in clause 8 or 9—about the province having made representations, and clause 10(a) and 10(b) (i) and (ii) and (iii) will be made applicable to any class of prepackaged products approved by regulations, because that subparagraph ends with the words "as may be prescribed."

**The Chairman:** Let us follow that through and take a fertilizer which is packaged. You then have general regulations as to disclosure that must be on the package. Are you proposing that by regulation you could exempt the

prepackaged fertilizer product from the application of regulations in Bill C-180?

**Miss Lozinski:** I am saying that some provisions in this act are made applicable by the act. Others, such as clause 10(b) (iii), are made applicable only by regulation but, it will be made applicable to a class of prepackaged products only by regulation. If no regulation is planned on the subject matter under clause 10(b) (iii), then there will be no requirement.

**The Chairman:** Where in the bill does it give us an assurance there will be no regulation to deal, for instance, with prepackaged fertilizer products? There is nothing in the bill.

**Mr. Seaborn:** There is none, sir, because there has not been any specific exemption for fertilizers in the act. As one of the other senators pointed out, this is a policy matter. One of the policy objectives is to have a general act, a uniform act in order to bring greater coherence and greater uniformity to the packaging and labelling of all consumer items and of all prepackaged goods.

**Senator Flynn:** Cannot you resolve it the way I have suggested, that if this act or the regulations adopted under it come into conflict with any other act or regulations, the other regulations should stand and that it would be up to you or the department to convince the other department to modify the regulations?

**Mr. Seaborn:** This is exactly the understanding which has been worked out interdepartmentally and agreed to at the cabinet level.

**The Chairman:** We know nothing about it.

**Mr. Seaborn:** I cannot answer the question, sir, from this side without telling you about what has been agreed to. The senator has suggested that this is something to be worked out between departments. I have told you what we propose to do. However, I cannot guarantee it. What I understand you to say is that it ought not to be a uniform packaging and labelling act but that, in fact, exceptions should be made from the application of this act and all those acts which at the present, in some form or another, govern the labelling of products.

**Senator Flynn:** We assume that they have more experience than your department in this particular field. If you come up with a brand new idea, which is very convincing, you will not have any difficulty in having the other department modify its regulations.

**Mr. Seaborn:** These other departments will continue to administer their acts and their regulations, some of which will be brought into line with the general regulations under this one.

**Senator Flynn:** If you want it to proceed in this way you do not need section 3. It is the other way round which should be drafted.

**Mr. Seaborn:** It would remove a basic purpose of this bill. I would have to defer to my minister.



**The Chairman:** I think we have chased this argument around the stump so many times that we are almost getting to the stage of shaking hands with ourselves.

**Senator Connolly (Ottawa West):** It seems to me that regulations made under Bill C-180 can override the provisions of a statute that has been passed by Parliament. May I ask the young lady from the Department of Justice if that is a fair statement to make?

**Miss Lozinski:** On the factual situation of the facts in existence, I think not. Theoretically, yes, but if we look at the acts, I think not. All the special acts are rendered very much like the section I read out of the Fertilizers Act. The regulations under C-180 will be dealing with specific aspects, and so as not to come into conflict with a provision the other provisions must be as specific.

**Senator Flynn:** I think you are forgetting paragraph (1) when you say regulations are not going to be very specific.

Clause 18 (1) (l) says:

generally for carrying out the purposes and provisions of this Act.

That has nothing specific about it.

**The Chairman:** In addition to that, Miss Lozinski made two distinctions. She was talking to the distinctions, as I see it, and not to the question that was posed. The bill does provide for exemption of the application of existing statutes. It is not theory, but a matter of what the bill says. In fact, it has, gathered into that word, actually the same thing which Mr. Seaborn has been saying, "Oh, we would not do that."

**Mr. Seaborn:** I think Miss Lozinski has an additional point to make.

**Senator Cook:** As bad as it may be in this bill, once we accept the principle it could be ten times worse in another bill. It is the principle we are talking about and not the application of the particular bill.

**The Chairman:** We have changed other bills which have come before us. Where they have pleaded extenuating circumstances we have said, "We will give you two years and whatever the status of the law is, which you have established at that time, that is the meaning to be ascribed to these words, and you have no alternative but to change it by legislation."

**Senator Connolly (Ottawa West):** I thought Miss Lozinski was doing fairly well, and then she was interrupted. I come back again to subclause (1) of clause 3 in Bill C-180. It seems to me that regulations made under Bill C-180 will apply notwithstanding any other act of the Parliament of Canada, which to me means that the regulations can supersede provisions of legislation. I would like to hear your opinion of that.

**Miss Lozinski:** When I stated theoretically that was possible, what I meant was that if there had been an act which had enough specific provisions, with spelled out requirements and sufficient particularity, a regulation

under this act would come into conflict, yes; but the draftsman stated that he examined the statutes and could not find any such specific provision. I personally do not recall seeing such a specific provision in the special statutes which have been mentioned, such as the Fertilizers Act, the Feeds Act, the Food and Drugs Act, et cetera.

**Senator Connolly (Ottawa West):** What we have to look at is what is in the statute, of course. Suppose we took out the words "or the regulations" and made this act supersede any other legislation that deals with any subject matter covered by Bill C-180, would you not have enough authority to do that, and to get the power that you want here without risking the possibility of regulations made pursuant to C-180 superseding the provisions of another statute?

**Miss Lozinski:** I touched on this before, but perhaps I did not explain myself very well. In this particular act, and this may be unusual, some of the provisions are applicable under the terms of the act itself, and I referred to those sections. But there is one section in particular which may be made applicable only by regulation. Since you have this feature that part of the act is applicable only by the operation of the act itself, if you strike out the words "or the regulations", you would have the practical effect of making part of the act subservient to other acts.

**The Chairman:** Why not?

**Miss Lozinski:** We would then be in the position where part of the act made applicable by the terms of the act itself would be in a dominant position to other acts, but another part that could only be brought into force by regulation would be subservient, and this could create a number of problems.

**The Chairman:** You are emphasizing the point we have been making from the beginning, that the scope of this bill is to override any existing act of Parliament that operates in the products field.

**Senator Flynn:** And it overrides not only existing legislation but also future legislation. We are going rather far when we amend legislation in advance.

**The Chairman:** On this point I should draw your attention to the authority to make regulations which you will find in section 18. It is true that the Governor in Council does have authority to make regulations exempting, conditionally or unconditionally, any prepackaged products or class of prepackaged products from any or all of the provisions of this act or the regulations, so presumably the scheme of this thing is to take products out of this bill by regulation. But that is in the discretion of the Governor in Council. It is interesting to note that in paragraph (h) of the power to make regulations, which is found on page 14, the Governor in Council may make regulations and then you will notice the words "subject to any other Act of the Parliament of Canada," as a qualification, "extending or applying any provision of this Act to or in respect of any product or class of

product specified in the regulations that is not a prepackaged product..." So it says here that they can make regulations in the field of products other than prepackaged products and they can govern them by regulations under this act, but only subject to the provisions of other existing statutes. If that sort of qualification related to one of the prepackaged products, it would, of course, be dealing with one of the questions we were raising here, and it might—and I am not saying it would—be an alternative to putting a whole list of exemptions in the statutes. If you limit the power of regulations in relation to prepackaged products and make it subject to any other act of the Parliament of Canada, it would mean that the fertilizer provisions and regulations would still occupy their field and that act would still be operative.

**Senator Connolly (Ottawa West):** Do you agree with what the Chairman says?

**Miss Lozinski:** I suppose you could look at it in another way. There is conflict because special acts deal not only with the special characteristics of the products to which they apply. For instance, the Fish Act does not deal only with the peculiar characteristics of fish; it also deals with the characteristics common to all these things, namely, packaging, deceptive packaging, quantity marking; and if there is a policy for uniformity on these general aspects which apply right across the board, then section 3 of this act sets out that policy.

**Senator Cook:** I do not think anybody is quarrelling with the desirability of having a uniform policy, but what we are talking about is how you go about it.

**The Chairman:** You want knowledgeable uniformity.

I have suggested that we move on to section 11, but it seems to me that there is a later section which we might deal with first. I am referring to section 20 dealing with offences and punishment. Subsection (3) of section 20 caused serious questions when we had delegations before us. They raised serious questions about this, and unless some explanation can be put forward to counteract what they said, it really presents a problem as to whether it can stand in the form in which it now is. You will notice what it says. It says:

(3) Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence...

The really offending words are the ones that follow:

...whether or not the corporation has been prosecuted or convicted.

On the reading of that section, one of the essentials or one of the elements of the offence so far as the prosecution of a director or officer is concerned is that the corporation has been guilty of an offence. There is only one way of being guilty—you have to be prosecuted and convicted. One answer may be put forward, and that is

that in the Income Tax Act you will find a wording that is very close to the wording here. That is section 134 of the Income Tax Act. But it is no argument to say that because Parliament approved of that, then that writes the law for all time. If an element of the offence is that the corporation is guilty of an offence, in order that a director may be if he has assented, then to add those words "whether or not the corporation has been prosecuted or convicted" is meaningless.

**Senator Cook:** Because you are only guilty if convicted. Otherwise you are only charged.

**Senator Flynn:** Under the Income Tax Act the purpose is to recover the penalty—and that is not a jail term—from the director of the company. It is not so much to make him guilty on the same basis as the corporation but to enable the department to collect the fine and to collect the amount owing to the department by the corporation. It would be more sensible to say that if you are unable to collect the fine from the corporation, it could be collected from any officer, director or agent who directed or authorized.

**The Chairman:** Under the Income Tax Act they create an offence in language that practically parallels this subsection (3).

**Senator Connolly (Ottawa West):** I think there is only one word in the Income Tax Act which differs from this subsection.

**The Chairman:** Perhaps Mr. Seaborn would like to speak to that?

**Mr. Seaborn:** I am quite ready to admit that this is one that has caused me some difficulty in the understanding of it, particularly as I am not a lawyer. My rather simplistic interpretation of the phrase "where a corporation is guilty" means where a corporation has been found guilty and convicted. It would seem to me to be a little bit strange in view of the terminal phrase in the clause. The intent is that it should be possible to proceed against either the corporation or an officer of the corporation, depending on the circumstances applicable.

I can do no better than quote from testimony which was given before the committee of the House of Commons. A special witness from the Department of Justice said:

Under this act in the trial of a director, an essential element that has to be proved beyond reasonable doubt, as with every other element, is that the corporation was guilty of the offence. Unless that element, as the other elements, is proved beyond a reasonable doubt, the director is entitled to an acquittal.

He went on to say at a later stage:

There need be no formal charge against the company; there need be no formal conviction of the company, no formal finding of guilt in proceedings against the company, but as an essential element of the proceedings against the director you have to prove beyond a reasonable doubt that the company was guilty of an offence.



**Senator Carter:** Prove to whom?

**Mr. Seaborn:** To the court. He went on to say:

There is a difference between saying a company was guilty of it and that the company was convicted of it. There is no need to proceed against the company and convict it, but you have to prove that the company was guilty of that offence. The finding is made in the course of the proceedings against the officer, and it does not constitute a conviction against the company although the finding is that the company was guilty.

I was engaged in conversation with the witness on that occasion. If I remember correctly, he said that the phrase "is guilty" has the same meaning as when the corporation has committed an offence.

**Senator Connolly:** What you are saying, in effect, is that the witness on that occasion said that when an officer, director or agent is charged and the corporation has not been charged or has not been found guilty, in the trial of the officer, director or agent there can be evidence adduced to prove that the corporation was guilty; and the court on that occasion, although there is no charge, would have to find first of all that the corporation was guilty, and it can then proceed to determine whether or not the officer, director or agent is guilty.

**The Chairman:** Where does that put us? In a trial of a director or an officer, one of the elements under this clause would be to prove that the corporation was guilty of the offence under the act. The corporation is not before the court. You would have a prejudgment on the guilt of the corporation before it was even charged and tried. This is an extraordinary use of our criminal procedures.

**Senator Cook:** The corporation would not be heard in its own defence.

**Senator Connolly:** I just wanted to bring that out.

**Mr. Seaborn:** That is my understanding of what the witness said.

**Senator Connolly:** The corporation has no opportunity of defending itself in the trial of the officer, director or agent.

**Mr. Seaborn:** I do not know whether the corporation would have an opportunity.

**Senator Connolly:** If the corporation were not available or were not represented, there would be nobody to defend the corporation.

**The Chairman:** What would the Crown do in those circumstances? Would it call someone from the corporation to admit that they had committed an offence?

**Senator Lang:** The object of the exercise is to get hold of an officer of the company when the company is bankrupt. That is the purpose of the wording.

**Mr. Seaborn:** There are a number of circumstances in which it would be impossible to proceed against the company, such as bankruptcy.

**Senator Connolly:** It is an attempt to penetrate the corporate veil.

**The Chairman:** They can cover it by making a substantive statement. Any officer or director or agent of the company who joined or agreed with it to commit an offence could make a substantive statement, and then it would depend on what he did or what he attempted to do. This is an extraordinary statement of criminal law.

**Senator Burchill:** Is it necessary for a corporation to be found guilty before you can proceed against a director?

**The Chairman:** Not under this wording. I do not know how a prosecution can succeed under this wording. One element is that a corporation may have been guilty of an offence under the act and you prosecute an officer for that offence because he participated in it. One of the elements is that the corporation has been guilty.

**Senator Connolly:** There must be a better way of drafting this clause. Probably the draftsman looked at section 134 of the Income Tax Act and said "This is probably an appropriate section and we will incorporate it in Bill C-180." They did it, perhaps, without regard to the circumstances.

**Mr. Seaborn:** I can only say that we have discussed this at some length with the Department of Justice before, during and after discussion in the house committee. So far the Department of Justice has not been able to provide us with alternative wording.

**The Chairman:** Perhaps we may be able to find alternative wording. We have been known to do that before.

**Senator Carter:** May I come back to the statement that Mr. Seaborn read. If I remember correctly, he said that it would have to be proved to the court that the corporation was guilty. He then went on to assume that having proven to the court that the corporation was guilty, it would not be convicted.

**The Chairman:** You would have to prove that the corporation was guilty and you would have to prove that the officer participated in or assented to the commission of the offence. But the corporation is not before the court.

**Senator Carter:** Then how can he prove it to the court if the corporation is not before the court?

**Senator Flynn:** It is easy to correct the wording if the intention is, once a corporation has been found guilty, to determine whether any officer or director participated. If you do not want to be obliged to sue the corporation and you want the choice of bypassing it, then why not prosecute the director directly?

**Senator Cook:** What is the advantage in being able to bypass the corporation?

**Mr. Seaborn:** Where a company has gone bankrupt it would be impossible to proceed against it. You may want to bring a suit against the director of the company, but if this is the intention, you can always sue the corporation



and recover the fine from the director. You could provide that in the case where a corporation has been found guilty of an offence under this act the penalty may be recovered from any officer, director or agent, if that is your intention. If you want to be sure to be able to collect the fine, then that is something else.

**Mr. Seaborn:** The real intent is to have freedom to proceed as seems appropriate in the circumstances of the case against the company or against one of the officers, directors or agents. Bankruptcy is one possibility.

**Senator Flynn:** The problem is transition should not enter into it.

**The Chairman:** It does not enter into it at all. This is a general statement of law.

**Mr. Seaborn:** I believe one of the other situations which was in the minds of the draftsmen as they proceeded with this, and in the minds of those who gave them instructions, was the case of dummy corporations. One man stands behind several dummy corporations. There is nothing to get hold of there.

**The Chairman:** Well, there is the corporation itself. All this says is that if the corporation is guilty of the offence then so long as it exists it can be prosecuted.

**Senator Flynn:** The wording could be "where the corporation is found guilty of an offence under this act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is liable, on conviction of the offence" to the punishment provided for.

**The Chairman:** And it would end there.

**Mr. Seaborn:** That would change the intent of the clause rather considerably.

**Senator Flynn:** Not the intent.

**The Chairman:** Senator Flynn, if the intent is to give general authority to the Crown to prosecute officials of a company who participate in the doing of something that is an offence and not prosecute the company, the first serious question is whether it is good practice, as a matter of fact, that we should recognize a proceeding of that kind. I mean where you have offenders, surely you do not pick and choose who you are going to prosecute.

**Senator Flynn:** The difficulty would be that if you can sue a corporation and a director they are not on the same basis because the person can be jailed whereas the corporation can only be fined. There is a blackmailing power there, if you have the choice.

**The Chairman:** Shall we call it pressure? There is tremendous pressure because the individual can go to jail. The corporation can only be fined. So the greater pressure would be to have a right to prosecute the officer without having to prove the offence and convict the company.

**Senator Cook:** You could put him in jail without having to convict the company in the first place.

**The Chairman:** Yes. Shall we move to clause 11? Clause 11 deals with the standardization of containers. We had a number of delegations before us who were critical of this clause. They were critical on two grounds, one being on the wording of the clause and the use of the expression "undue proliferation of sizes likely to mislead or confuse as to the weight, measure or numerical count." There were two questions that they put forward, and I think there are two questions to be considered. One is whether this can be justified as being good criminal law, because the only basis on which you can support the validity of this bill is on the basis that it is criminal law. That is, it prohibits certain things with penal consequences. We went into that when the Manufacturers Association was before us last week.

The other question is that in the earlier parts of the bill you have full provisions as to disclosure for net quantity. That is, you must disclose the net quantity in terms of numerical count or a unit of measurement. Then also on the label you must add certain other things such as the nature, quality, age, size, material content, composition, geographic origin, performance, use or method of manufacture of production of the prepackaged product.

We must assume that when this bill is being put forward and these requirements are made for disclosure, the conclusion is that if you have these requirements the consumer is not going to be confused or misled, because if notwithstanding those requirements he is likely to be misled, then they have not put in enough requirements. To come along and say we have provided for net quantity in weight or numerical count to be put on the package and then say that if you have an undue proliferation of any packaged product so that the person is going to be confused as to the weight, measure or numerical count, does not add up or make sense, because all you have to do is read what is on the package and it will tell you the numerical count. It will tell you that there are so many paper towels or it will tell you what the weight is. Whether there are ten different sizes or two different sizes does not matter. The information as to weight and numerical count must be stated on the package. That is what the law says.

In those circumstances, how can undue proliferation of container sizes mislead the consumer as to the weight or the numerical count? It cannot, in my submission. The evidence we had here this morning from the Consumers' Association was on the question of the consumer being able to determine value.

**Senator Connolly (Ottawa West):** Or price.

**The Chairman:** Or price, and what is a good buy and what is not a good buy. But clause 11 does not deal with that.

**Senator Connolly (Ottawa West):** I think it does, indirectly. I am just wondering, Mr. Chairman, whether we are thinking of clause 11 as being in the wrong place. I do not think it matters whether it is one place or the other, but if it were appended to or read along with the earlier clauses dealing with the requirements as to disclosure and if proliferation of sizes or shapes of containers

which leads to confusion were also a requirement, then I do not think we would be complaining too much.

It does seem to me that what the consumers' groups said to us this morning with reference to proliferation of sizes and shapes in respect of toothpaste—and they produced samples to illustrate their argument—was quite right. I think there is a danger of confusion.

**The Chairman:** The only way you could deal with that would be by having a requirement for unit price.

**Senator Connolly (Ottawa West):** I think unit price is a very difficult rule to apply in the market today. In fact, at any time it would be difficult because the unit price that might have to be put on the package would have to be put on by the manufacturer. That product would go through the hands of a distributor, a wholesaler and ultimately through the hands of a retailer who might want to mark it up or down as the case might be.

I think it is virtually impossible, apart from the question of jurisdiction, to provide that a unit price should be displayed on the label of a package, but I do think that there is some sense in what was said as to proliferation of sizes, because the examples given us this morning do make for confusion in respect to price. We asked Mrs. Jones and others specifically whether they were concerned about price and they said, "Yes, this is really the determining thing."

**The Chairman:** Another question I asked this morning was whether at this time they supported the idea of stating the price and the answer was "No, not in this legislation". The question we are looking at in clause 11, in the form in which it is here, is whether it makes sense.

**Senator Flynn:** It does not, but I think you can discover the intention if you simply delete the words "weight, measure, or numerical count of a prepackaged product." You could delete these words and say "...there is an undue proliferation of sizes or shapes of containers sold and that the effect of such undue proliferation of sizes or shapes is to confuse or mislead or be likely to confuse or mislead consumers..." "You do not have to say in which way it does, because the number of sizes and shapes is itself misleading.

**The Chairman:** This is our first consideration. In the form in which it is, it does not make sense.

**Senator Flynn:** You do not have to say "confuses as to weight".

**The Chairman:** If you make the changes which you have suggested is it a valid exercise of authority?

**Senator Flynn:** It is sensible. It gives the minister power to limit the size and shape of containers, period.

**The Chairman:** The question is whether that is a criminal law or a colourful effort to accomplish standardization of containers which ordinarily would belong under the heading of "Property and Civil Rights in the Province".

**Senator Flynn:** That is something else.

**Senator Lang:** In your opinion, does section 11(1), as it now stands, fall within the category of civil rights?

**The Chairman:** As it stands, I do not think it needs anything. Either we have to go back and re-write the earlier provisions on disclosure, but surely we either assume that those disclosure provisions as to the net quantity are adequate or not. If they are not adequate then we should do something about them.

It would appear they are not adequate in the form in which section 11 is drafted. It talks about undue proliferation likely to mislead the consumer as to weight, measure or numerical count. If the weight, measure or numerical count is stated on the package then there cannot be any confusion.

**Senator Connolly (Ottawa West):** Would your objection be met if the words "weight, measure or numerical count of a prepackaged product" were eliminated from the section?

**The Chairman:** This is what Senator Flynn suggested as a way of dealing with it. Certainly it removes that argument.

**Senator Flynn:** As you suggest, we may be facing the problem of invading the field of property and civil rights.

**Senator Lang:** I take it from what you say, Mr. Chairman, that you think that if on a package the weight, measure or numerical count is clearly stated there can be no confusion?

**The Chairman:** That is right.

**Senator Lang:** I would differ with you on that.

**The Chairman:** That is your privilege.

**Senator Lang:** I think you could have two ounces of soap in a two-inch box or in a ten-inch box.

**The Chairman:** If on that big box you had "Net weight, two ounces".

**Senator Lang:** I have never read a net weight in my life.

**The Chairman:** Then you are a poor shopper.

**Senator Flynn:** You are supposed to read them. That is the object of this bill.

**Senator Lang:** Does size have something to do with quantity?

**The Chairman:** The bill proposes that you state the net quantity.

**Senator Lang:** Am I entitled to assume that size has something to do with quantity?

**The Chairman:** I am not sure that you would be entitled to that qualification. If you have a large box with a label "Net 2 ounces" you would think you would be getting an awful lot.



**Senator Lang:** It would be on the bottom in very small print.

**The Chairman:** No, it must be displayed prominently on the label. You cannot work that excuse to support your shopping method.

**Senator Lang:** I can see this is going to be an area of confusion or deception.

**The Chairman:** The confusion may result from the inability of many shoppers to correlate quantities and price that the retailer puts on the package. It is a reasonable thing to expect that legislation should recognize inequalities in education, because every person is not a mathematician.

Mrs. Jones or Mrs. Lister spoke about some college professors in the United States who were unable to do a certain arithmetical problem. It may be that in these days of high specialization, mathematics was not one of the subjects they specialized in.

**Senator Carter:** I gather from what the witnesses said this morning that what they hoped would result from section 11 was that it would achieve something very much similar to the Agricultural Products Standards Act. We are talking about property and civil rights, and jurisdiction. Apparently, the Agricultural Products Standards Act does not trespass upon provincial jurisdiction. They assume the intent of this section is to bring about the same situation as the Agricultural Products Standards Act.

**The Chairman:** The question is whether you can write a rule which would apply to every product. I would not want to try to do that, because I could not accept the principle that a standard rule should cover the containers that are to be used for all types of products. Also, I would find difficulty in accepting the principle that the manufacturer should have no choice as to how he packages his products; that he can only have two sizes for all products.

**Senator Casgrain:** Can I respectfully ask why, because you go to the market simply for the consumer. There are quantities of containers, and consumers are confused.

**The Chairman:** You are telling me then that putting the net weight on the package is of no help?

**Senator Casgrain:** If you say that the manufacturer would only be obliged to produce a certain number of containers then...

**The Chairman:** Let us say two types of containers—a small size that may be four or six ounces and a large size with ten, or twelve or sixteen ounces. This is the way they must package their product. The extent to which you can express individuality in making your products attractive is reduced. The question is how far are we going in this field?

**Senator Lang:** Mr. Chairman, are we not really dealing with deceptive packaging here?

**Senator Flynn:** It is the number of sizes and shapes.

**Senator Lang:** But is it not deceptive packaging?

**Senator Connolly (Ottawa West):** "Confusing or misleading", which is deception?

**Senator Lang:** What I am suggesting is that the words "undue proliferation" are misplaced in this context. It seems to me that we are dealing with deceptive packaging practices.

**Mr. Seaborn:** Not in this clause, senator. There is an earlier clause—clause 9—which deals with deceptive packaging and what is referred to in the trade as non-functional slack fill. The sort of thing you mentioned is a large package with a tiny bit of product in it. Clause 11 is meant to deal with "undue proliferation".

**Senator Connolly (Ottawa West):** I think Senator Lang is right. Certainly you talk about proliferation of sizes and shapes, but when the effect of this proliferation is to confuse or mislead, then it is deception.

**Mr. Seaborn:** I agree, but it is the very number which is likely to mislead and confuse as set forth in this, whereas in section 9 we refer to the individual package and how it is filled which could give rise to deception. There is the distinction there.

**Senator Cook:** There is no element of fraud at all contained in section 11. It is just a question of price and the question of too many sizes where the net result is likely to confuse somebody.

**The Chairman:** The fraud occurs in section 9.

**Senator Flynn:** It could result from the number and it does not mean that there has to be a conspiracy within the industry.

**Senator Connolly (Ottawa West):** I am not talking about numbers of conspiracy; I am talking about proliferation leading to confusion and deception.

**Senator Lang:** There is no objection to proliferation if it does not mislead.

**The Chairman:** You would take those words out altogether?

**Senator Lang:** Yes, I would take them out of the section, and change section 9.

**Senator Connolly (Ottawa West):** Perhaps section 11 is misplaced.

**The Chairman:** It may well be in the sense that it should not be there at all.

**Senator Lang:** I think section 9 could be amended to cover the proliferation of packaging that results in deception.

**Senator Flynn:** In section 9 you have a situation created by one particular dealer whereas in section 11 you have a situation created by many manufacturers or producers.

**Mr. Seaborn:** Might I be allowed to get a word in here?



**The Chairman:** You have been struggling for quite a while and everybody has been popping questions at you.

**Mr. Seaborn:** I think there is a very good case to be made for the contention that the undue proliferation in itself can lead to confusion and deception. I would certainly agree that the earlier clauses in the act which will lead to a clearer declaration of net contents will take us well along the way to more rational consumer shopping, if you want to put it that way, and this is the object of the bill. But I would submit that the choices are made in the market place, not just on something which says 12 ounces or 13 ounces; they are made in part on the appearance of the sizes of the packages you have. If you face the kind of array there is of detergents, for example—and let us put it on a male basis, and your wife has said, “Will you go down and pick up one of the medium sized boxes of detergents?”—you have no idea what is meant by “medium sized”. You have a whole range of boxes which may go from 11½ ounces, 12 ounces, 12½ ounces, 13 ounces, 16 ounces, 17½ ounces, 32 ounces, 4 pounds, 4½ pounds, 5 pounds—the very number of individual sizes and weights in this particular case is such as to make it extremely difficult to have a mental conception of what it is that is required, or what you are looking for. Let us take a typical standardized size—a pound of butter. We only sell butter by the pound or by the half pound so if somebody mentions a pound of butter, you know what he means. You have a mental concept of it. You can imagine what half a pound is like. But if you have to try to make a choice from a range of 10, 15 or more different sizes, you have no mental concept of what you are getting, particularly if you are faced with very confusing fractional sizes such as those put forward in the case of the toothpaste this morning. I think the very number can make the choice of deciding what you are getting very difficult. This is particularly the case if many of them are in a close range, and you have packages that look almost the same and contain 14 or 14½ ounces, or 12½ or 13 ounces.

**The Chairman:** I should hate to carry out the instruction that you have given as an illustration. If your wife told you to go to the market and get a medium-sized packet of detergent, I would say the instruction was inadequate. What is “medium”?

**Mr. Seaborn:** The job of the housewife who has to do this every week is infinitely simplified if she has a small range and she knows that when she reaches quickly for something she has got what she expected to get. At the present time I submit that she thinks she is reaching for the same sized package as she picked last week but it may be smaller or larger by one or two or three ounces. So the very appearance of them has something to do with your concept of size. This is quite apart from what is declared specifically as a declaration of content.

**Senator Cook:** We are all old enough to remember when the grocer used to weigh up the tea, flour, and sugar in brown packages. But the packaging industry has come a long way since then with cellophane wrappings and coloured boxes and things like that. Now we have a situation under section 11 where the Minister decides

that in a certain class of goods there is undue proliferation, and he says: Stop. If somebody comes along with a new package which is more attractive, is he going to be allowed to go ahead with that? Now what happens in that case? Does he have a hearing and does the Minister make a ruling or what happens?

**The Chairman:** There is no provision for a hearing. You will recall the provisions we put in the Hazardous Products Act, that where the Minister decided to add a product to the schedule of prohibited products or to remove a product that might be sold under another schedule, there was what was called a board of review to which the person who was affected by it had the opportunity to go and make his presentation.

**Senator Cook:** But that is not in here.

**The Chairman:** No, it is not here. Some of the briefs submitted did raise that issue. It was mentioned, for example, last Wednesday by some of the people appearing before us who said that they should have some opportunity to be heard. They may demonstrate that economically this is affecting their operation. For instance, if I want a small tube of toothpaste or a small tin of shaving cream, something of that nature that I need when travelling, it would follow that some variation in size should be available. So how do I decide when it is undue?

**Mr. Seaborn:** You come at it pretty carefully in deciding what is undue. You have provision even in this act for research and study on matters related to packaging, labelling and the rest. You also indicate that you are free to seek the advice of any number of people who will have expert knowledge in the field, from the Consumer Association to the manufacturer of the product, and I think it would be a terribly rash minister or a terribly rash official who would think to go ahead and submit an Order in Council without very careful consultation first.

**The Chairman:** We are dealing with what the legislation should be and the rights of the people who are affected. They have rights too, you know, just as well as the consumer. So if there is going to be a change or a determination of that kind, there should be an opportunity to be heard. I am not saying that they may be heard, but there should be an opportunity for them to be heard.

**Senator Lang:** The section to which Mr. Seaborn referred provides that where the Governor in Council is of the opinion that the number, size or shape of containers, et cetera, is designed to confuse or mislead...

**Mr. Seaborn:** As soon as you say the word “designed” you suggest conspiracy.

**Senator Lang:** I am searching for the right word. The purpose of the number, shape and size is to mislead.

**Senator Flynn:** The number is the result of many producers.

**Senator Connolly:** No, one manufacturer.

**Senator Flynn:** But that is not the purpose of this clause.

**The Chairman:** This is to create standard sizes of containers which would apply to everybody.

**Senator Connolly:** The word "design" is the difficulty. Suppose a manufacturer of toothpaste decides that he will put out seven or eight different sizes with odd numbers or fractional units in the package. There is no conspiracy so far as he is concerned. He is just proliferating, and perhaps this would result in confusion.

**The Chairman:** Senator Flynn did not suggest that. He said that the word "design", which Senator Lang mentioned might involve that.

**Senator Flynn:** If the manufacturer had a monopoly of a certain product, even if he produced several sizes, the consumer would become used to it and there could hardly be undue proliferation in those circumstances, because there are so many manufacturers who produce so many sizes and shapes of containers.

**Mr. Seaborn:** May I say that in our view the clause as it now stands is quite restrictive in the sense that we would have to be very sure in the event of establishing some standardization of a range of sizes for one product that if the regulation were challenged in the court we would be able to prove to the satisfaction of the judge that there had been undue proliferation such as to confuse and mislead. That is a pretty restrictive provision.

**The Chairman:** Mr. Seaborn, you are not putting the issue at all. All you need here in order to have standardization is for the Governor in Council to say, "In my opinion..."

**Senator Flynn:** Yes.

**The Chairman:** That is all that is needed. That is in the recital, and the recommendations by the minister to the Governor in Council on which the regulations are based. You do not have to prove that there is in fact confusion.

**Senator Cook:** Or to consult anybody.

**The Chairman:** The Governor in Council has only to say, "In my opinion..."

**Mr. Seaborn:** The clause provides:

Where the Governor in Council is of the opinion that there is undue proliferation...

He has to state that the effect of such proliferation is such and such, and then there is a qualifier as to why he comes to that opinion.

**The Chairman:** He says, "In my opinion there is undue proliferation of sizes or shapes of containers in which the prepackaged product is sold, and in my opinion the effect of that is to confuse or mislead consumers. Therefore this regulation is enacted."

**Senator Connolly:** It is discretionary.

**Mr. Seaborn:** I am merely suggesting that one is unlikely to use that discretionary power if you expect that the first challenge will upset it.

**The Chairman:** So long as the Governor in Council says "In my opinion..." you cannot challenge him. There should be some opportunity at one or two places where the person who is convicted—

**Senator Cook:** You might have a very large sum of money tied up in a product which is banned.

**The Chairman:** The person who will be affected by the order should perhaps be heard before the order is made. When the order is made he should have the opportunity to appeal, not to the court but to a board of review.

**Mr. Seaborn:** Section 11 says that he may seek the advice of dealers of that prepackaged product.

**The Chairman:** But it does not say that he must take it.

**Mr. Seaborn:** There is a provision for publishing the proposed regulations in the *Canada Gazette* to allow them to be made public before they become final. There is the repeated declaration that there will be consultation with those affected, with manufacturers, retailers and consumers, at a preliminary stage when one is drafting the regulation. This has been done by other departments and also by my own department. I do not think it is contained in the Agricultural Products Standards Act that there must be consultation before sizes are set, but it has in fact taken place.

**The Chairman:** We have dealt with the major points that were raised by the people who made submissions. The use of the word "age" on page 6 was mentioned. It says, "respecting the nature, quality, age, size". What does the word "age" mean there? Is it intended to mean the date of manufacture or production?

**Mr. Seaborn:** It is meant to have a very general meaning, namely, the details to be spelled out in the regulation. It could apply to the date of manufacture, or to the terminal date for use of the product, on its reasonable shelf life.

**The Chairman:** Whatever it is intended to say, we should spell it out, giving the date of manufacture, so that the consumer can calculate that the product was manufactured six months ago. Some candy manufacturers had a practice of putting on a limit slip where candy was being merchandised through drug stores. They indicated the useful life of the product.

**Senator Casgrain:** The same applied with the yogurt people.

**The Chairman:** Age is not enough, because the word has a bad connotation with many people.

**Mr. Seaborn:** One of the difficulties that we faced in putting in this very general word is that in this area the state of the art has not developed sufficiently. Anyone is able to give a clear and definitive procedure for giving the best protection to consumers in a variety of products. A number of considerations enter in. When the product was packed may be relevant, but with some items they are valid for 150 years.



**The Chairman:** The really relevant information is the date of manufacture or production.

**Mr. Seaborn:** I do not think so. Some goods manufactured in June 1971 may still be perfectly useable and edible in January 1975, but any product produced in June may not be edible two months later, depending on the sort of storage and handling it has in the intervening period. If we want to arrive at a kind of protection which ensures that we do not get products of bad quality or products that are no longer edible, we must have a combination of date and storage.

**Senator Connolly:** What do you visualize in connection with natural products?

**Mr. Seaborn:** I do not see that this would necessarily apply. We are talking primarily about prepackaged products, senator.

**Senator Connolly (Ottawa West):** Well, you can buy prepackaged vegetables. You can buy prepackaged potatoes and prepackaged celery.

**Mr. Seaborn:** Perhaps it would be useful to describe it as the spring or fall crop, 1971. I am not an expert on potatoes.

**Senator Connolly (Ottawa West):** I am not an expert on vegetable products at all, but I just wondered if this would cover it.

**Mr. Seaborn:** It could, if we can make regulations.

**Senator Connolly (Ottawa West):** I am not suggesting your umbrella does cover it; I am simply asking if your umbrella does cover it.

**Mr. Seaborn:** I think it could cover that. It was meant to be a general wording on the basis of which regulations could be passed which would be relevant to different kinds of products. Perhaps a regulation which would be applicable to potatoes packed in a bag would be not at all applicable to frozen vegetables. There would be other considerations.

**Senator Connolly (Ottawa West):** I think you have answered my question, but now that you have mentioned frozen foods, is there anything specific in this act in connection with packaged frozen products that would regulate the situation where the frozen food thaws out and is then refrozen and perhaps damaged?

**The Chairman:** There is nothing specific in this bill, senator.

**Mr. Seaborn:** Nothing specific.

**Senator Connolly (Ottawa West):** Is there anything implied?

**The Chairman:** No.

**Mr. Seaborn:** There could be under precisely this part dealing with the nature and quality and age of the product. I might say that one device that is being worked on is a symbol which will change colour when frozen foods reach a certain temperature. The technology is far

from being perfected. The idea is that frozen food must be kept at a certain temperature in order to sustain long life and, if for any reason, that temperature rises to a much higher degree some time between when it is packaged and sold, there could be an indicator on the package which would warn customers to watch out because the temperature has risen to a high degree and the product is no longer safe for consumption.

**Senator Connolly (Ottawa West):** I think you would have a real problem there, because without any bad faith on anybody's part frozen goods might be affected by temperature fluctuations owing to faulty refrigeration. If you were to try to regulate that you might have a problem.

**Mr. Seaborn:** But it would not be simply a question of evil intent, senator.

**Senator Connolly (Ottawa West):** Well, are you taking authority to deal with a situation of this kind?

**Mr. Seaborn:** With respect to the marking, perhaps, but I hesitate to go farther. I hesitate partly because the technology of the art has not been that far developed. Moreover, I do not know whether it would fit into this situation. It might, but I would not guarantee it.

**The Chairman:** Another point of concern, Mr. Seaborn, is the question of being required to mark on labels certain processes which are secret.

**Mr. Seaborn:** The secret process, yes.

**The Chairman:** Manufacturers regard the secret process as being personal property, and yet under the language of the disclosure on the label such information is required respecting the method of manufacture or production of the prepackaged product that they are concerned that they will have to disclose their secret processes on the label. They certainly do not wish to give out their special know-how in producing the particular article. Surely there should be some qualification on that. I cannot conceive that this is what was originally intended by this disclosure aspect.

**Mr. Seaborn:** No, the intention was something much more straightforward, as you can imagine. For example, it should not be labelled "hand-made" if it was turned out by machine.

**The Chairman:** Can we not have some language that will convey what you want without it being as sweeping as this?

**Senator Connolly (Ottawa West):** Perhaps Mr. Seaborn can speak to the minister about that.

**Mr. Seaborn:** I can only reiterate what my minister said to the house committee, and that is that it was not the intention to use this clause to require on a package disclosure of a secret formulation. That is all I can say about it at the moment.

**The Chairman:** The committee accepts all those statements in good faith, but we think something should be put on paper, Mr. Seaborn, because administrations



change. Ministers change, and when they do the new ministers may have different ideas. There may not be any immediate recollection that a particular representation was made. So where it is possible we should clarify as much as possible right in the bill.

We seem to have covered the points that were raised by the submissions that were made to us. Nevertheless, I for one, as chairman, would like to hear the minister again before we finally conclude how we intend to deal with these particular points. I do not doubt, Mr. Seaborn, that you will be able to tell the minister how our thinking goes.

**Mr. Seaborn:** Yes, I shall certainly do that.

**The Chairman:** I suggest we should adjourn further consideration of this bill until next Wednesday. Is that agreeable to the committee?

**Hon. Senators:** Agreed.

**The Chairman:** As we have no other business on the agenda today, I suggest we adjourn.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 22

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WEDNESDAY, MAY 12, 1971

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Second and Final Proceedings on Bill C-215,

intituled:

“An Act to establish the Textile and Clothing Board and to make  
certain amendments to other Acts in consequence thereof”

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REPORT OF THE COMMITTEE

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 22, 1971:

"Pursuant to the Order of the day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Aird, for the second reading of the Bill C-215, intituled: "An Act to establish the Textile and Clothing Board and to make amendments to certain other Acts in consequence thereof".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Aird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, May 12, 1971.

(24)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further consider the following Bill:

Bill C-215 "An Act to establish the Textile and Clothing Board and to make certain amendments to other Acts in consequence thereof".

*Present:* The Honourable Senators Hayden (Chairman), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Haig, Hays, Isnor, Lang, Macnaughton, Martin, Molson, Sullivan and Welch—(18).

*Present, but not of the Committee:* The Honourable Senators Casgrain, Fergusson and Heath—(3).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

### *Canadian Importers Association Inc.:*

Mr. Keith G. Dixon, Executive Vice President;  
Mr. Murray E. Corlett, Q.C., Legal Counsel;  
Mr. B. Andrei Sulzenko, Administrative Assistant.

### *Canadian Textiles Institute:*

Mr. J. I. Armstrong, President;  
Mr. R. H. Perowne, President, Dominion Textile Limited;  
Mr. F. D. Brady, General Counsel;  
Mr. D. Taran, President, Consolidated Textiles Limited.

### *Department of Industry, Trade and Commerce:*

Mr. B. Howard, Parliamentary Secretary to the Minister of Industry, Trade and Commerce.

Upon motion it was Resolved to report the said Bill without amendment.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, May 12, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-215, intituled: "An Act to establish the Textile and Clothing Board and to make certain amendments to other Acts in consequence thereof", has in obedience to the order of reference of April 22nd, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
Chairman.





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, May 12, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-215, to establish the Textile and Clothing Board and to make certain amendments to other acts in consequence thereof, met this day at 9.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Honourable senators, the first bill we have before us this morning is Bill C-215. This is the continuation of a hearing we had two weeks ago, at which the minister was present and made a presentation.

This morning we have two groups who wish to make presentations and the department is represented also.

We can consider the bill and decide what we are going to do with it.

The first group we have here is from the Canadian Importers' Association. According to the memorandum I have, they are represented by Mr. Keith G. Dixon, Executive Vice President; Mr. Murray E. Corlett, Q.C., Legal Counsel; and Mr. B. Andrei Sulzenko, Administrative Assistant. I understand Mr. Dixon will make the presentation.

**Mr. Keith G. Dixon, Executive Vice-President, Canadian Importers' Association Inc.:** Mr. Chairman and honourable senators, on behalf of the Canadian Importers Association Inc.—Association des Importateurs Canadiens Inc.—we should like to record our thanks to you and your honorable colleagues of the Senate Standing Committee on Banking, Trade and Commerce for the opportunity to present our views on Bill C-215 which is now under your consideration.

Bill C-215 proposes "An Act to establish a Textile and Clothing Board and to make certain amendments to other Acts in consequence thereof". As you are undoubtedly aware this bill was first introduced in the House of Commons on January 11th, 1971 and following consideration by the House of Commons Standing Committee on Finance, Trade and Economic Affairs, passed through the Commons on April 6th, 1971. The bill is part of the Government textile policy announced by the Minister of Industry, Trade and Commerce, the Honourable Jean-Luc Pepin, in the House of Commons on May 14th, 1970. Our Association first received a copy of the proposed legislation on January 15th, 1971 and on that date issued a statement setting out the Association's views on the proposed legislation. The statement was widely circulated at

that time and subsequently reproduced in the minutes recording our appearance before the House of Commons Standing Committee on Finance, Trade and Economic Affairs on February 16th, 1971. Copies of the statement are available for any honourable senator who may desire a copy. Also available Mr. Chairman, are copies of our brief to the House of Commons committee offered by representatives of the association on February 16th, 1971.

Our association has carefully followed the progress of this legislation through the House of Commons since its introduction on January 11th, 1971 and studied the recorded considerations of the House of Commons Standing Committee on Finance, Trade and Economic Affairs during their deliberations on this proposed legislation. To the best of our knowledge witnesses appearing before the House of Commons Committee, with the exception of our association and the Consumers' Association of Canada, could be considered supporters of the proposed legislation. This legislation is designed to be restrictive but regrettably the extent to which it will restrict is unknown at this time to all interested parties including The Minister of Industry, Trade and Commerce, and it is perhaps for this reason that there has not been more public and commercial concern for the serious implications contained in the bill. In our view the legislation goes far beyond the need of Government to intercede in Canada's international trade, and we submit that the bill, if passed and proclaimed in the form adopted in the House of Commons on April 6th, 1971, will have serious and unfortunate consequences for those concerned with Canada's exports, Canadian consumers of textile products, and indeed the Canadian textile industry. Our review of the proposed legislation prompts the following comments.

(1) The proposed legislation seeks a means to protect a certain segment of Canadian industry at the expense of all other sectors of the Canadian public.

(2) The bill as it now stands offers a means to effect extraordinary powers of Government intrusion into areas of commercial endeavour.

(3) The proposed legislation finds its source in an industry that has failed to remain either creative or competitive and therefore seeks a solution to some very real problems through Government action designed to restrict competition.

(4) The Canadian textile industry has made it clear that it feels a fair proportion of the Canadian textile market should be theirs by right and not as a result of the distillation of normal commercial competition.

(5) The consequential amendments proposed in the legislation, specifically clauses 26 and 27, appear to seek similar Government interference in normal commercial trade, in areas other than those covered in the body of the bill. It is our view that these consequential amendments need the most careful consideration by you and your Honourable colleagues if we are not to be faced with a series of measures designed to protect various sectors of the Canadian economy alleged to be commercially injured by imports.

It may be useful to review briefly the current protection offered and available to the Canadian textile industry. The Customs Tariff clearly indicates a range of duties which by themselves should be adequate protection for an industry that claims to be well equipped and competitive. Tariffs on cotton textiles range as high as 24 per cent on a most-favoured-nation rate and clothing of varying types is offered protection as high as 32 per cent, also on a most-favoured-nation rate. In addition such textile imports naturally bear their appropriate assessment of federal and provincial sales taxes at various levels of trade. Also the Government presently has (and uses its) authority to impose surcharge duties and to negotiate voluntary restraints on textile products thought to be injuring the Canadian producer. The appropriate Government departments have authority under present statutes to investigate textile and other imports under the provisions of the Anti-Dumping Act and under the Tariff Board. Finally, the new Textile Labelling Act, Bill S-20, passed by Parliament last year, the regulations for which are now in the course of preparation, will act as a deterrent to Canadian textile imports. It may be noted that, while the Textile Labelling Act and its regulations will also apply to Canadian manufacturers, we suggest that this will be an additional advantage to the Canadian industry. While we cannot dispute the merits of this labelling legislation it will, we suggest, be a greater burden to the foreign exporter trading with several markets than to the Canadian manufacturer.

The Canadian textile industry has often been quoted as stating that they can meet the competition from the so-called developed countries but that their difficulties arise with the competition from the developing or low-cost countries. In this connection we should like to submit for your consideration figures taken from the Dominion Bureau of Statistics Trade of Canada, December 1970, which indicate that about one third of Canada's textile imports by dollar value originate in low-cost countries. Please refer to Appendix A. Appendix B sets out domestic production of textiles and clothing for the years 1968 and 1969 drawn from the Canada Year Book and from the Canadian Textiles Institute's figures. Appendix C on the same page notes that the total imports from low-cost countries for 1970 as a proportion of total domestic production in 1969 is a mere 6.9 per cent by dollar value.

Insofar as the Canadian textile importer is concerned the proposed legislation presents a most serious handicap in that the bill anticipates continuing submissions to the Textile and Clothing Board at the request of a wide variety of Canadian textile producers. Inevitably the Bill

therefore inhibits all textile imports and this results in an immediate restriction of choice being made available to the Canadian consumer. The minister at a luncheon meeting of our Association in Montreal on January 20th, 1971, indicated that it was his interpretation of the legislation that the only function of the Textile and Clothing Board would be to review submissions received from the Canadian textile industry and recommend to him and his colleagues in the Government an appropriate course of action. While this is a reasonable interpretation of the purpose of the Bill there is sufficient evidence that the legislation provides for prompt restrictive action by the Government following the Textile and Clothing Board's consideration and report. Under the circumstances, therefore, it would appear to our Association that while the restrictive powers will remain in the hands of the Government the report of the Textile and Clothing Board will be a serious consideration in the Government's decision. This in our view grants wide and unnecessary influence to the Textile and Clothing Board which will in fact result in decisions being taken which are not only adverse to the Canadian textile importers' interests but also adverse to other sections of the Canadian textile industry.

In conclusion, Mr. Chairman, we should like to draw your attention again to the possible serious consequences of the amendments proposed in sections 26 and 27. Apparently the Government in introducing this legislation with its consequential amendments felt it necessary first to create the Textile and Clothing Board, and second introduce by this legislation the authority to create or provide for similar boards with similar powers to be concerned with other Canadian industries thought to be or alleged to be commercially injured by imports. We suggest that this authority is unnecessary at the present time and that the consequential amendments would be more appropriate if they were confined to the subject of the legislation, namely textiles. The legislation as a whole and the consequential amendments in particular have been viewed with some concern by Canada's trading partners abroad. Not unnaturally, interested foreign exporters and members of our Association are apprehensive at the inclusion of broad powers to restrict imports included in a Bill whose prime purpose, we are advised, is to attempt to rationalize and make more competitive the Canadian textile industry. We therefore respectfully urge, Mr. Chairman, that you and your honourable colleagues carefully consider those consequential amendments and their possible significant effects not only on Canada's international trade but also on the interests of the Canadian consumer. Thank you, Mr. Chairman.

**The Chairman:** Mr. Dixon, you refer to clauses 26 and 27 of the bill. Members of the committee will know that those are the two clauses that impart certain amendments to other statutes and really provide the authority or power that carries the minister on from the stage of the board's report or recommendation.

Addressing ourselves to those two clauses for the moment, Mr. Dixon, is it your suggestion to strike them out?



**Mr. Dixon:** No; to strike out the word "goods", which appears in both clauses, Mr. Chairman.

**The Chairman:** The wording of clause 26 refers to "textile and clothing goods".

**Mr. Dixon:** And clause 27?

**The Chairman:** Clause 27 refers to "goods". What would you propose should replace the word "goods"?

**Mr. Dixon:** I would ask our counsel, who has assisted us with regard to this particular clause, to comment.

**Mr. Murray E. Corlett, Q.C., Legal Counsel, Canadian Importers Association Inc.:** Mr. Chairman, with reference to clause 26, the Association has in mind that the proposed section 5(2) of the Export and Import Permits Act be restricted to subparagraph (a), which relates to the functions of the Textile and Clothing Board under Bill C-215 deleting subparagraph (b), which has no bearing at all on textiles.

**The Chairman:** I am not so sure, Mr. Corlett, that I agree with that. The Anti-Dumping Tribunal was established two years ago mainly to determine damage or injury in relation to goods said to have been dumped. The following year the legislation was amended so as to give power to the tribunal to make determinations of damage or injury without any reference to whether or not the goods were dumped.

Actually, as I put it to the minister the other day, the Anti-Dumping Tribunal could be authorized to perform the function for which the Textile and Clothing Board would be established. Would you object to that?

**Mr. Corlett:** No; this Association would not object to that procedure, although we had been given to understand that the Government decided that it wanted a special board relating to the subject of textiles.

**The Chairman:** The explanation we were given for that was that the Anti-Dumping Tribunal did not have authority to initiate its own inquiry. Of course, a simple change in this bill could have accomplished that. However, it is interesting to know that you would not object to the Anti-Dumping Tribunal, but you object to the Textile and Clothing Board. They would be doing the same thing, would they not?

**Mr. Corlett:** Yes, they would. We recognize that there was an amendment to the Anti-Dumping Act earlier in this session. However, it is the feeling of the Association that if the Anti-Dumping Tribunal considered that there was material injury to a Canadian industry arising from imports from low-cost countries there was already an adequate remedy, namely in the form of the surtax which may be imposed under the authority of section 7 of the Customs Tariff Act.

The textile industry has informed the Government that they need additional assistance in order to carry out its program of rationalization. We want the Government to have the right, after review by the Textile and Clothing Board, to impose a unilateral quota on imports. The Government, as we understand it, has said as a matter of

policy this is what they propose to do. However, our concern is that if subparagraph (b) of the consequential amendment provided for in clause 26 appears, the same right will be given to any other industry in Canada as long as the Export and Import Permits Act exists.

These other industries, as far as we know, have not asked for this assistance. If the leather goods industry requires assistance, our view is they should go to the Government and sell the bona fides of their system to the Government in the same manner as that adopted by the textiles industry.

**The Chairman:** Do you say that subparagraph (b) on page 13 does not relate to the subject matter of this legislation?

**Mr. Corlett:** That is our view, sir.

**The Chairman:** Although when it touches on the provisions of the Customs Act, goods is defined in the most broad language in the definition section:

"goods" means goods, wares and merchandise or movable effects of any kind, including vehicles, horses, cattle and other animals.

I would have thought the objection might be, if the Textile and Clothing Board is intended to function in relation to that industry, why is the authority provided in paragraph (b) on page 13 to deal with anything that comes within the subject matter of goods, and in respect of which the Anti-dumping Tribunal has functioned or may function?

**Mr. Dixon:** This is basically our argument, Mr. Chairman. The same applies more specifically on clause 27, where the word "goods" is specifically used.

**The Chairman:** Yes, that is right. I have been doing all the questioning. Have any honourable senators some questions?

**Senator Desruisseaux:** Since you have certainly made some study of this, and surely made some comparisons with other importing countries of textile goods, how does your association view the Canadian textile importation control and restriction compared with the American?

**Mr. Dixon:** Basically we feel the Canadian textile industry has similar and, in many cases, more protection and more recourse than in such countries as the United States or Great Britain, or any other countries in Europe. We are satisfied with the customs tariff, the series of voluntary restraints permitted under existing legislation, the authority the Government has to apply a surcharge if serious injury is caused in a particular textile product, such as shirts, or is thought to be injurious, when they apply a surcharge for an unlimited period or a renewable period. In addition, there is recourse, as the chairman has mentioned, the Anti-dumping Tribunal. While the Anti-dumping Tribunal itself cannot, as the chairman rightly pointed out, originate an investigation, matters that are drawn to the attention of the Department of Revenue, who do have the authority to initiate an investigation, quickly received attention from that department. Finally,

of course, there is the Tariff Board, which is a court of last resort, as it were, for both the textile importer and the textile manufacturer. We are satisfied basically by comparison that Canada stands well in protecting its domestic industry.

**The Chairman:** Mr. Dixon, as I understand your presentation, if clause 26 remains as it is, except that paragraph (b) on page 13 is struck out, that clause would be satisfactory to you?

**Mr. Dixon:** It would, sir, yes.

**The Chairman:** In other words, what you are doing is limiting it to the Textile Act, and to deal with textile and clothing goods?

**Mr. Dixon:** Right, sir.

**The Chairman:** Your area of operation, of course, and your function, judging by your title, the Canadian Importers' Association, relates to every variety of goods imported.

**Mr. Dixon:** This is true, sir.

**Senator Isnor:** You suggested striking out the word "goods". Would you give us a definition of "goods" as it applies to your association?

**Mr. Dixon:** We feel, as the chairman just mentioned, almost any product you can think of would be covered by that statement.

**Senator Isnor:** In fact you do away with the bill if you do away with the word "goods".

**Mr. Dixon:** If we cannot succeed in persuading the Government, or more particularly at this time the senators, to recommend the bill be done away with entirely, we would at least like to confine it entirely to the subject matter on hand, which is textile.

**Senator Isnor:** What percentage of imports comprise goods by the yardage compared with manufactured goods?

**Mr. Dixon:** Our best estimates—and they are only estimates, because, as I think you are aware, the textile industry is a very fragmented industry, and there are people in this room who could confirm that fact; there is a lot of selling and buying all along the stages of production—our best estimates are that 60 per cent of goods imported are for further production or manufacture in Canada, for garments and so on.

**Senator Isnor:** Sixty per cent?

**Mr. Dixon:** Yes.

**Senator Isnor:** Yard goods?

**Mr. Dixon:** Yes, or back from yard goods, by which I mean yarn or raw materials.

**Senator Isnor:** And 40 per cent manufactured?

**Mr. Dixon:** Right.

**Senator Isnor:** What would that include?

**Mr. Dixon:** The preponderance with which the Canadian textile industry is concerned is the shirt or cheap garment, T-shirt type of product.

**Senator Isnor:** From one country only?

**Mr. Dixon:** No, it is from a group of six countries, largely in the Far East. As I mentioned in our presentation, the Textile Institute has often been quoted as saying they can handle what they regard as normal competition, but they find it difficult to meet competition from the Far East low-cost countries, as they call them.

**Senator Isnor:** Coming back to the 60 per cent, that is yard goods?

**Mr. Dixon:** Right.

**The Chairman:** He said yard goods and yarns.

**Mr. Dixon:** Everything up to yard goods. The remaining 40 per cent is a variety of garments, which includes the most luxurious in the world and also the very cheapest as far as imports are concerned.

**Senator Connolly (Ottawa West):** May I ask Mr. Corlett a question or two. Under the existing powers the Government can take action to deal with imports that are damaging the Canadian textile industry if it so desires, under the Customs Tariff Act.

**Senator Benidickson:** We have a new act, the Anti-dumping Act.

**Senator Connolly (Ottawa West):** That is another matter. I am asking about this one.

**Mr. Corlett:** You remember when the Anti-dumping Act was implemented there was a consequential amendment to add section 7(1) (a) of the Customs Tariff Act, and where it was shown to the Government that there was injury to the Canadian producer or manufacturer the Government had the right unilaterally to impose a surtax. There was no maximum limit to the surtax at all, and this provision has been resorted to. Now, of course, the determination of material injury has been transferred from the Government or the Executive to the Anti-dumping Tribunal.

**Senator Connolly (Ottawa West):** The Government has very broad powers to deal with any situation that might be considered damaging to a segment of the industry. What I am concerned about is this. We have come here to discuss this bill. This bill does not give the Government any more powers. What the bill apparently seems to purport to do is to supply the Government with information based on an inquiry, a hearing, at which industries like your own can appear. Is it not better for you to have an opportunity to influence the decision the Government might make by appearing before these boards, whether it is this board or the Anti-dumping Tribunal? Are you not



better off to have these boards available to you than you would be if the Government were simply acting on the best of recommendations made by officials in the department?

**Mr. Corlett:** That is true, senator, up to a point, as far as we see it. It is this consequential amendment that has been discussed earlier this morning which would go one step further and give the Government another weapon, namely the right to impose a unilateral quota on imports. If you look at section 5 of the Export and Import Permits Act today, you will see that the Government is restricted to certain types of situations where it can impose a unilateral quota.

The Government of Canada has said this is our policy with reference to textiles. Although initially it felt that there were other adequate remedies available to the textile industry the Government has gone along with that, and we will have to accept it, but we are saying that there should be restrictive right to impose a unilateral quota, which can be achieved by this consequential amendment to the Export and Import Permits Act, but restricted to the subject matter of this bill, namely, textiles and clothing products which are defined in section 2.

**The Chairman:** Senator Connolly, there may be a little confusion because of the fact that there has been included in this bill an amendment to the Export and Import Permits Act—that is section 26—and there may also be some confusion because section 27, purports to amend the Customs Act. Ordinarily you would expect that to be done in bills proposing direct amendments. They have used this as sort of a catch-all for purposes of enlarging the authority under the Export and Import Permits Act and Customs Act to deal with a situation that will occur under this bill.

I think the conclusion that you reached seemed to be the right one, that at the present time, and quite apart from this bill, the Anti-dumping Tribunal, on a reference by the minister, has full authority to deal with any question of damage or injury by reason of imported goods.

**Senator Benidickson:** Which is a relatively new provision.

**The Chairman:** Yes, the amendment that provides that power was passed last year.

All that is proposed here is that under the Export and Import Permits Act the minister will have authority to act in relation to reports or recommendations that may be made after this bill becomes law by the Textile and Clothing Board, or by the Anti-dumping Tribunal. So, truly, when this bill becomes law you have two places, at least, to which you can go. You can go to the Anti-dumping Tribunal, or in a more limited sense, you can go to the Textile and Clothing Board.

**Senator Connolly (Ottawa West):** The Government, I think, as a result of the activities of these boards, is not going to be taking a decision—I do not like to use the word “vacuum”, but it is not going to be taking a decision without knowing that all the parties have had an opportunity to present their views.

**Mr. Sulzenko:** It will not be a unilateral decision.

**Senator Connolly (Ottawa West):** It will not be a decision that is taken entirely by an official department.

It seems to me that that is helpful to the Canadian Importers' Association's case. They should have this tribunal. I think that all this is doing is giving you. Correct me if I am wrong, but all this is doing is giving you an opportunity to present your case before action is taken by the Government. Is this a more helpful thing to have, than not to have?

**Mr. Sulzenko:** What you say, Senator Connolly, does seem reasonable. Although no mention has been made specifically in the brief that has been prepared for presentation before this committee, it is the view of this association—and these points were emphasized before the House of Commons committee—that this will be a permanent bill, and we have the assurance of the present Minister of Industry, Trade and Commerce that import interests would be considered by the proposed board. But we feel that we always have to take into consideration the fact that perhaps in 20 years' time there will be different parties involved in government, and as the wording stands in the bill it would be quite possible, it would seem to us, for a government to ignore import interests completely.

**Senator Benidickson:** The board is a very small one.

**Mr. Sulzenko:** There are three members, I believe, Senator Benidickson.

**Senator Connolly (Ottawa West):** What did you say at the end?

**Mr. Sulzenko:** That the work of the board, in various sections—and I would be glad to point them out—seems to be couched in permissive language. In other words, the board “may receive evidence submitted to it by an interested party”. This is section 12 of the bill.

**Senator Connolly (Ottawa West):** Certainly you have the prerogative right available to you. If the board decided, for example that your association would not be heard and you felt it was essential, I would imagine you could probably go to the court and get an order requiring the board to hear you.

**Mr. Sulzenko:** It would be just that much more difficult.

Our suggestion was that it should provide that the board shall hear the interested parties.

**Senator Connolly (Ottawa West):** There may be sense in that, although there may be times, I think, when the board has to have some restrictions. However, you know this bill better than I do.

**The Chairman:** All we are noting at the present time is the position of this association. We can decide later whether we think it should be ‘may’ or ‘shall’



**Senator Cook:** Dealing with section 26, when the minister was before us he said:

I might also say to you that a number of countries which I have been negotiating have said to us, "Why don't you, like all the others, have the possibility of establishing quotas?" I could name countries where I have been told that Canada is the only country that does not have the proper equipment to deal with these problems and they said to us, "Why don't you have a quota system?"

As I understand it, that is the very purpose of Section 26.

**Mr. Corlett:** May I make a comment, Mr. Chairman?

**The Chairman:** Yes.

**Mr. Corlett:** I think we should bear in mind, senator, that Canada is the fifth largest trading country in the world, which for the size of the country is really a stupendous feat and reflects great credit on our exporters and our producers and, indeed, the Department of Industry, Trade and Commerce. I think it is politically unwise, speaking in the universal sense, to empower authority to institute a system of quotas, and I and our association admire the rather statute way by which the Department of Industry, Trade and Commerce carry on their quota regulations at the moment. They are within the law, of course, but they put the onus for control and the onus for agreement on the exporting countries. They are usually referred to as voluntary restraints. However, there is an onus in the agreement—

**Senator Connolly (Ottawa West):** You think there is an arm twisting?

**Mr. Corlett:** I would strongly suggest that there is enough evidence to consider that possibility.

However, the fact is, as I say, that we are a leading world trader and our export interests must continually have preference and, for this reason, I admire the Government, and our association admires the Government, for the factual and effective way in which they are able to regulate, as they do now with some nine or ten countries, textile products by quota. Furthermore, they are saved the huge administrative costs. Although they have a checking system of their own here in Canada, the administration of quota systems is carried on in the country of export, and I would suggest to the chairman and the committee that, perhaps, we are acting very effectively in this area.

**Senator Cook:** He did make one comment—they do not always work.

**Mr. Corlett:** It is a sound argument for reducing the number of restrictions, senator, to a minimum. Whatever law or restriction is passed, there are people always seeking amendment around it. However, I am confident that the very existence on the voluntary quotas is a deterrent on the majority not to break the rules.

**Senator Molson:** My question is somewhat similar to that of Senator Cook. Does not section 26 provide a different remedy from any that could apply under the Anti-dumping Act. Just prior to Senator Cook's question,

it was being suggested that all the powers were already there under the Anti-dumping Act and that the Anti-dumping Tribunal could do what was necessary; but in fact, they have not all the options provided by section 26, which enables the system of quotas to be imposed. Am I not correct?

**The Chairman:** Senator Molson, in my view you are right, because, if the Export and Import Permits Act is to be available for this use, there must be some amendment to the Export and Import Permits Act, I think, having regard to the terms of section 5 as they exist at the present time.

Section 5 reads, in this fashion. I do not wish to belabour the point, but it just illustrates that, if they want to use this control list on imports, which is provided under section 5 of the Export and Import Permits Act, then they must put in some authority, by way of amendment to that act, so that where the Anti-dumping Tribunal makes a report or where the Textile and Clothing Board makes a report, they can correlate the two—the Export and Import Permits Act and the implementing of the report or recommendation of either one of these boards. Section 5 of the Export and Import Permits Act says:

The Governor in Council may establish a list of goods, to be called an Import Control List, including therein any article the import of which he deems it necessary to control for any of the following purposes, namely:

(a) to ensure, in accordance with the needs of Canada, the best possible supply and distribution of an article that is scarce in world markets or is subject to governmental controls in the countries of origin or to allocation by intergovernmental arrangement;

(b) to implement any action taken under the Agricultural Stabilization Act, the Fisheries Prices Support Act, the Agricultural Products Cooperative Marketing Act, the Agricultural Products Board Act or the Canadian Dairy Commission Act, to support the price of the article or that has the effect of supporting the price of the article;

There is the extent of the purpose for which the Governor in Council can function under section 5. This section 26 purports to add to that, by saying that where you have a recommendation or a report from either one of these groups, then the Governor in Council can use the facilities of the Export and Import Permits Act, in other words, that the control list that is provided for there is available for use to the extent provided here, that is, to limit the importation of such goods to the extent and for the period that, in the opinion of the Governor in Council, is necessary to prevent or remedy the injury.

That is the scope of this amendment, to provide an effective—I was going to say "weapon"—an effective means of giving effect to the report or recommendation of either one of these boards, if the minister is satisfied that it should be done. But, remember, it is discretionary in him. If he does not make the recommendation to the Governor in Council, then you can assume that that further step would not be taken.

I notice in the wording it says that it must be made on the report of the minister. Therefore, he must recommend.

Our law clerk, Mr. Hopkins, and myself were talking earlier about this. The only concern we had was, who is the minister? The minister referred to in this bill is the Minister of Industry, Trade and Commerce; but who is the minister under the Export and Import Permits Act? In this case, we are fortunate that the minister who administers the Export and Import Permits Act is also the Minister of Trade and Commerce, so we are all right on that one. But in the next one, section 27, we may have to make an addition, section 27, we may have to make an addition, because there are two different ministers.

**Senator Molson:** In view of the breadth and scope of section 5 which you read. Mr. Chairman, it would seem to me that subsection (b) here on page 13 is relevant. I was questioning that with the witness a minute ago, but when you read the breadth of that section, it seemed to me that subsection (b) is in its proper place here.

**The Chairman:** Quite true.

**Mr. Dixon:** May I make another comment here. I do not want to question Senator Molson's judgment, especially after last night's victory, which we are all very pleased about.

**The Chairman:** You might get a much—

**Mr. Dixon:** Do you not agree, sir, that the point we are after there is to limit it purely to textile goods rather than to a complete wide range?

**Senator Molson:** This was my original thought. If we are amending this other act, the Export and Import Permits Act, it seemed to me that then this becomes relevant because of the scope of that act is not in any sense limited to anything to do with textiles, which this act is.

**Mr. Dixon:** No, but I think our counsel would agree that the original intent of the Export and Import Permits Act was really strategic and military and for foreign exchange.

**Mr. Corlett:** Yes. Senator Molson will remember that the Export and Import Permits Act was a post war statute. If you look at the debates of that time, you will find that Mr. Howe, who was the minister, indicated that the statute would only be in effect for a few years. There was a definite life to the statute. There have been successive renewals. Our thinking is that this is an extraordinary remedy. If an industry, such as the textile industry, as they have been able to do, can convince the Government that they need this extra remedy, that is fine. But then, if another industry comes along, it is our view as importers, that this other Canadian industry, wherever it may be, has the onus on it to satisfy the Government at that time.

**The Chairman:** You know, Mr. Corlett, when you are talking about the limited purpose for which this Export and Import Permits Act was designed, at the time it was brought in, it reminds me of the fact that I had to review once the whole history of the income tax legislation of

Canada. I went back to 1917, when the Income Tax Act was originally introduced. It was called the Income Tax War Revenue Act. Sir Thomas White, when he was presenting the bill in 1917 in the House of Commons, said that this bill was designed to produce revenue to finance the additional responsibility of sending men overseas and would be terminated of course as soon as the war was over.

**Senator Beaubien:** It is a long war.

**The Chairman:** Finally, in 1948, I think it was, we got to the stage where we changed the name of the act. In 1949 we introduced a new Income Tax Act. Once a statute gets on the statute books, and if it is capable of an application that was not even thought of at the time it originally got there, you will find amendments, adding powers, rather than introduce another bill. That is, I was going to say the progress in legislation, but I think rather I should say it is the progression in legislation.

Could we come to section 27, because the same point is involved there, except that we do have this problem in section 27 which proposes an amendment by adding a subsection (2a) to section 22, subsection (2), of the Customs Act.

In this case we have a problem, because the Minister of Customs is not the same minister as the minister of Trade and Commerce. Yet the minister who functions under this new section (2a), I take it, is the Minister of Customs, since they are amending an act that he enforces. So we may have to say "either the minister or the Minister of Customs".

On section 22 of the Customs Act, it may be I should read it and you will get the purport of it:

(1) Unless the goods are to be warehoused in the manner provided by this Act, the importer shall, at the time of entry,

(a) pay or cause to be so paid, all duties upon all goods entered inwards; or

(b) in the case of goods entered in accordance with the terms and conditions prescribed by regulations made under subsection (3), present in respect of the duties upon such goods a bond, note or other document as prescribed by such regulations;

and the collector or other proper officer shall, immediately thereupon, grant his warrant for the unloading of such goods, and grant a permit for the conveyance of such goods further into Canada, if so required by the importer.

The comes subsection (2)—and I remind you that we are proposing a new subsection (2a). Subsection (2) says:

(2) Notwithstanding subsection (1), goods of which the export or import is prohibited, controlled or regulated by or under any Act of Parliament, may be detained by the collector and shall be dealt with as provided by any law in that behalf.

Then there is subsection (2a), which is felt necessary to provide the authority of the minister in relation to goods intended for import. Clause 27 of the bill provides:

Notwithstanding subsection (1),...



Which I have read to you and which is contained in the Customs Act, providing that by paying a duty or providing a bond the goods may be released.

(2a) Notwithstanding subsection (1), where at any time it appears to the satisfaction of the Governor in Council on a report from the Minister that the goods, the export of which from any country is the subject of an arrangement or commitment between the Government of Canada and the government of that country,...

That may refer to voluntary restraints.

...are being imported into Canada in a manner that circumvents such arrangement or commitment, the Governor in Council may, by regulation, prohibit or otherwise regulate the entry of goods to which the arrangement or commitment between Canada and that country relates.

That means that the right which an importer has to pay duty or provide a bond and recover his goods is subject in this case in relation to goods, which I take it may be the subject matter of voluntary agreement, if a country shipping the goods to Canada is attempting to evade the obligations which it voluntarily undertook. The minister, in this case the minister of customs, reports to the Governor in Council, who may prohibit or otherwise regulate the entry. The full forces of subclause (1) would not be available to them.

**Senator Molson:** Why could this not be done under the Export and Import Permits Act?

**The Chairman:** Then the conflict would arise as to the right under clause 22.(1) when goods are presented. The customs officer refusing might find himself in trouble.

**Senator Molson:** It is too late in the process, in effect.

**The Chairman:** That is correct.

**Senator Connolly (Ottawa West):** You say, Mr. Chairman, that in effect clause 27 is not related to the Textile and Clothing Board?

**The Chairman:** That is correct.

**Senator Connolly (Ottawa West):** This is done entirely by order and regulation made by the minister and it is something to do with the Customs Act.

**The Chairman:** To be exact, it is an order made by the Governor in Council on the recommendation of the minister.

**Senator Connolly (Ottawa West):** And the minister in turn has received the recommendation from officials of the department.

**The Chairman:** That is right.

**Senator Connolly (Ottawa West):** Because the goods are imported in a manner contrary to or at variance at least with the arrangement made between the Government of Canada and that of the exporting country.

**The Chairman:** That is right.

**Senator Connolly (Ottawa West):** Therefore we are not referring to the Textile and Clothing Board at all when we consider clause 27.

**The Chairman:** No, except that these voluntary arrangements may have more particular application to textile importations and therefore it would have a direct bearing on that industry in particular.

**Mr. Dixon:** At the moment, Mr. Chairman, the only voluntary restraints are in textiles, with the exception of radio receiving tubes from Japan.

**The Chairman:** Yes, almost the full import of this applies to textile imports. However, conceivably there could be other situations and this is drawn broadly. Anything that is the subject matter of voluntary agreement on restraints or quantities as between Canada and any other country could be affected by this proposed amendment to the Customs Act. At least, that is the view I take at the moment.

**Senator Connolly (Ottawa West):** Could I ask one of the witnesses, in view of the discussion we have now had relating to clause 27, might they favour the change that the Textile and Clothing Board be authorized to review the subject matter of clause 27? There is no hearing provided for the imposition of the sanction; it is just imposed by order in council on the recommendation of an official.

Would the Canadian Importers Association be better pleased by having an opportunity to present its case before the Textile and Clothing Board in the event of an order in council being contemplated?

**Senator Cook:** Is it not simply a matter of evidence as to whether a restraint agreement has been broken?

**The Chairman:** Are you referring to clause 9, Senator Connolly?

**Senator Connolly (Ottawa West):** No, just clause 27. Perhaps I should look at clause 9.

**The Chairman:** Yes; clause 9 provides the authority to the Textile Board, which is limited with respect to the importation of any textile and clothing goods. They have authority either to initiate an inquiry themselves or to act on a complaint from a Canadian producer or a written request from the minister.

**Senator Cook:** Clause 27 applies only if there is in fact an arrangement between the two governments; it depends on the question of evidence whether it has been broken.

**The Chairman:** At that stage, I take it, if the Government has made a voluntary arrangement in relation to quantities of goods imported we would be beyond the stage of a question of damage or injury by reason of the agreement. It may be by reason of the abuse of the agreement. The new subsection (2a) imposed by clause 27 of this bill would cover the case where there is an abuse or it is believed one exists in relation to the terms of the agreement.



That seems to be a reasonable authority to grant, does it not? Are there any other questions in relation to this point?

We will move on to your other objections, Mr. Dixon. You are of the opinion that the stream of imports should not be interfered with in any way other than by tariff; is that correct?

**Mr. Dixon:** The largest handicap, Mr. Chairman, in this proposed legislation as far as the Canadian textile importer is concerned is the uncertainty of future action by the Textile and Clothing Board. No Canadian importer and, indeed, no manufacturer in Canada will ever know in advance literally what product will come under examination of the board at the request of a domestic producer. There will obviously be situations in which a domestic producer in difficulties will appeal for assistance. There will be Canadian producers of similar goods who are quite satisfied with existing arrangements. Undoubtedly, also, there will be some conflict of interest within the industry as a whole.

To the Canadian importer, however, the whole possibility and opportunity for restrictive legislation on virtually any textile product, whether it be an expensive cashmere sweater or a cheap shirt from the people's Republic of China, can be the study of a review by the Textile and Clothing Board at any time, with subsequent recommendations or restrictive action. This is itself is our largest objection to the bill. Had the bill not included these consequential amendments, which inclusion indicates that certain serious restrictive action can result from the board's inquiry and recommendation to the Government, we would have been quite satisfied.

We agree in principle that Canada needs and must have a strong textile industry. At the same time we do not wish it to be entirely protected from world competition. We recognize at the moment that there is an imbalance of trade in so far as Canadian textile imports and exports are concerned, although there are areas of Canadian textile production which are not only profitable, but highly successful in the export field. I think immediately of carpets, where Canada has an enviable reputation.

Our most serious objection to the bill, therefore, is the uncertainty of restrictive action against any textile products following review by the Textile and Clothing Board.

**The Chairman:** Mr. Dixon it appears to me from what you have said that what you would like would be to have the importer added as a person who is entitled to avail himself of the services of the Textile Board.

**Mr. Dixon:** This is true.

**The Chairman:** At the present time, under the bill only the Canadian producer of textile goods, or the board itself on its own initiative, or the minister, may get the subject matter before the board. What you are suggesting is that an importer should be given a right to lodge a complaint to the board.

**Mr. Dixon:** This is one aspect of our view, sir, yes.

**The Chairman:** Is this one that you are putting forward?

**Mr. Dixon:** Yes.

**The Chairman:** Is this heavy artillery?

**Mr. Dixon:** No, importers never use heavy artillery, sir.

**The Chairman:** Sometimes the more subtle approach is better.

**Mr. Dixon:** Seriously, our interests are first in the uncertainty of the future as far as textile imports are concerned. Equally, we are interested in having the opportunity to present our views and to ensure that we are invited as importers to present the views of the importing community when the board is making its consideration.

**The Chairman:** You do have that now.

**Senator Cook:** Under clause 12(2)(c) an importer is an interested party.

**The Chairman:** You are an interested party under clause 12.

**Mr. Dixon:** Yes, but there again we come back to our "may" or "shall", which I understood from you on the earlier clause you would consider later.

**Mr. Corlett:** We could agree. Mr. Chairman, the definition of "interested party" does include an importer. Then, as we see it, if you look at subsection (1) of clause 12,

The Board may...receive evidence...by an interested party

**Senator Cook:** That is a good point.

**Mr. Corlett:** In 10 or 20 years time the chairman of the board might not like importers and he might ignore them. It is true that notice has to appear in the *Canada Gazette*, but from a practical point of view I do not think the average importer would read the *Canada Gazette*.

**The Chairman:** Certainly we do not have problems about putting the word "shall" in relation to some function of the minister; we do not have that problem here. It is simply that the board, you said, shall in any manner receive evidence submitted by an interested party. We are not going to upset by reason of that any of the order of priorities or anything else, on matters of address. It may make sense, because in that same subsection it says:

The Board may, in the manner specified by its rules, receive evidence.

Then it goes on to say:

...shall take such evidence into account in making its report to the Minister.

There is a difference there. The board decides under the "may" that it will not hear an interested party. Yet the subsection says it

shall take such evidence into account in making its report.

Having refused to hear him, they do not know what his evidence is going to be and therefore they do not pay any attention, or they do not guess. I think the importer is an interested party, and if he is he should have the opportunity of presenting evidence; he should be in the position of making the decision whether he will go or not; it is not for the board to decide whether it will hear him or not.

**Senator Cook:** I agree. That seems a good point, Mr. Chairman.

**The Chairman:** Are there any other points, Mr. Dixon? It seems to me, as I read your brief, that you seem to have touched on the pertinent points. Have I missed any?

**Mr. Dixon:** No.

**The Chairman:** I thought you were trying to suggest in your brief that there was adequate protection to the textile industry through the tariffs that presently exist, and I thought you were suggesting that therefore nothing more is needed.

**Mr. Dixon:** This is how we have basically felt all along, that there is more than adequate protection under the existing statutes. However, as our counsel has pointed out to you and your committee, the Government has been prevailed upon by the Canadian textile industry to take a more in depth look at their particular problems, and this legislation has passed the Commons and is now before you. We would anticipate that we cannot hope at the present time to see the bill substantially amended. Consequently, we have concerned ourselves with trying to restrict its restrictive powers to the minimum.

**The Chairman:** Just stopping you there, Mr. Dixon, when you say that you could not hope, if you look at what we have done in the past in relation to legislation, we have rewritten the whole thing.

**Mr. Dixon:** I did not mean to presume your opinion, of course.

**The Chairman:** You might want to revise the language that you used.

**Mr. Dixon:** Yes. I do not want to presume your committee's decision. I do want to suggest that we have to try to anticipate varying consequences of your consideration and the final bill. Let me put it this way. I can say this I think. The Canadian textile industry is continuing to be vociferous and anxious to have more and more restrictive measures assessed against textile imports, and eventually, of course, we are concerned that by the consequential amendments this trend will continue. This is even now our dominant concern over the textile review board that is being considered.

**The Chairman:** The whole basis of this bill—and I think you agreed with that, inferentially anyway—is that it is to deal with the question of damage or injury to the domestic market. I thought I understood you to say that you agreed with that in principle, that that was a worthy objective.

**Mr. Dixon:** It is indeed, sir. It is just the cost to the Canadian consumer and the Canadian importer and exporter that is our concern. We agree with the rationalization program very much indeed.

**Senator Molson:** Does your association have a large membership? I suppose it must be very large.

**Mr. Dixon:** Unfortunately, senator, no, it is limited at the moment to about 640 members, of which 60 only are concerned with textiles. We have some beer importers within the membership also.

**Senator Molson:** I did not bring that up; you did.

**Senator Isnor:** Getting away from the legal aspect, are you concerned mostly about the imports or the exports of goods by the yard or manufactured?

**Mr. Dixon:** Undoubtedly there is in the textile industry a conflict within our association membership concerned with textile imports. There are those who import finished garments who maintain, rightly in their view, that any protection offered to the garment industry should be very limited. I and the majority of our importers are concerned with the import of textile piece goods, where there is further Canadian content to be added before the garment or final product reaches the consumer. There is a conflict within our membership. Naturally those who import garments want the duties and restrictions on garments to be the minimum; those who import piece goods, which are subsequently to be processed in Canada, seek, and feel they have a better ground for, more protection in Canada against imported garments and less protection in Canada against the textile piece goods, which they feel would be to Canada's advantage, and I share their view. There is a division within our association.

**Senator Isnor:** As expressed just now, your motto would be "Imports for Exports".

**Mr. Dixon:** Exactly.

**The Chairman:** I take it we have run through your presentation?

**Mr. Dixon:** Yes, sir. Thank you very much indeed for an excellent hearing.

**The Chairman:** I use the word "through" and not "over".

**Senator Benidickson:** Mr. Chairman, I just want to go back for a little. We originally relied on the Customs Act. You have emphasized the importance of relying on tariffs. We had a big inquiry in 1958, presided over, I think by Mr. Justice Turgeon. He came to the conclusion that the protection required for textiles should be perhaps that which would meet imports from America, and he rejected a lot of the wails with respect to the imports of textiles from the so-called undeveloped countries.

We have not had a great deal of what you might call protective legislation for years. Strangely, we have been getting it in the last two or three years. There is the Anti-dumping Act which is supplemental to the use of tariffs, and we have had the act with respect to a



machinery board, and now we get another board in connection with textiles. What are your comments with respect to the import of textiles from the underdeveloped countries, particularly the Pacific rim countries, with whom we are doing a lot of trade these days?

**Mr. Dixon:** Senator, in matters of international trade—and I said earlier that Canada is the fifth largest trading nation—we share the view that each country should produce what it can produce best, and I have grave doubts that Canada, with a population of 21 million, is able to produce the complete range of textiles for its citizens at competitive prices.

We find it illogical for Canadian manufacturer to produce the type of goods that are available from the so-called Pacific rim countries. We feel they should concentrate their efforts where their potential lies, which is in carpets, blankets and certain fabrics, and Canadian-styled and Canadian-designed clothes. Basically we subscribe to the view that a customer abroad is just as important as a Canadian textile worker, because the customer abroad provides a livelihood for a vast majority of Canadians, directly and indirectly. At the same time we also submit that an importer has the same right as the Canadian producer, in that he contributes to the economy rather heavily in the form of these duties you have referred to.

In addition, we have the facility of opening the Canadian textile industry or any other industry to the wind of world competition, and to the innovation that comes from free interchange of goods.

**The Chairman:** Thank you, Mr. Dixon and Mr. Corlett.

We have another association here this morning, the Canadian Textiles Institute, represented by Mr. J. I. Armstrong, the President; Mr. R. H. Perowne, who is the President of Dominion Textile Limited; Mr. D. Taran, President of Consolidated Textiles Limited; and Mr. F. P. Brady, who is general counsel for Dominion Textile Limited.

**Mr. J. I. Armstrong, President, Canadian Textiles Institute:** Mr. Chairman, honourable senators, we, too, very much appreciate the opportunity of appearing before you. We have viewed the progress of Bill C-215 through the house, and through the parliamentary committee, and now through the Senate, with a great deal of interest.

It is not our intention this morning to table a brief or present a case that might more properly be put to the textile and clothing board.

Our interest has been the subject of many studies in depth in recent years by Government departments, by management consultants and by ourselves. We are not sure that we can add very much to the record this morning, but it did seem to us that it would be appropriate if we presented ourselves and endeavoured to answer any questions you might wish to put to us. We are delighted to have had the opportunity of hearing the importers' presentation by Mr. Dixon and Mr. Corlett and their associates. I think we share the same concern about the Canadian economy in broad terms. I am not

sure, however, that we always agree on the best way to bring that about and with your permission, Mr. Chairman, I would like to comment on one or two of the points made by Mr. Dixon.

I am delighted that he agrees with us that there should be a viable and strong textile industry in Canada. To that we say amen. Our industry is one of the largest employers of manufacturing labour in Canada. With the clothing industry, we account for 200,000 employees, 60 per cent of whom are in the Province of Quebec, 30 per cent in Ontario and 10 per cent in the other provinces. It is truly a national industry. There is not a province without one of our mills or clothing manufacturers located in it.

However, Mr. Dixon and the Importers' Association have stated in their brief, and they rest, I think, many of their views on this theme, that this legislation is designed to be restrictive. I do not really think so. The legislation proposed in Bill C-215 is nothing more than a framework for policy decisions which will be made at a later time.

It is certainly not restrictive in the way it is written, and certainly when compared to legislation of other countries it is far from restrictive, even if it were interpreted the way we might wish it to be.

One of the senators compared controls in Canada to those of some other countries. I happen to have with me a paper we prepared a couple of years ago in which we endeavoured to tabulate the controls on imports in other countries and with your permission, Mr. Chairman, I will just refer very briefly to some of the wording from these controls.

First of all, the Benelux countries: All imports from Japan are subject to licence. Quantitative restrictions only on the items included in the quota list, of which there is a long list of almost all textile products. France: Quotas against Japanese and other low cost countries. Then most of the European countries have the Noord Wijk agreement which exists between the Benelux countries, Germany, Switzerland, Italy, France and Norway not to re-export to each other cotton and spun gray cloth originating from Japan, China, Hong Kong, India, Pakistan. Italy has quotas on a six-month basis, and textile items not included in the list are free of control. However, when one looks at the list there are very few items not included.

Possibly the best example of quotas and restraints on trade in some of the other countries are those in Switzerland, where imports of textiles from Japan are not permitted if their prices are lower by more than certain margins. The margins are: Woven fabrics of wool, 12 per cent; cotton, 10 per cent; and other textiles, including most fabrics, 20 per cent. There are others here, but certainly, generally speaking, our controls are nothing compared to those in other countries.

I think it was Senator Cook who noted that we do not have the power in Canada to impose quotas unilaterally at the moment. The international long term arrangement on cotton textiles which was signed by some 32 countries in Geneva in 1951, I think, and reviewed again last year, had a separate addendum pointing out that Canada did not have power to impose quotas unilaterally. All other signatories did, indeed, have that power.



**Senator Beaubien:** What about the United States?

**Mr. Armstrong:** The United States has the power to impose quotas unilaterally. The only question in the United States seems to be, as it would be the question here, whether or not it is appropriate to impose quotas in certain circumstances?

**Senator Molson:** Are there any in effect that you know of?

**Mr. Armstrong:** There are voluntary agreements between the United States and Japan and other countries, the same as there are in Canada.

**Senator Molson:** There are no imposed quotas that you know of?

**Mr. Armstrong:** No, not at the moment.

**Senator Benidickson:** Did the bill we heard so much about just prior to Christmas in the United States referred primarily to textiles?

**Mr. Armstrong:** The Mills bill? I recall the bill very well. As you say, it became a Christmas tree in the process.

**Senator Benidickson:** Did it propose to do more than the present voluntary agreement?

**Mr. Armstrong:** Yes, it did. The Mills bill proposed at that time, as I understand it, to empower the Government to impose quotas unilaterally on certain textile and footwear products from Japan, because apparently the Japanese were unwilling to negotiate voluntary restraints in areas—

**Senator Benidickson:** The bill died because of the end of the session in December. Has it been re-introduced here now?

**Mr. Armstrong:** No, not to my knowledge, although it is still a very active subject in Washington, I believe.

I was saying, Mr. Chairman, that our industry is a very large employer of labour. However, in the last five years, we have lost 8,000 employees in the primary textile industries and 1,000 employees in the clothing industry. This is very significant, because in many of the communities in which the textile industry is located, the local textile mill is virtually the only source of manufacturing employment in that community. And there would be no economic life if that mill did not exist. I could cite several cities, like Magog, Cowansville, Valleyfield, Drummondville in Quebec, Cornwall, Arnprior and others in Ontario.

It has been said by the minister, by the National Industrial Conference Board, and others, that the Canadian primary textile industry and the clothing industry are as efficient technologically as that of any other country in the world. Its productivity is of a very high level, because of an investment of over \$1 billion in the last ten years.

There is more money waiting for investment in the industry, too, but not under present circumstances where

we are being put out of one market after another by imports from these low cost countries.

Mr. Dixon referred in his presentation to the uncertainty faced by his 60 export and import textile importer members. We face that same uncertainty. Many of our mills have gone out of business quickly because of imports from these low cost countries. This is not unique to Canada or to the textile industry.

The current article, the current cover story in *Time* Magazine, refers to Japan's business invasion. Other countries and other industries are facing the same problem.

Our industry is 80 per cent Canadian-owned. It has shown remarkable price stability over the years. In fact, in the past ten years, textile prices have risen by 3.1 per cent, which is less than a third of one per cent a year. That is an exceedingly good record.

**Senator Isnor:** Would you repeat those figures?

**Mr. Armstrong:** Prices of textile products in Canada over the past ten years have risen just 3.1 per cent over that whole period, which is about one-third of one per cent per year.

**Senator Beaubien:** How much would your wages have gone up in that period?

**Mr. Armstrong:** Perhaps Mr. Brady or Mr. Perowne could answer that.

**Mr. J. R. Brady, Canadian Textiles Institute:** Our wages in that period have gone up by at least 80 to 100 per cent.

**Senator Casgrain:** Is that a general increase?

**Mr. Brady:** No, not in relation to the textile wages everywhere. Actually, we are paying the highest textile wages in the world. If you take wages and the fringe package. Certainly, if you compare the issue of parity with wages in the United States, this is one area where parity has been achieved. Comparing to wage levels in other competitive countries, there is just no comparison on that point. In the areas in which we are located, the wages compare very favourably with manufacturing in general.

**Senator Isnor:** That is, 90 per cent in Ontario and Quebec?

**Mr. Brady:** Taking communities, 60 per cent in Quebec and 30 per cent in Ontario.

**Senator Isnor:** That is, 90 per cent in those two provinces?

**Mr. Brady:** Yes.

**Senator Hays:** Mr. Chairman, the witness said that the increase has been only one-third of one per cent a year.

**Mr. Armstrong:** Yes, it has, on the average over all textiles. Man-made textiles...

**Senator Hays:** Your tie, for instance, I am sure you could not buy that tie as cheap as you could then?

**The Chairman:** That is why he suggested, on the average. All ties are not like that tie.

**Senator Molson:** The average tie.

**Mr. R. H. Perowne, president, Dominion Textile Limited, Canadian Textiles Institute:** That is one thing that we do not make, incidentally.

**Mr. Armstrong:** Carpets, which are within our industry and to which Mr. Dixon referred—the price of carpets is less now than it was ten years ago. The price of the man-made textiles in general is about 11 per cent less than it was ten years ago. In other areas, however, prices have gone up 15, 18 per cent, and so on. I have a whole list of them here. But on average it is one-third of one per cent a year. I think it is fair to take an average over all textiles.

**Senator Hays:** I think you said in the breakdown that there were 200,000 people employed in the textile industry.

**Mr. Armstrong:** Yes, sir.

**Senator Hays:** What is the percentage of retail workers? What is the breakdown, compared to those involved in manufacturing?

**Mr. Armstrong:** I am afraid I cannot answer that. There are no retailers worth speaking of in our industry—this is manufacturing employment and not the service industries.

There are about 100,000 in the primary industry and about 100,000 in the clothing industry, but these are manufacturing workers and do not include retailers or any of the service industries. Of course, there are many studies on the point, and it appears that the multiplier effect in our industry of associated industries directly dependent on our industry is of the order of two. In other words, if our two industries employ 200,000 people, there are about 600,000 people directly relying on the continuation of this industry and its employment.

**Senator Desruisseaux:** May I ask another question. Relatively speaking, in the last three years, what has been the value of the imports of textile goods, in these last three years?

**Mr. Armstrong:** I have the figures here. I can give you the figures in thousands of square yards. Would that be satisfactory, rather than in dollars?

**Senator Desruisseaux:** I think it is the value that would be the more meaningful, approximately.

**Mr. Armstrong:** In 1969, imports of fabrics and clothing, and clothing converted into yardage, so that it is one figure, totalled 551 million square yards. Canadian production in that year totalled 619 million square yards.

**Senator Flynn:** And you exported?

**Mr. Armstrong:** Yes. Our industry exports roughly \$75 million worth of primary textile and products a year, to many countries. Mr. Perowne of Dominion Textile and Mr. Taran, both are exporters, and the exports have been growing.

**Mr. Perowne:** For Dominion Textile, I can say that over the last seven years, and we hope it will happen again this year, in round figures 7 per cent of our total dollar sales are represented by exports. The bulk of those exports are to British Commonwealth countries. This is putting it into dollar figures, in round figures, it is \$10 million to \$11 million per annum, in export.

**Mr. D. Taran, President, Consolidated Textiles Limited, Canadian Textiles Institute:** In our case, the figures are slightly higher. It is 15 per cent of our total dollar sales, in exports.

**Senator Flynn:** Does that mean that it is less than 50 per cent of the Canadian market?

**Mr. Armstrong:** That is correct. The total apparent market in Canada for textiles, domestic producers have 50 per cent and 50 per cent is controlled by imports.

**Senator Desruisseaux:** I asked a question previously. What is the increase per year in the last three years, of imports of textile goods, percentage-wise or otherwise?

**Mr. Armstrong:** In 1964, for example, our imports were 438 million square yards; in 1966, 469 million square yards; in 1968, 512 million square yards; and in 1969, 551 million square yards.

We have been concerned with the erosion of our industrial base on which the exports which have been referred to must be based.

Canada imports more per capita from low cost countries, than any other country in the world.

For example, we take \$28.43 in United States funds equivalent, from low cost countries, which is double that of the United Kingdom—

**Senator Beaubien:** Per head, you are talking about now?

**Mr. Armstrong:** Yes, per head. It is double that of the United Kingdom which takes \$15.61, three times that of the United States at \$10.40 and four times that of the countries making up the E.E.C. in Europe, which is \$6.86. This is what really concerns us and is the problem with which we are faced. We have said many times that we are prepared to compete with the countries of Western Europe, the United States, England and all the developed countries of the world. This is so because we are efficient technologically and we feel that we can do it. This does not apply to imports from countries such as Taiwan and Hong Kong, nor to other industries in other countries.

Mr. Dixon referred to the fact that we should perhaps in Canada do what we can best do and let Taiwan and Hong Kong do what they can best do. I will challenge Mr. Dixon to point to any manufacturing industry in Canada which can compete with these countries.



**Senator Cook:** Does the witness agree with the following figures? During the year 1964 our imports amounted to \$463 million, as against \$701 million in 1969, an increase of 51 per cent.

**The Chairman:** The question being how much of that is increase in price and how much in volume?

**Senator Cook:** In 1964 our exports amounted to \$75 million, as opposed to \$147 million in 1969, an increase of 98 per cent in our export trade.

The figures for employment were 192,000 in 1964, as opposed to 198,000 in 1969.

**Senator Beaubien:** What is the source of the figures?

**Senator Cook:** The Dominion Bureau of Statistics.

**Senator Carter:** Does the wage increase and price stability referred to mean that you have been able to afford the increased wages out of productivity, which has kept pace with price increase? Have wages outpaced productivity?

**Mr. Armstrong:** Our productivity over the last several years have been at a higher rate than that of any other Canadian manufacturing industry, an exceedingly high rate. I believe our ability to maintain prices in this way has certainly been largely due to productivity increases in those years.

**Mr. Perowne:** So far as Dominion Textile Limited is concerned, over the past ten years we have spent in excess of \$100 million in upgrading, keeping ourselves technologically proficient. We have had our company and our industry, as stated by Mr. Armstrong, researched and analysed from stem to gudgeon. We are quite confident that our own industry—again I am referring particularly to Dominion Textile Limited—is capable from a technological point of view. We have good labour, employing approximately 10,000. We have knowledgeable personnel and, we believe, good management. We are familiar with the textile industry and for the kinds of conditions that are imposed on the Canadian textile manufacturer we will put ourselves up against any manufacturer, whether it be in the United States, Japan or anyone else, if in terms of size of market and conditions prevailing in that market they compete against us in Canada.

It might be of interest to reflect for a moment on the amount of United States takeover we have read of in the newspapers during the last few years. If this were such an easy market and we in fact were noncompetitive, unimaginative and not creative, it is somewhat surprising that the J.P. Stevens, the Burlingtons, the Lowensteins, the Cone Mills, the Springs Mills and Cannon Mills of the United States have not come to Canada in search of an easy haven in which to compete in the textile manufacturing field.

**Senator Carter:** When he was before us the minister made the point that one of the purposes and factors that make this bill necessary is the necessity of the textile industry to re-organize itself. This means that some sections of the industry would be phased out, while others would probably expand.

My point is that in spite of all this productivity, you still feel that in the foreseeable future there is no way of competing within certain sections of the industry.

**Mr. Perowne:** As far as Dominion Textile Limited and, I believe, other segments of the textile industry are concerned, we have not yet found a way to pay an average wage of \$2.75 in Dominion Textile Limited and with all other costs relative to this type of economy in Canada compete against the Taiwans, Koreans, and so on, at the 10, 15 or 18 cents per hour wage level. Really this is the nuts and bolts of the problem with which we are faced.

Dominion Textile Limited has always shown itself to be prepared to spend money and face up to all the normal business risks that may be envisaged. We all know that there are a great many business risks envisaged at the present time. However, so far as competition from Taiwan, Korea, Macao, China, Portugal, India, Pakistan, Colombia, and so on is concerned, we have not as yet been able to find that magic wand.

**Senator Carter:** What percentage of your total industry will disappear in your phasing out process?

**Mr. Perowne:** If in fact we in Canada are to face up to the unemployment situations that are about us today and are not to have this situation continue to erode and deteriorate, I would hope that the number of plants and companies that have gone by the wayside will be put to a halt and that we will see new plants come into existence.

In 1953, well before anyone in this country and, indeed, in the forefront of developments in England and the United States, our company was spending money in anticipation of the advent of the blended type fabric with polyester. Dacron, fortrel and terylene are all names of polyester blended with cotton. We built a plant in Long Sault, Ontario, and a very big \$20 million plant at Beauharnois, outside Valleyfield, Quebec.

However, as we sit here today there are no quotas on polyester cotton goods. There being no protection whatsoever against polyester cotton, no-iron, easy-care fabric goods from Japan, Taiwan and other low-wage countries, we are just sitting ducks. The increase in fixed overhead that must be borne in our plants prohibits our generating sufficient funds, at 65 or 75 per cent of capacity, to merit Dominion Textile Limited asking its board for approval to erect another new plant.

**The Chairman:** Mr. Perowne, I think there is general agreement that the provisions of the bill are needed.

**Mr. Perowne:** Yes sir.

**The Chairman:** I think you have just underlined this. Since there is general agreement, except for information purposes it is not really relevant to the decision we will come to, whether we will pass the bill as it is or as amended. We are glad for the information, but we do not want to get too far along on that track.

**Senator Desruisseaux:** The witness mentioned previously that due to uncertainties extensions were being held back. I was curious about the estimated value of



those extensions that were being held back because of the uncertainties that we presently have.

**Mr. Armstrong:** Perhaps Mr. Taran can comment on that, because I believe he himself has held back an investment.

**Mr. Taran:** Basically our biggest problem, which relates directly to the bill, is that we do not know what will happen tomorrow. As Mr. Dixon said for the importers, we have had these cases. I will give you a case history from our own company. In 1967 we, being the first in North America to do so, developed the ability to weave textured polyester fabrics. We were able to export these fabrics to the United States because of our technological advancement over them, but we could not compete in our own market against Japan, because unfortunately at the same time the Japanese developed, or were in the throes of developing, this particular type of weaving of textured polyester. We went to the Government, to the Department of Trade and Commerce, and complained.

I will just read out these figures of Japanese imports into Canada: in 1967, 1.67 million square yards; 1968, 3.2 million square yards; 1969, 7.9 million square yards; 1970, 13 million square yards. In other words, they went from 1.6 to 13 million square yards in four years. They have now completely taken over the market. The Canadian producer now controls only 22 per cent of the market; Japan alone controls 45 per cent.

We made a decision at that time because of the apparent market available for this type of product. We took over a mill that was going out of business in Magog. We brought it back into full production and kept it that way until September of last year, when we were forced to close it because at that time the Japanese made a mistake in Osaka; they over-produced, and dropped their prices 30 per cent in September of last year.

No business can plan. It is impossible. Had this review board been in existence three years ago our only avenue at that would have been to go to the review board and present our case. There is no guarantee they would have accepted it, but at least we would have known then the proper business decision to make based on the facts presented. The Japanese had the audacity, and have had until just last week, to tell the Canadian Government that these fabrics were not produced in Canada. I personally had to make a presentation to the Japanese trade delegation to prove to them that we did make them.

We have held back a very large capital expenditure, and our board of directors has decided that we will not invest in any new capital in plants or equipment until such time as we have a better understanding of the ground rules with which we have to work.

**Senator Beaubien:** Do you still export that sort of thing to the United States?

**Mr. Taran:** Yes, we do.

**Senator Beaubien:** Because the Japanese cannot get in there?

**Mr. Taran:** No, because basically we can export a very small amount on a styled basis, because of our proximity to the American market; we are one hour away from New York and we can go into New York and make a certain pattern for a New York converter who would like to get on the market quickly. What has happened is that the Japanese naturally will get the bulk of the business; we may get 50,000 to 100,000 yards, but the Japanese may get two million yards, because they will knock it off and it will come in two months later. That is really what we are doing.

**Senator Desruisseaux:** Is that not anti-dumping? Did you avail yourselves of our anti-dumping laws?

**Mr. Taran:** Unfortunately our experience with anti-dumping has not been too successful. It is very difficult. The Canadian Government has made a lot of investigations in the past, but because of the manner in which business is done in Japan it has been impossible to prove dumping. If you read that *Time* magazine article, you will appreciate that they have trading companies which all the trade goes through. These trading companies deal in a multitude of products. Nobody in the Canadian Government has to this day been able to figure out how they operate, and it is impossible to prove.

**Senator Isnor:** Where are these trading companies located?

**Mr. Taran:** They are located in every major city in the world.

**Senator Flynn:** Do you think this bill will help them make up their minds?

**Mr. Taran:** The only hope we have is that this bill will enable us to come and present a case. In many cases, when we cannot prove we are viable and competitive over a long term, I am sure the Government will tell us, "We are not interested in protecting you", and we have never asked for that.

**The Chairman:** Mr. Taran, the added power we gave to the Anti-dumping Tribunal last year is not dependent on establishing dumping. It is only damage or injury to domestic production. It makes a report to the minister and it is up to the minister then to decide whether he will apply surcharges or countervailing duties, or what he will do. We also provide the same kind of power to this textile board, so there is machinery to deal with that situation.

**Mr. Taran:** There is only one problem. The Anti-dumping Tribunal has the power to apply countervailing duties...

**The Chairman:** No, the minister has.

**Mr. Taran:** The minister. Our problem is not duties. Our problem is quantitative quotas really.

**The Chairman:** That is what is coming in in this bill.

**Mr. Taran:** That is right.

**Senator Cook:** That is clause 26.

**The Chairman:** Have you anything further to add?

**Mr. Armstrong:** No, Mr. Chairman, unless there are any other questions?

**The Chairman:** Are there any other questions? I think we have gone through all the merits of this bill rather carefully.

**Senator Beaubien:** I would like to ask the witness one question. You say a duty is no use. You mean the difference in price is so enormous?

**Mr. Taran:** Let us put it this way. I cannot understand the Japanese cost system, and I have been to Japan a few times. Their cost or selling price is based really on what the market is. If they decide they want a piece of a market, cost means relatively little. They have a system of spreading it amongst themselves; I do not know what it is. In some areas, the further you go in manufacture the lower the price you get. If we raise the duty, all they would do would be to lower their price if they decided they wanted the market. That is what it really amounts to.

**The Chairman:** Now we are approaching it from a different angle where that will not work advantageously for them. Thank you very much.

**Mr. Armstrong:** Thank you, Mr. Chairman.

**The Chairman:** Honourable senators, that concludes all the requests for a hearing from various organizations. I think we must have become convinced of the merit in this bill and the need for it. Frankly, from my point of view, which is only one person's view, the only place where I could even suggest any change is whether we should change that "may" to "shall". I am not even going to suggest that, and I will tell you why in a minute.

We have the Department of Industry, Trade and Commerce representatives here, but before I call on them I was wondering whether this committee wanted to make a decision whether in the circumstances, following the evidence we have, we need to hear anything more, having heard the minister.

**Senator Benidickson:** Mr. Chairman, we heard the minister, but I feel very strongly on this question of protection, particularly in textiles, as against the consumer, which has for years been a very important question in this house. I do not think the bill is large enough, and I do not think the board membership is large enough.

**The Chairman:** Senator Benidickson, may I point this out to you. I think the area you are going into is one that might properly be described as being policy in relation to this subject matter. When the minister was here we could certainly have questioned him on policy. When we have departmental representatives, consistently our view has been that it is not fair to ask such witnesses to discuss questions of policy. Certainly this morning my initial ruling, if you are asking questions on policy of the departmental representatives, would be against you, although the committee could overrule that decision. However, I am wondering, having regard to the scope of

the bill, whether it is necessary to question the departmental officials who are here. My own feeling is that there will be repetition of what we have already heard. That is one point.

On the point about changing "may" to "shall", I would hate to report this bill with one amendment that merely changed "may" or "shall". Although clause 12 says the board may in the manner specified by its rules receive evidence, I think the regulations could be drafted so as to say that "in receiving evidence the following is the manner in which it shall be presented". In that way any interested person would have a right to go. He would have to clothe himself in the proper style, according to the rules, but he would have a right to go there. In the interpretation of statutes "may" has often been interpreted as "shall". After all the discussion we have had on "may" and "shall," I think that the Textile Board would be very sensitive about refusing any interested person the opportunity of being heard in accordance with whatever the regulations may be.

Therefore, my feeling—and this is only my own feeling—would be that we should not propose an amendment to the bill if there is only the one amendment, changing a "may" to a "shall".

I do not think that the risk that Mr. Dixon saw in the use of the word "may" is that real, and I am saying this before the departmental representatives.

**Senator Beaubien:** I was not here when this problem was discussed, but I would agree with your conclusions and I would even agree with section 12 as it now reads, because there has been some discussion in the board whether any evidence that is adduced is relevant or not.

**The Chairman:** That is why it says here "in the manner specified by the rules." That does not say they shall not receive evidence.

**Senator Beaubien:** They have to have some discretion in saying, "We do not need this type of evidence." Otherwise, they would be forced to hear something that they did not consider relevant at all.

**Senator Connolly (Ottawa West):** Reasonable discretion.

**The Chairman:** In the light of that, does this committee forthwith agree to report the bill without amendment?

**Senator Flynn:** Mr. Chairman, I wonder if you would ask the officials of the Department of Industry, Trade and Commerce, if they have anything to add.

**The Chairman:** Mr. Howard, you are parliamentary secretary to the minister. You have heard the discussion, and I think you were here the last time, when the minister was here.

**Mr. B. A. T. Howard, M.P., Parliamentary Secretary to the Minister of Industry, Trade and Commerce:** Mr. Chairman, I think most of these points have been covered very well this morning. The argument on the question of "may" and "shall" has been discussed at great length in

the Commons Committee and, again, in the house where it was the subject of amendment.

I think all these other points have also been covered, on both sides, very effectively here this morning.

I would be very happy, with the officials present, here, to try to answer any questions you have. There are no additional points that I would wish to put. I think you have covered these points in great detail. Your questions have been similar to points that have troubled others who have examined the bill. You have been concerned about the same points and have given them very close scrutiny.

Unless you have any questions I have nothing further to add.

**The Chairman:** I feel anything that we might ask at this time would be repetitious.

Thank you, Mr. Howard.

I move that we report the bill without amendment. Is it agreed?

**Hon. Senators:** Agreed.

**Senator Benidickson:** On division.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 23

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WEDNESDAY, MAY 12, 1971

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First Proceedings on Bill S-9,  
intituled:

“An Act to amend the Copyright Act”

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Urquhart, seconded by the Honourable Senator Cook, for the second reading of the Bill S-9, intituled: "An Act to amend the Copyright Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate*

# Minutes of Proceedings

Wednesday, May 12, 1971.  
(25)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce proceeded at 11:30 a.m. to the consideration of the following Bill:

Bill S-9, "An Act to amend the Copyright Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Haig, Hays, Isnor, Lang, Macnaughton, Martin, Molson, Sullivan and Welch (18).

*Present, but not of the Committee:* The Honourable Senators Casgrain, Fergusson and Heath—(3).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

### *The Canadian Association of Broadcasters:*

Mr. Henri Audet, President, CAB, President, Station CKTM-TV, Trois-Rivières, Quebec;

Mr. D. M. E. Hamilton, General Manager, CKLG, Vancouver, B.C. Vice-President, Radio, C.A.B.;

Mr. D. W. G. Martz, Vice-President, Canadian Marconi Company, Montreal, Vice-President, TV, C.A.B.;

Mr. D. Barkman, Managing Director, CHWK/CFVR, Chilliwack, B.C., President, British Columbia Association of Broadcasters;

Mr. Lyman Potts, President, Standard Broadcast Productions Ltd., Toronto, Ontario;

Mr. John D. Richard, Gowling & Henderson, Ottawa;

Mr. T. J. Allard, Executive Vice-President, C.A.B.

At 12:30 p.m. the Committee adjourned.

2:00 p.m.  
(26)

At 2:00 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa*

*West*), Cook, Desruisseaux, Flynn, Grosart, Haig, Hays, Isnor, Lang, Molson, Sullivan, Welch and Willis—(18).

*Present, but not of the Committee:* The Honourable Senators Heath and Methot—(2).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

### *The Canadian Association of Broadcasters:*

(Same witnesses as morning session)

### *Canadian Labour Congress:*

Mr. William Dodge, Secretary-Treasurer;

Mr. John Simonds, Director, International Affairs Department;

Mr. Alan Wood, American Federation of Musicians;

Miss Margaret Collier, Association of Canadian Television and Radio Artists;

M<sup>me</sup> Jeanne Sauvé, Fédération des Auteurs et des Artistes du Canada;

Mr. Burnard Chadwick, Actors' Equity Association;

Mr. Hamish Robertson, Actors' Equity Association.

### *Canadian Broadcasting Corporation:*

Mr. Jacques R. Alleyn, General Counsel.

At 3:30 p.m. the Honourable Senator Desruisseaux assumed the Chairmanship.

At 4:30 p.m. the Committee adjourned to the call of the Chairman.

## ATTEST:

Frank A. Jackson,  
Clerk of the Committee.

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, May 12, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-9, to amend the Copyright Act, met this day at 11.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** We have three groups who wish to be heard today on Bill S-9, and the point in the bill has to do with the right to collect a royalty in connection with the performing right on records.

The three groups this morning are: the Canadian Association of Broadcasters; the Canadian Council of Performing Arts Union, who are affiliates of the C.L.C.; and the Canadian Broadcasting Corporation.

I suggest that we hear them in the order in which they requested to be heard, so we will hear the Canadian Association of Broadcasters first.

Before we hear them, there is a comment the chairman would like to make. It is that in connection with any bill that attracts public interest "Rumour Alley" starts operating. It has been operating a little more in relation to this bill than previous ones, except perhaps when we were considering the Bank Act.

This time "Rumour Alley" seems to have as its main target the chairman of the committee. He has been a target so many times that, except to get the facts straight, it does not upset him.

**Senator Beaubien:** What are some of the juicy statements?

**The Chairman:** This time it is that the chairman has clients who are interested in opposing this bill, and that one of the clients is the company that is going to appear here as a witness at a later date and which appeared before the Copyright Appeal Board in presenting a tariff—that is, the SRL organization, which manufactures records. I am supposed to be the solicitor and counsel for SRL. Nothing could be further from the truth. I have no retainers of any kind from SRL.

Then more vaguely, it has been suggested that I have clients who are interested in opposing the bill. If I have, there has been a singular lack of communication with me. I know nothing about it, if I have.

In this area of copyrights, of course, any firm that is a big firm and provides the facilities has certain copyright work, but the field of copyright is very broad. I am talking about the field that is represented here; that is, the performing right that is represented in records.

I am under no restraint by virtue of retainer, by virtue of representing anybody. I should say for SRL that they are not even clients of my office.

I do not expect that this will clarify the situation. I do not expect it will stop "Rumour Alley" from still generating these things. At any rate, I have stated what my position is and I challenge anybody to establish a different position for me.

**Senator Beaubien:** Hear, hear

**The Chairman:** I have made this statement generally, but if I were put to it to indicate sources from which this information came to me, I could do it. I could put labels on it.

Honourable senators, we begin with the Canadian Association of Broadcasters, and we have representing them: Mr. D. M. E. Hamilton, the general manager of Station CKLG in Vancouver and a vice-president of CAB radio; Mr. D. W. G. Martz, a vice-president of Canadian Marconi Company and vice-president, Television, CAB; Mr. Barkman, the managing director of CHWK/CFVR Chilliwack, British Columbia, and president of the British Columbia Association of Broadcasters; Mr. J. Lyman Potts, president, Standard Broadcast Productions Limited, Toronto; Mr. John D. Richard, legal counsel; and, sitting immediately on my right and who is going to make the opening remarks, is Mr. Henri Audet, of Trois Rivières, president of the Canadian Association of Broadcasters.

**Mr. Henri Audet, President, Canadian Association of Broadcasters, and President, Station CKTM-TV, Trois Rivières, Québec:** Thank you, Mr. Chairman. Honourable senators, with your permission, I would like to make an opening statement, in reduced form, which sums up our brief. Then I would like to ask some of my colleagues to supplement my remarks.

**The Chairman:** Honourable senators, before Mr. Audet continues, I should indicate that I doubt if we will hear this morning the three groups we have committed ourselves to hearing today. Fortunately, we have time in the afternoon to continue, if we do not finish by the morning adjournment time. I suggest that we resume at 2 o'clock. Having given dates to these people, it has been our policy that we hear them sometime during the day, since we have told them that they will be heard.

**Senator Beaubien:** Can we adjourn at 12.30?

**The Chairman:** Yes, if we are going to resume at 2, I think 12.30 would be a good time.



**Senator Molson:** We have to deal with Bill C-180.

**The Chairman:** Yes, but we are not going ahead with Bill C-180 today. If you remember, we fully considered it the last time we met. There were certain points that developed and we said we wanted to hear the minister on those. I was in touch with the minister and got a message from him today that he would not be available this afternoon. Therefore, we have offered him a firm date as No. 1 next Wednesday morning. I think that is when we will be hearing him.

**Senator Molson:** Thank you.

**The Chairman:** Now, Mr. Audet.

**Mr. Audet:** Mr. Chairman and honourable senators, I should like first to express to you our thanks for your courtesy in receiving us today.

[Translation]

Mr. Chairman, we wish to state how happy we are to have this opportunity to express our full support for Bill S-9, which seems to us an excellent means of extending to authors, composers and publishers the privileges to which they are entitled, while at the same time avoiding the possible imposition of an additional burden on the Canadian broadcasting system.

[Text]

Bill S-9 is of vast importance to the broadcasting industry of Canada—and consequently, to Canada itself.

We are here on behalf of the private broadcasting industry of Canada to make it clear that it supports and endorses Bill S-9.

Since its inception, broadcasting in this country has been a chosen instrument of public policy, a major weapon in the never ending struggle to maintain a distinctive Canadian identity.

Broadcasting is a business in which people are the single most important asset. Salaries, benefits and various talent and performing fees account for over 55 per cent of the broadcasters total operating expenses. Amongst the other charges made against station gross, is that for the public performing right held by the author or composer of original works. As noted in Appendix "D" to our brief, these payments in 1969 approximated \$4,558,280. The Canadian Broadcasting Corporation paid an additional \$1,082,000.

As noted in the same Appendix, we estimate that since 1952 the privately owned stations and the CBC have paid out copyright fees in the order of approximately \$45,687,974.

The amounts payable to the Copyright Societies are based on gross income; regardless of station's financial position and regardless of amounts of music used, this tariff is imposed.

**The Chairman:** This amount of \$45 million is in relation to payments to the author or composer of an original work?

**Mr. Audet:** Yes, or editor.

**The Chairman:** And it does not bear on the question of the performing right in records, is that right?

**Mr. Audet:** I would like to elaborate on that a little later.

**Mr. John D. Richard, Legal Counsel, Canadian Association of Broadcasters:** The figure, Mr. Chairman, is \$4½ million, not \$45 million. These are payments to the composer and his publisher for the performance of his original musical work on radio or television.

**The Chairman:** On radio or television?

**Mr. Richard:** Yes.

**The Chairman:** And it does not include any element for the record manufacturer or the so-called performing right in the record?

**Mr. Richard:** No, it does not, sir.

**Senator Beaubien:** Mr. Richard, is that for one year?

**Mr. Audet:** No, it is \$4,600,000 per year, and it has been \$46 million since 1952.

**Mr. Richard:** I just want to make sure that there is no confusion that the yearly figure is \$4½ million and the total over the years is \$45 million.

**Mr. Audet:** As nearly as we can estimate, somewhere between 75 and 80 per cent of these dollars must be exported out of Canada. We make this statement in no spirit of adverse criticism. It is no one's fault that, thus far, the majority of authors and composers or their assignees, live in countries which have much larger populations than Canada, very much longer established cultural traditions and consequently a greater supply of material.

Application has now been made by another group known as Sound Recording Licences (SRL) Ltd. for a further percentage of gross revenue.

This organization asks for a payment of 2.6 per cent of gross revenue from privately owned radio broadcasting stations, 0.5 per cent of gross revenue from privately owned television stations and 4 cents per capita from the Canadian Broadcasting Corporation.

As nearly as we can estimate, this would mean *additional* annual payments from privately owned radio broadcasting stations of \$2,747,661., privately owned television broadcasting stations of \$469,659., and payments by the Canadian Broadcasting Corporation of \$842,440.

What impact would this have on the private sector of Canada's telecommunications industry? We asked DBS to give us an answer in total terms, without identifying stations, of course, which it cannot do. It reported as follows:

In response to your request of March 16, I am pleased to present the following information which has been compiled from the individual reports of the privately-owned radio stations for the 1969 reporting year.

The table appears as Appendix C of our brief but I would like to quote the final paragraph of the DBS letter.

It is interesting to note that the combined total of 74 radio stations operating at a loss of 22 radio stations operating at a profit but *whose profit would become a loss if 2.6 per cent of total operating revenue were deducted*, represents 29.2 per cent of the privately-owned radio stations in operation during 1969.

This application for a public performing right tariff is based upon the assumption that the existing section 4(3) of the Copyright Act creates a public performing right in addition to protection against unauthorized copying—a position never before asserted.

**Senator Connolly (Ottawa West):** Would you please elaborate on that?

**Mr. Richard:** Section 4(3) of the Copyright Act has existed since 1921, being the last major revision to the act. The sound recording companies represented here by SRL have never asserted a right, since 1929 until recently, to payment of a fee to them for the so-called performance of their record on radio or television. They have never sought to limit use of their records by stations completely, in time or frequency of use. They have only recently asserted a right to a public performance fee in a record. By "recently" I mean 1968.

They have, of course, asserted the other rights which they have, which would be preserved by Bill S-9, which prevent copying their record by transposing it to another. However, the further right which they allege they have, of a public performance, of which Bill S-9 would deprive them, they have never asserted against the broadcasters.

**Senator Flynn:** Do you suggest that this right does not exist, or do you agree that the bill would delete an existing right? It has been asserted that the right does not exist.

**Mr. Richard:** You are correct, Senator Flynn; some have argued that the right does not exist, but it is an academic question at the moment. SRL has asserted that this right exists. They have taken no actions before the courts of this land to test the right. Therefore there is no decision of any court of competent jurisdiction determining whether they have the right. However, before the Copyright Appeal Board, they rely on the Carrawdine case of Great Britain, which would seem to indicate that such a right exists.

**Senator Flynn:** I understand that such rights exist in other countries.

**Mr. Richard:** Yes, but not in the United States.

**Senator Molson:** What is the situation with regard to sheet music?

**Mr. Richard:** This has nothing to do with sheet music.

**Senator Molson:** I understand that, but what is the situation when sheet music is used in a performance?

**Mr. Richard:** There is no performing right in sheet music.

**Senator Connolly (Ottawa West):** In other words, the thrust of the paragraph at the end of page 3 is to point out the difference between copying and performing?

**Mr. Richard:** Yes.

**Senator Beaubien:** A fee is paid in England.

**Mr. Richard:** Yes, but there is subsequent legislation. Their statute was revised in 1956, so we are not dealing with exactly similar legislation. However, it must be borne in mind that in Great Britain, except the Isle of Man which is a very small island inhabited by approximately 45,000, all radio is owned and operated by the state. All examples of countries where performing right fees for sound recordings are collected are those with having private, commercial radio.

In the country most similar to Canada with respect to broadcasting, i.e. the United States, there is no such performing right. As we shall illustrate a little later, most of these record companies have parents in the US and most of them receive master tapes from the parent. Therefore there is the incongruous situation in which the parent companies and those holding the master tapes in the US are attempting to assert in Canada a right which they do not have in the United States.

**Senator Flynn:** Was this point argued before the Copyright Appeal Board?

**Mr. Richard:** Yes, we must understand the function of the board. The point argued before it was, first of all, whether SRL had a performing right in a musical work. The Copyright Appeal Board's jurisdiction can only be invoked when there is a performing right in the musical work. Speaking on behalf of the broadcasters, we alleged that whatever right they had was not a performing right in a musical work, but in a record. This put SRL in the position of arguing that a record is a musical work.

**Senator Flynn:** The board would not be able to decide on the fees SRL could collect without deciding first that this performing right exists under the present law.

**The Chairman:** I understand they did reserve and decided preliminary to going into the question of tariffs that they had the jurisdiction.

**Mr. Richard:** Yes, they proceeded on that basis. However, it is not a matter to be resolved by the Copyright Appeal Board. The important fact of the matter is that if the board said it did not have jurisdiction, they would still not resolve the matter, because the record companies could then assert that they do have a performing right in the record, as opposed to a musical work and therefore did not need approval of their tariff by their Copyright Appeal Board. They could then sue users of their records for infringement and damages.

So the problem is still with us, regardless of what the Copyright Appeal Board decided.



**The Chairman:** If we can proceed at all to consider this bill, we must assume that there is a law in existence which this bill proposes to amend.

**Mr. Richard:** May I make the position of the broadcasters before the Copyright Appeal Board clear? We said that whatever right SRL does hold by assignment from various sound recording companies, it is not a right in a musical work and therefore the Copyright Appeal Board has no jurisdiction. We did not argue before the board that the sound recording companies had no performing right under section 4(3), so we are being consistent. At the very least there is an ambiguity that should be cleared up and at the very worst they do have a performing right in a sound recording under section 4(3). We argue that this right should be removed by legislation and that is the reason for our support of Bill S-9.

**Senator Beaubien:** Does Bill S-9 then remove that right?

**Mr. Richard:** It reserves other rights to them, but removes that particular one which, as I say, has never been asserted by them.

**The Chairman:** Until 1968, you said.

**Mr. Richard:** Until 1968, sir.

**Mr. Audet:** May I point out that we support the bill because we feel that it brings the law into line with a practice which has been long standing, for probably 60 years or more.

**Senator Cook:** If this bill does not become law and they were right in asserting their rights, the fees would go to the manufacturers, would they?

**Mr. Richard:** They would go to the manufacturers of records, yes.

**Senator Cook:** Like the fees would go to the printers of a book?

**Mr. Richard:** Yes, sir.

**Senator Cook:** If every fellow who read a book had to pay a fee it would have to go to the printer and not the author?

**Mr. Richard:** That is right, sir, not the author. This bill does not disturb any rights of the author or composer. It deals only with the rights of the manufacturer of a physical piece of goods, i.e. a record, in respect of which we allege he gets his reward from the sale of the record.

**Senator Cook:** Does the manufacturer pay anything for the free advertising obtained when the records are played over the air?

**Mr. Richard:** No, sir, and that was another point made before the Copyright Appeal Board. They acknowledged this, that the favoured and, in some cases, only means of promoting records is through radio and television broadcasting. Of course, we do not suggest there is any "payola". Therefore we do not suggest there is any payment for those performances. Indeed, there was very strong

evidence before the Copyright Appeal Board—I just mention it to you, because I am sure you do not want me to go into it in great detail, though I can—statements from representatives of the industry itself, in which they recognized that the promotion of records on radio and television is necessary for the sale of records.

**The Chairman:** Senator Cook, you understand the wording of the provision in the law now is that the copyright subsists in the performing right in records just as if much contrivances were musical, literary or dramatic work. What this bill proposes is to take that away. It is not taking away, as I understand it, the performing right, if any, that they may assert for the use of it. I take it it is not dealing at all with a situation if the record manufacturers attempted a division of their sales as between sales for private use and for public performance. That question is not, as I understand it, in issue here. Is that right, Mr. Richard?

**Mr. Richard:** They would not be entitled to collect a fee for the performance of their record on radio or television.

**The Chairman:** No. I was raising the other question. If the record company sold their records in two classifications, one would be for private use only; in other words, you would have to get something more in a contract than simply buying a record, because they impose terms on the sale of a record for private use only. All I am asking you is, is that an issue here?

**Mr. Richard:** It does not affect contractual rights; it just affects copyright.

**The Chairman:** So whatever contractual rights they could achieve apart from the question of copyright, this bill does not deal with that?

**Mr. Richard:** It does not deal with contractual rights, with agreements made between manufacturers and purchasers of the records that could be enforced contractually as opposed to enforced through copyright.

**Senator Beaubien:** If this bill were to go through, from January 1, 1971, they could not sue you for having played a record?

**Mr. Richard:** That is right.

**Senator Beaubien:** Could they still sue you for having played a record before?

**Mr. Richard:** No, no.

**The Chairman:** Why not?

**Mr. Richard:** That is a very interesting question. I say "No, no", because I am relying on the fact that they have never asserted the right against us. There is a limitation period of three years.

**Senator Beaubien:** If they go back to 1921...

**Mr. Richard:** No, there is a limitation period of three years in the statute. That is a point well taken. We would be satisfied to see the bill go through in its present form.



**The Chairman:** You would be willing to pay for the three years.

**Mr. Richard:** No, we would be willing to take our chances.

**Senator Flynn:** Maybe you will take the hint from Senator Beaubien.

**Mr. Richard:** That is a very, very good point.

**Senator Carter:** Bill S-9 does not solve the fundamental problem, which goes back to 1921, whether a record is a musical work. The problem is one of definition, is it not?

**Mr. Richard:** No, it is not, sir. The problem is that they assert a performing right. That is our problem. I do not want to confound the problem we had before the Copyright Appeal Board. The Copyright Appeal Board has jurisdiction to entertain tariffs only in respect of performing rights in musical works as opposed to performing rights in other things. The point there was: was a record a musical work?

**The Chairman:** So the statute solved the question for the Copyright Appeal Board by saying you could treat it as if it were a musical work?

**Mr. Richard:** Yes. That is what SLR argued, and they said they have a performing right in musical works. My point is whether it is in a musical work or in a record. Still, section 4(3) gives them a performing right in something, and this performing right by Bill S-9 should be withdrawn.

**Senator Carter:** If you define a record as not a musical work, does that solve the problem?

**Mr. Richard:** No, it does not, sir.

**The Chairman:** No. It only solves the problem of the Copyright Appeal Board being able to fix a tariff.

**Mr. Richard:** Yes.

**The Chairman:** Unless you enlarge the scope of authority of the Copyright Appeal Board.

**Mr. Richard:** That is right.

**The Chairman:** And that is not in issue here.

**Mr. Richard:** That is right.

**Senator Desruisseaux:** Would the same tariff apply to educational records?

**Mr. Audet:** It is to all records of which music forms a part.

**The Chairman:** I am sorry, would you go ahead, Mr. Armstrong.

**Mr. Audet:** Originally copyright obviously had a very simple purpose. It was to ensure that an individual whose intellect or emotions produced an original work, such as a book, a painting, a song or a speech, had some form of legally enforceable right preventing others from copying

his work without his authorization, or passing it off as their own, or gaining financial benefit from it without benefit to the original creator. We agree that such a legal and enforceable right should exist, and it exists now.

It happens that copyright "works"—that is to say the songs or speeches or music or plays—are in today's world, frequently encapsulated within some form of mechanical reproduction such as a tape, a film or various forms of records in order to give them wider distribution.

**The Chairman:** Mr. Audet, I hope you do not mind being interrupted, but we are looking to be informed as to what is at issue. If we stop right there and then we look at the amendment proposed in a new subsection (4) of clause 4, what they declare as to the nature of the copyright in this record is that the producer of that record would have:

the sole right to reproduce any such contrivance or any substantial part thereof in any material form.

I take it that would apply if you played a record and taped it and then used the tape to publish it to the public through a station, a radio or TV station; the copyright and the sole right of the man who had produced that record would persist. That is not being taken away?

**Mr. Audet:** No.

**Mr. Richard:** That is right.

**The Chairman:** "To reproduce any such contrivance." What is embodied, other than what I have said, in the word "reproduce".

**Mr. Audet:** I believe we want to make a distinction. There is the time when a record is originally produced; you have, say, a musical ensemble whose sounds are recorded on a record, and the right, that was originally and by tradition protected, of the author not to see his work stolen by somebody else. We feel there is a distinction to draw between that and where someone just presses recordings of the original work. We feel this second person does not have a right to ask for payment each time the record is played. We feel the original author and editor are entitled to their rights, but a person whose job is only to reproduce things should not have a copyright. Am I right?

**Mr. Richard:** He should not have the performing rights. As the Chairman pointed out, he should have the right to prevent reproduction of that record.

**The Chairman:** I think your statement is too broad.

**Mr. Audet:** I see your point.

**The Chairman:** Because there is some kind of copyright preserved.

**Senator Beaubien:** In other words, if you buy a record you have the right to play it?

**Mr. Richard:** Yes.

**Senator Beaubien:** That is what you bought it for.

**Mr. Richard:** Yes.

**Mr. Audet:** That is what it is there for.

**Senator Cook:** You can replay it but you cannot reproduce it.

**Mr. Richard:** That is right.

**Mr. Audet:** That is it.

**The Chairman:** That is why I asked Mr. Audet the question.

**Mr. Audet:** This is a rather difficult frontier to establish. If you register a record and you play it, it is very difficult to find out whether you are playing an original record or a copy.

As far as the TV or radio station is concerned, you could register any record and you could play it. You could play the reproduction very easily.

**Senator Flynn:** It would be interesting to know the procedures from the time the radio station acquires a record to play at their station. What are the procedures and what is done in relation to that record in order that the public may hear it over that wavelength?

**Mr. Richard:** The evidence before the Copyright Appeal Board was, first of all, that the record companies promote their records by giving them to the radio and television stations. Also they were giving the albums free and, sometimes, at a discount. They take the record and put it on a turntable.

**The Chairman:** Is that all that is involved? The record does not have to be prepared?

**Mr. Richard:** A record can be physically used the same way it is received.

**The Chairman:** You just pick it up and set it down on a turntable?

**Mr. Richard:** Yes.

**Senator Hays:** Why do we not go back to where it is composed, and as to who gets a cut, and so on? Somebody composes a song and puts it on a record.

**Mr. Richard:** Could I just make one clarification, Mr. Chairman? The records could include literary and dramatic works as well as musical works, but it is only before the Copyright Appeal Board that they can deal with music.

To answer the question of Senator Hays, what happens, first of all, is that a composer or a group of composers get together and compose an original musical work. They usually assign their copyright in that musical work to a publisher, who is the person who, in effect, acts as their business agent in publishing the music in sheet form and getting it recorded.

They go to a record producer, who need not be a record manufacturer. In other words, the producer of the record is not necessarily the one who actually physically presses the record. There are two terms here: record producer and record manufacturer. They will go to a

record producer who will agree, on whatever terms, to produce the record.

**Senator Carter:** A master copy?

**Mr. Richard:** A master copy. We are talking here of a master tape and the original contrivance, if you are looking at the Copyright Act. The producer may then either have the record manufactured or may just, for payment, turn over the master to the group, who will then go and have their record manufactured themselves.

**Senator Macnaughton:** Distributed?

**Mr. Richard:** No, manufactured first. Then it is distributed. It is distributed at the distributor level and retail sales level and they receive payment for the sales of the records.

Now let us look at what payments are received. First of all, the composer receives performing right fees for the performance of his musical work. Whenever his work is played in public, he or she gets a payment through the publisher who has assigned the rights, in turn, to these two large collection agencies in Canada, BMI and CAPAC.

Now the musician, what does he get? We have had the evidence of Mr. Wood, who I notice is with us today, and is international vice-president of the FSM. The musician, of course, receives the rate that has been negotiated by the union with the record manufacturer or producer—the labour rates for the time he spends in the recording.

**Senator Flynn:** The same thing for the artists?

**Mr. Richard:** The same thing for the artists. The artists did not give evidence before the Copyright Appeal Board.

In the case of the musicians it is quite clear that they receive a negotiated rate for their services. In addition, for each record sold, there is a payment made to a trust fund, administered in the United States. Since this is an international union between Canada and the United States, payments are made from Canada to the United States and are received from the United States in Canada. This trust fund is to pay musicians for live performances of works at band concerts or whatever.

There is also a special fund—and these are terms they use—which I would describe as providing bonuses to the side men; that is to say, the musicians, as I understand it, apart from the leader of the group, who have contributed to the performance. They receive bonuses through a special fund.

Then, where negotiated, the musicians and artists also receive royalties from the sales of records. A group such as the Beatles would probably negotiate a contract with the producer of a record whereby, in addition, they would receive a royalty based on a certain number of sales of records. The record manufacturer gets his money from the sale of the records.

Let me, at this juncture, Mr. Chairman, draw your attention to some revealing figures. This is not an unprofitable business, such as was suggested by the previous witnesses from the textile industry. This is an industry



that is very healthy. These are figures taken from the Dominion Bureau of Statistics.

The first figures I have are for the production of phonograph records in Canada. From 1958 to 1970 the production of records in Canada has increased from 19.8 million to 42.8 million. Even more revealing are the sales figures of records in Canada. The total of retail sales for all goods in Canada in 1961 was \$16 billion and in 1969 \$27 billion. That is a 70 per cent increase in retail sales from the year 1961 to the year 1969.

**Senator Flynn:** Not in Canada.

**Mr. Richard:** That is in Canada, sir.

**Senator Flynn:** That is in billions?

**Mr. Richard:** It is all goods. I am comparing the sales of all goods in Canada with record sales, and the sale of all goods, 1961 to 1969, increased by 70 per cent.

**Senator Carter:** When you say "record sales," are you including cassettes, tapes, everything?

**Mr. Richard:** Just phonograph records alone, not tapes.

**Senator Connolly (Ottawa West):** Excuse me, Mr. Chairman, there is confusion. Mr. Richard is giving us the sale of all consumer goods, regardless of whether they are records, clothing, shoes, or whatever they are.

**Mr. Richard:** Yes. Now I am giving you the total sales of records in Canada. The total sales of all goods in Canada, as Senator Connolly pointed out, increased in the period 1961 to 1969 by 70 per cent. The sales of phonograph records, only, during the same period increased by 142 per cent. That is double the rate at which retail sales generally in Canada increased.

**Senator Connolly (Ottawa West):** From what to what?

**Mr. Richard:** From \$18½ million to \$44½ million. These are distributor prices. The evidence was that you would multiply that figure by at least two to see what the total retail sales in Canada of phonograph records have been in the past year.

**Senator Connolly (Ottawa West):** Multiply both by two.

**Mr. Richard:** One of the witnesses suggested that it would be a \$100 million industry, at the retail level.

**The Chairman:** Have you a breakdown of that as between what would represent domestic production and what would represent the imports?

**Mr. Richard:** Yes, I have a breakdown. To come back to the question by Senator Hays, you must understand that the master tape is imported into Canada 90 per cent of the time and records are pressed from that master tape in Canada 90 per cent of the time. That is to say, the performance which gives rise to the record took place in a foreign country 90 per cent of the time, and this is by volume of sales.

The other 10 per cent is accounted for by importation, direct importation of the record itself, as opposed to the master tape coming in to make the record, and records

produced in Canada. What I mean by "records produced in Canada" is where the performance actually took place in Canada, where the master was produced in Canada, where the record was pressed in Canada. On the evidence given before the Copyright Appeal Board, that accounts for about 5 to 7 per cent of the total volume of records made in Canada. So, 90 per cent of the records which you buy in Canada, and which may have been pressed in Canada, originate from tapes made outside of Canada. The musicians and the artists got together at a session outside Canada, made the tape outside Canada and shipped the tape to Canada. I assure you that the duty paid on that tape is minimal, because it does not include the value of the performance, but only the value of the physical tape. From that tape they press records in Canada. The other 10 per cent is accounted for by records which are physically imported into Canada and records where the master tape was made in Canada.

**The Chairman:** Mr. Richard, am I right in concluding that what you are telling us is that there is no domestic industry for the production of records in Canada where they start with the artistic and musical performance and carry out the whole operation here?

**Senator Beaubien:** It is 6 per cent.

**Mr. Richard:** There is, Mr. Chairman. On the evidence of SRL, by volume it accounts for less than 10 per cent of the total production.

**The Chairman:** I understand that some of the radio stations, not all, for instance, do produce some of their own records?

**Mr. Richard:** Yes, we have the MacLean talent library, with Mr. Lyman Potts here, which do produce.

**The Chairman:** And you have CFRB here.

**Mr. Richard:** The broadcasting industry pays artists and musicians for live performances—particularly, the Canadian Broadcasting Corporation, and Mr. Allyn is here to represent them.

**The Chairman:** I was trying to get at the scale of the domestic industry, if you can give it to me. That is, eliminating the importation of tapes or records from abroad, how much would it be?

**Mr. Richard:** 5 to 7 per cent of the records pressed in Canada are from masters originally produced in Canada. That is the evidence of SRL.

**Senator Hays:** You started at the composer. I want to know what these other people you are complaining about are receiving under Bill S-9.

**The Chairman:** They are not receiving anything.

**Senator Hays:** But what will they receive?

**Mr. Richard:** What the record company is seeking to collect from the broadcasters is, from the private broadcasting sector, \$3½ million per year and, from the Canadian Broadcasting Corporation, \$800,000 a year,—let us say \$1 million dollars—so that makes \$4½ million a



year, which is what they are seeking to collect from the broadcasting industry in Canada.

**Senator Connolly (Ottawa West):** And they can play those records on radio and television?

**Mr. Richard:** They can play those records on radio and television which they have given us for nothing. They have beaten paths to the doors of our librarians and music directors. We produced in evidence a circular to all stations from Polydor Records of Canada Limited, which is owned by German and Dutch interests. It was accompanied by a cheque and by a record, and said: "We send you a buck just to audition this record". They used the radio and television stations, but primarily the radio stations, to promote and sell the records, at no expense to them.

**Senator Flynn:** It is the same for the composer, the musician and the artist. The rights that you are now paying the musicians, the artists and the composers for are based on the use of the record, and they are interested in having you play their music. They are interested in the same way as would be the record manufacturer.

**Mr. Richard:** It is based on the use of their musical work which is embodied in the record.

**Senator Flynn:** It is only natural.

**Mr. Richard:** That is the only payment they receive, Senator Flynn; that is the way they receive payment. The record manufacturers receive payment from the sale of records. I have tried to show how substantial their sales have been. The record manufacturers also have publishing firms which receive part of the royalties that are going to the composers and authors. As I said to you earlier, the composer in 99.9 per cent of the cases has assigned his right to a publisher, and the usual division of fees between composer and publisher is 50-50. The record companies have set up publishing firms, so they are getting 50 per cent of the composers' fees, as well as the money they are getting for selling the records.

**Senator Flynn:** I am interested in the question of the division of fees between the composer and the artist or musician. The right of the author disappears after 50 years, for instance?

**Mr. Richard:** Yes, life plus 50 years.

**Senator Flynn:** When there are no more composer's rights, you pay less to CAPAC and BMI?

**Mr. Richard:** The broadcasting industry pays to BMI and CAPAC on the following formula. It is a percentage of gross revenue for the use of any or all of its repertoire.

**Senator Flynn:** Whether there is a composer's right on the music or not?

**Mr. Richard:** We know that there is a composer's right.

**Senator Flynn:** I am speaking of items like "Carmen," for instance, composed a hundred years ago. There is no longer a composer's right on this work.

**Mr. Richard:** That is right.

**Senator Flynn:** You pay the same amount as if there was a composer's right?

**Mr. Richard:** Yes, you do, you pay on the gross revenue for any or all records. But if you wanted to play a single selection which was in the public domain, you would not have to pay performing rights for that particular selection.

Let me talk about artists, musicians and performers. There is nothing in the present Copyright Act which grants to performers, musicians or artists any right to copyright. Section 4(3) does not disturb any right that performers, artists or musicians may have, because they have none under the present Copyright Act. That is why I will be very interested to hear what the second group may have to say.

**Senator Connolly (Ottawa West):** You say that that group, performers, artists and musicians, are paid by those who hire them to perform.

**Mr. Richard:** That is right; they are paid for a service. The Copyright Act as presently constituted does not recognize any copyright in the performer, artist or musician. Therefore, this is not taking away anything that that group may have, because they do not have it in any event.

**Senator Flynn:** Who determines the fees payable?

**Mr. Richard:** These rates are negotiated.

**Senator Flynn:** On behalf of whom do BMI act?

**Mr. Richard:** Only on behalf of the composer and publisher; they do not act on behalf of the artist, musician or performer.

**Senator Connolly (Ottawa West):** To take a concrete case, Rogers and Hammerstein write both music and lyrics. They have a publisher or manufacturer of records produce a recording of, for instance, "The King and I." They make a deal, in which they have copyright fees in the work. Subsequently, the manufacturer may hire a name band and a name singer, who have no copyright but are paid to reproduce that work on another record.

**Mr. Richard:** Yes, plus the fact that they may have an additional contractual arrangement to receive royalties.

**Senator Beaubien:** It is just the record, not the number of times it is played.

**Mr. Richard:** In the case of musicians there are also two funds, one trust and one special. The funds receive moneys, which are distributed to the musicians, from the sale of records.

**Senator Connolly (Ottawa West):** Is that over and above their service charge?

**Mr. Richard:** Yes.

**Senator Molson:** Do those payments to the trust funds include all the copyright fee?

**Mr. Richard:** It has nothing to do with copyright fee.

**Senator Molson:** I mean all the performer's fees?

**Mr. Richard:** I want to be sure that I understand your question.

**The Chairman:** Do the funds for this trust fund come from performers' earnings?

**Mr. Richard:** No, from the sale of records.

**The Chairman:** Is it a percentage of the sale price?

**Mr. Richard:** Yes, it is.

**Senator Molson:** Does all that percentage of the sale price go to the trust fund, or does any of it rub off on the performers?

**Mr. Richard:** The trust fund and the special fund were explained to us in relation to musicians, and I am not in a position to state whether payments from it are made to performers or artists.

**Senator Molson:** You have still not answered my question: do the musicians retain any of this, or does their share go to the trust fund?

**The Chairman:** The musician has already been paid.

**Mr. J. Lyman Potts, President, Standard Broadcast Productions Limited:** This agreement is negotiated in New York by the major companies. They decide in negotiation with the AF of M how much is to be paid to the trust fund in respect of the recording sessions. Others who wish to make records have to agree to those terms, which are almost dictated by these large groups in New York.

When a musician is hired to make a phonograph record, not a transcription, he is paid \$90 for three hours' work. During this time no more than 15 minutes can be recorded. Therefore, the minimum requirement for a long-playing record is two three-hour sessions at a cost of \$180. The producer pays 8 per cent of this into the pension fund; the musician pays nothing.

**The Chairman:** That 8 per cent is on everything that has been paid, as well as the sale price?

**Mr. Potts:** No, sir, it is only on the musician's wages. A recording session might cost \$6,000 or \$7,000; 8 per cent of that goes to the pension fund administered by the union.

**The Chairman:** Mr. Richard told us earlier that it was calculated on the sale price.

**Mr. Potts:** No, there are two funds. The first was established in 1948. Since that time whenever a record is sold some money goes to the trust fund, which has collected \$100 million since 1948 on this particular assessment. I believe that Mr. Wood will tell you that approximately \$5 million of that money has returned to Canada and been distributed. This enables part-time musicians, who normally are not engaged in recording sessions, to produce concerts in such places as parks, where no admission is charged.

The second fund is an equivalent assessment and goes to the personnel in the studio. If we employ Moe Koffman in a studio he receives his share in that total fund, which is collected all over the world and transmitted to the AF of M, proportionate to his participation with other musicians in that session. So, as a result of the recording activity in Canada, some of our better Canadian musicians now receive sizable cheques from that union in addition to employment.

However, nothing is received by this fund as a result of records made outside Canada. No contributions are made as a result of records made in Germany, Great Britain, France and other places in the world. As Mr. Richard has pointed out, this represents at least 90 per cent of the records sold in Canada, if we count only those manufactured in Canada and perhaps up to 4 or 5 per cent of the records brought in physically and distributed here.

Mr. Wood and I are very close on this matter and I think I have adequately described it. I might say that Mr. Wood has some of the finest musicians in the world working for him. We have great talent in this country and are doing our level best to ensure that it is heard around the world and in our own country, but it is so hard to be a Canadian sometimes.

**Senator Flynn:** At page 2 of your submission it is mentioned that the Canadian Broadcasters pay \$4½ million and the Canadian Broadcasting Corporation \$1 million in performing rights held by the author or composer of original works.

**Mr. Richard:** Yes sir.

**Senator Flynn:** My understanding is that in many cases there are no composer's rights, only performer's rights in this amount. Speaking of my example of "Carmen", that has no composer's right, only the performing right. Did I understand you to say that the performing right does not exist under the present legislation?

**Mr. Richard:** No, I said that an artist or musician has no performing right under the Copyright Act.

**Senator Flynn:** So there is no composer's right?

**Mr. Richard:** There is no intervening right.

**Senator Flynn:** Why do you pay this amount to musicians and performers when no rights exist?

**Mr. Richard:** First of all, Senator Flynn, the broadcasters play very little public domain music. Secondly, the way the fees have been approved by the Copyright Appeal Board for composers and authors vis-à-vis broadcasting stations is as a percentage of gross revenue for the right to use any or all of the repertoire in current use.

**Senator Flynn:** Whether there is a right attached to any particular piece of music?

**Mr. Richard:** Yes, but it is for the works which are in current use.

**Senator Flynn:** I know.



**Mr. Richard:** There would be very little public domain in current use. In any event, it is a blanket licence, as they describe it. If we wanted to take out a per occasion or per performance licence—in other words we pay...

**Senator Beaubien:** Who is we? The broadcasters?

**Mr. Richard:** Yes, the broadcasters. If we wanted to pay BMI or CAPAC, representing the publishers, on each record, on each musical work we perform over our airwaves, then we could do so. We would then only pay for those musical works on which there is copyright subsisting. But the cost of administering such a scheme, which would require us to keep continuous logs of each musical work performed on the airwaves, is outweighed by the risk of paying in some cases for musical works which may be in the public domain. Let me make just one more point.

**The Chairman:** If this is a breaking point, maybe it is a good time to adjourn. Is there something new you would like to develop?

**Mr. Richard:** Yes, sir.

**The Chairman:** Then let us mark it down. You make a note of it for two o'clock and we will pick it up. Is it agreed that we adjourn until two o'clock?

**Hon. Senators:** Agreed.

The committee adjourned until 2 p.m.

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Upon resuming at 2 p.m.

**The Chairman:** Gentlemen, we have a quorum so we shall resume our hearing.

Now, Mr. Richard, you were going to jump into a new point. We have been searching and asking questions. Let us see if we can acquire the answers.

**Mr. Richard:** I will be brief. I would just like to draw your attention to another figure. This is evidence given to us by Mr. Wood on American Federation of Musicians, and it puts things in some perspective.

He told us before the Copyright Appeal Board that of \$45 million earned by musicians in Canada, only about \$1 million comes from all recordings in Canada. That includes the Canadian Talent Library, of which Mr. Lyman Potts has spoken about earlier, and which is administered by Standard Broadcasting which, in turn, has radio stations CFRB and CJAT. The record companies in Canada are spending less than \$1 million in employing musicians in Canada to produce records in Canada.

**The Chairman:** Where does that lead to?

**Mr. Richard:** It just supports the point, Mr. Chairman, I was asked earlier about how many records were produced in Canada. I gave you the figure of 5 or 6 per cent.

**The Chairman:** I thought you were talking about a correlation of some moneys that were paid musicians, and what went into this fund.

**Mr. Richard:** The correlation I want to make is that very little money is paid by the record companies to musicians in Canada—less than \$1 million out of \$45 million. A substantially larger amount is paid to musicians in Canada by private radio and TV, and by the Canadian Broadcasting Corporation. That is the point I wanted to make.

**The Chairman:** Do you mean paid directly?

**Mr. Richard:** Directly for live performances.

**Senator Connolly (Ottawa West):** This is for services rendered?

**Mr. Richard:** Yes, for live performances.

**The Chairman:** They have not figured out a way go get that free.

**Mr. Richard:** No. Mr. Audet would like to continue now.

**The Chairman:** I was wondering about your brief, Mr. Audet. We have all read it, and there is not very much left. If there are some high points perhaps you would mention them, but I do not want you to feel that we are closing you out on anything.

**Mr. Richard:** I would just like to briefly describe SRL. SRL is a privately incorporated company, limited to shareholders. There are at the present time eight shareholders. SRL describes itself as being the big eight: MCA, RCA, Warner Brothers, London, Columbia, Polydor, Capitol, and Quality. All of these companies are foreign-owned and controlled: 6 from the United States, one from Great Britain and one from Germany.

**The Chairman:** Except as a fact that we have this information, in what direction and to what extent, if at all, should we make use of it?

**Mr. Richard:** We are already making payments to the composers' societies of some \$4½ million each year, every year. What SRL requests before the Copyright Appeal Board amounts to a further payment of \$3½ million yearly in perpetuity in addition to what we are paying to BMI and CAPAC. In our submission, this is an additional drain on broadcasters, and it means additional funds going out of this country.

**The Chairman:** I can understand the first part, the additional drain on broadcasters, but your calculation is based on the tariff that was submitted on which there has been no decision.

**Mr. Richard:** That is right.

**The Chairman:** Would you assume, having regard to the reception, that the tariff which is settled will be substantially less than what they ask for?

**Mr. Richard:** I hope so. This is in the hands of the Copyright Appeal Board.



**The Chairman:** You appeared in the matter?

**Mr. Richard:** Yes I did.

**The Chairman:** With your usual ability and agility, I would expect that you have formed a pretty good judgment on that.

**Mr. Richard:** I would not try to prejudge the decision of the Copyright Appeal Board, which I know is meeting right now to make its recommendations.

**The Chairman:** We may have the answer to that. It may be a lot less dollars, and I want to see to what extent you are leaning on the dollars you arrived at by using that tariff as a calculation.

**Senator Connolly (Ottawa West):** I wonder if I could ask a couple of questions here.

**The Chairman:** Yes.

**Senator Connolly (Ottawa West):** I notice that we have listed in our agenda other witnesses, such as the Canadian Labour Congress and Canadian Broadcasting Corporation. Do we know whether their interest is the same as the interest of the present witnesses?

**The Chairman:** I would assume the CBC have the same interests. I have no way of knowing whether the CLC is supporting or opposing the bill.

**Senator Molson:** In their brief they are opposing it.

**Senator Connolly (Ottawa West):** They have an opposite interest. We will find that out when they come before us.

Mr. Richard or Mr. Audet, as I understand it, you are supporting this bill and what you say is that the addition of subparagraph (4) to section 4 of the Copyright Act will have the effect of not recognizing copyrights in performing rights. Is that so?

**Mr. Richard:** Yes, sir.

**The Chairman:** In records?

**Mr. Richard:** In records.

**Senator Connolly (Ottawa West):** Now, it is the use of records that you are talking about. It is not the record itself.

**Mr. Richard:** That is right, sir.

**Senator Connolly (Ottawa West):** So it is the performance of the work by the medium of a record?

**Mr. Richard:** No, it is the performance of the record itself. We are not seeking to take away the performing right of the composer or publisher in the work, but we are seeking to support the principle of this bill, which would draw the performing right in the record, the mechanical contrivance, itself.

**Senator Connolly (Ottawa West):** What you say, in effect, is this: If payment is to be made for a performing

right, it would be made to the manufacturer of the record.

**Mr. Richard:** Yes.

**Senator Connolly (Ottawa West):** And what you say, in effect, is, apart from the fact that it is going to be much more costly to the radio and television industry in Canada, that these manufacturers of records, as a result of the publicity that is given to their productions through the media, television and radio, will have their sales to the public at large increased.

**Mr. Richard:** Yes, sir.

**Senator Connolly (Ottawa West):** I find a little problem here in my mind, and perhaps you can clear it up readily. You tell us that these record manufacturers at all times give the stations the records and sometimes even pay you a small amount to use them. Now do I understand you to say that there is pressure? I find it difficult to find where this pressure is coming from. I find it difficult to find where your opponents are because they may not be represented here; but there is pressure from them to get a performing right on something that they give you free?

**Mr. Richard:** Yes, sir.

**Senator Isnor:** It is like church, everything to sell and nothing to buy.

**Senator Desruisseaux:** Mr. Chairman, I believe from the experience I have had that they receive records from some companies—the records that they want to promote. They cannot get free access to all other records.

**Mr. Richard:** Yes. There was evidence before the Copyright Appeal Board of stations writing to the record companies for further copies of a record which had been broken, and the evidence was that in all cases the record companies were quite happy to provide them with additional copies of the record.

In conclusion, Mr. Chairman, I would say that Bill S-9 implements the recommendations of the Ilsley Commission, and of the Economic Council report of as recent date as January 1971.

**The Chairman:** You are urging our due consideration to the report of the Economic Council.

**Mr. Richard:** Yes, sir.

**The Chairman:** Even if they prefaced their remarks by saying they did not know very much about copyrights, and then went on to express their opinion on this.

**Mr. Richard:** Yes, sir, and on many other things.

**The Chairman:** Yes, that is right, on many other things—with the same experience. Now, Mr. Audet?

**Mr. Audet:** As Mr. Richard was saying, there was a sentence in the Royal Commission report which I should quote: It is given on page 5 of our brief. It is from the Ilsley Report of 1957, page 77:

The act restricted by the copyright in a sound recording should be the making of a record embodying the recording. At the present time it would appear that an unauthorized public performance of a recording embodied in a record is an infringement of the copyright in the record. Probably the broadcasting of a recording embodied in the record is also an infringement. We recommend the abolition of a record manufacturers performing right and the broadcasting right in records or in the recording embodied in the record.

We also have on page 5 a quotation from the Economic Council of Canada more recent report on Intellectual and Industrial Property, page 158. You will note it also recommends the abolition of this performing right. You will notice that on page 159 of that Economic Council report the Council also recommends that there not be a proliferation of neighbouring rights and that therefore performing artists who do not now have the right, not be given the right in the future. They suggest that moneys which could be received by performing artists through a performing right fee, could best be done through the Government of Canada through such agencies as the Canada Council or the Canadian Film Development Corporation.

As one last matter, I would like to draw your attention to this. SRL has assignments from 28 record producers in Canada, eight of whom constitute the Big 8 and who only eight of whom are the only shareholders. The important thing is that SRL has admitted that it has no agreement with those who have made assignments to it, regarding the division of any funds that it may receive from the broadcasters. Although there has been a suggestion by SRL, that they may make some of the funds which they may collect available to musicians and artists in Canada, the evidence is also quite clear that there is no agreement between SRL and musicians and artists and performing artists in Canada. We take the position, as the Economic Council did, that if the performing artists are to receive additional encouragement for their creative talents, this should be done in another way.

**Senator Connolly (Ottawa West):** As far as this committee is concerned, of course, that evidence is hearsay.

**Mr. Richard:** Yes, it is hearsay, and I suggest it is not relevant because you are not dealing with the performing artists company right here.

**Senator Cook:** We have first to decide whether there should or should not be a copyright and all we have to decide afterwards is consequential. If there is no copyright, it is none of our business.

**The Chairman:** The question may go a little further, Senator Cook. The basic question, in any strict analysis is, should there or should there not be a copyright. However, you know that public policy is expressed in statutes sometimes becomes a matter of what it is expedient to do. You see that in legislation. It is what someone has said is the "art of the possible".

It could be that if we decided that this is something where there should be a copyright, yet we thought there should be some recognition of the recording or records people, we could still go ahead with what might be suggested would be expedient. Now, I do not want to be misinterpreted. I do not want rumour alley to become full again, because I have raised this as a possible consideration, that I am thinking in those terms. This is to provoke a realization of the problem.

**Senator Connolly (Ottawa West):** Following up what you say, it seems to me that if the record companies—I have regard for them because I think they are an important part of the industry and the industry we have with us here today—if the record companies were upset about the bill or about the presentation that is being made by the broadcasters, they would be here to complain.

**The Chairman:** They are. We have briefs filed and we have given them an appointment to hear them. We are hearing the SRL on the 26th, I think.

**Senator Connolly (Ottawa West):** Thank you. I am sorry, I did not realize that.

**The Chairman:** There are seven or eight more hearings after today. So the first ones who reply would be the first ones who get the appointments. There is a question I had here for either Mr. Richard or Mr. Audet. On page 9 of your brief you talk about the reasoning behind, I take it, the conclusion which was supported by the Ilsley Royal Commission. You have referred to that and then you say:

It is supported after detailed study by the Economic Council of Canada, it is supported by the Parliament of Canada in the Broadcasting Act.

Would you please develop that and explain it to me?

**Mr. Audet:** Yes. I think what we mean here—and I would like Mr. Richard to enlarge on that if he feels that it would be appropriate—is this. We have been very often requested, and properly so, to be a national instrument for furthering Canadian culture and Canadian identity. We are proud to have that function. We feel that if funds are drained out of Canada through certain requests that may be made in the future, or which the previous act permitted, that it would be only detrimental to the furthering of the Canadian aims and objectives through broadcasting.

**Senator Flynn:** Then the bill does not go far enough. If this argument is valid, the bill does not go far enough. As we are told this morning, something like 90 per cent of the amount that you are bound to pay every year goes out of the country. So we should do away with the composers' rights or the performers' rights.

**Mr. Audet:** May I take a very pragmatic approach?

**Senator Flynn:** I think this is the approach you should have taken from the beginning.

**Mr. Audet:** In that sense, there is now a *modus vivendi* which has been accepted by all parties over the years. We are speaking now of over 50 years. There is a loop-



hole in the law and, if I am right, and I wish my legal adviser would confirm this at some point. This law is a remnant of some old British law which the British themselves have amended since that time. But since it happened to be and have been carried into Canadian law and stayed there, no one took notice of it until someone, using a little part of what appeared to be a permissive wording, has suggested that the rights should be in effect double.

**Senator Flynn:** You are dealing with the principle, but when you say that one reason is the fact that most of these funds would go out of the country, it is true of the rights that you are now paying to CAPAC and BMI. So I say that if we are to pursue your argument, the bill does not go far enough.

**Mr. Audet:** We could ask for all sorts of things but it appears to us that this bill which is now before you does plug the hole. And I think this is good.

**Senator Flynn:** It is the best we can do.

**Senator Beaubien:** At the present time. We could not buy the records anywhere else anyway. It has to go out of the country.

**Senator Flynn:** I am just dealing with the principle. We would get the records all the same, do not worry.

**The Chairman:** Senator Flynn's point is that if the argument is that we should approve this bill so as to prevent some money from leaving Canada, let us go the whole hog and prevent all the money going out.

**Senator Beaubien:** Where would you get the records? Would we make them all here?

**The Chairman:** Some are made here; the broadcasting companies make some.

**Senator Beaubien:** Yes, 6 per cent.

**Senator Flynn:** Six per cent are composed here, but over 90 per cent are manufactured here.

**Senator Beaubien:** You are not referring to the manufacturing; you pay outside the country anyway.

**Senator Flynn:** An editor in another country would sell the basic tape to any recording company here.

**The Chairman:** Senator Flynn's point, Senator Beaubien, is that the money involved is not a good argument for supporting or opposing the bill.

**Senator Beaubien:** I will bow to the greater wisdom of the lawyers.

**Senator Desruisseaux:** But, after all, Mr. Chairman, all moneys collected for fees go first to the United States, as I understand it, and only a part comes back.

**Senator Beaubien:** Senator Flynn would like to eliminate that, but I do not see how it can be done.

**The Chairman:** Any argument based on that does not go to the principle, but down a parallel line. I take it you

say it is supported by the Parliament of Canada in the Broadcasting Act; that is the opinion expressed by Ilsley and the Economic Council. I just wish to know where it appears in the act?

**Mr. Audet:** These are three different things. The act says that broadcasting should be an instrument furthering the Canadian identity and the Canadian culture and, as I was telling you, we are very proud of that. I will read from section 3, subparagraphs (b), (d) and (g) of the Broadcasting Act:

(b) the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;...

(d) the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide...

I am not sure that the rest is relevant:

(g) the national broadcasting service should...

(iv) contribute to the development of national unity and provide for a continuing expression of Canadian identity.

**Senator Cook:** Those are flower clauses.

**The Chairman:** Those are flowers, yes.

**Mr. Audet:** They are costly flowers, sir, I submit.

**Senator Flynn:** This is the same argument; to favour Canadian identity we should never import music and words composed elsewhere and pay for the rights. That is exactly what you are doing, paying out 90 per cent of the \$500 million.

**Mr. Audet:** There is a practical aspect to this, sir; there are no other products available.

**Senator Flynn:** Why not come back to the pragmatic aspect of the problem, that you and the Canadian Broadcasting Corporation do not wish to pay more than at present? That is the only valid argument in favour of the bill.

**The Chairman:** Mr. Audet, the fallacy of your statement, as far as bearing directly on the question, is that while you wish to continue dealing with the manufacturers of your records you do not wish them to be in a position to collect a royalty. Which route do you intend to take?

Quoting the concept of the Broadcasting Act to develop the culture of Canada will not make any change. It will only provide an assurance by statute that the performing right in terms of royalty will not have to be paid in order to use the records. That argument falls flat against the wall; it is splattered all over the place.

**Mr. Audet:** I am not sure if I am permitted to make a comment after the Chairman has spoken.

**The Chairman:** You certainly are; I am just a member of the committee.



**Mr. Audet:** We are not initiating this bill; we are just coming to tell you that what you seem about to do is in our opinion a good thing and we wish to support it wholeheartedly.

**Senator Flynn:** It is helping you financially.

**Mr. Audet:** Well, this is, of course, an important part of it.

**Senator Flynn:** I think it is the only part.

**Mr. Audet:** It helps all Canadians by attempting to find a way to keep our money in the country. If what you are doing at the present time happens to keep within Canada \$4½ million per year in perpetuity, we feel it is a good thing.

**Senator Flynn:** That is based on the hypothesis that the Copyright Appeal Board would grant in its entirety the application of SLR, which is doubtful.

**Mr. Richard:** Mr. Audet referred to a *modus vivendi* which has existed for over 50 years. It is important to note that both of these industries have grown and developed on the basis that one would not charge the other for the use of air time or records. Mr. Audet really says that they are now coming in with a substantial tariff claim, \$3½ million or whatever it may be, and that this will impose additional strains on the Canadian Broadcasting System at a time when Parliament expects it to perform in the field of cultural activities in national unity.

**Senator Beaubien:** You should raise your price.

**Senator Flynn:** If the Copyright Appeal Board should grant only 10 per cent of what is asked by SLR, it would not have the same meaning at all.

**Mr. Richard:** They could always come back to the Copyright Appeal Board the next year for more money.

**Senator Flynn:** But they would have to justify it.

**Mr. Richard:** Yes, sir.

**The Chairman:** Mr. Richard, to urge the approach of the public interest of Canada to keep these moneys in the country I think is wrong. This then should apply in all directions in which money is paid out and your organization pays out money itself.

**Mr. Richard:** We are not urging it, but explaining the facts so that when you make your decision you will know what its implications are.

**Senator Cook:** They have this copyright; it is the fact that the money goes out of Canada.

**The Chairman:** Is it a reasonable approach that there should be a copyright? All these other things end up on a detour.

**Mr. Richard:** I agree that that is the nub of the argument.

**Senator Desruisseaux:** I would like to know, if we did grant the sound recording organization the right to obtain a fee on the gross revenues, how would that affect CAPAC and the other organizations? That is what I would like to know. Would it affect them at all?

**Mr. Richard:** It could affect them because of what the Copyright Appeal Board may say when they were granting money to SRL. They may take something away from CAPAC and BMI. But what is the effect of this? The effect of this is to reduce the value of the composer's work. The law is quite clear, that the primary performing right belongs to the author or composer, because it is his work that is being performed. If by reason of SRL getting some money the fee payable to the composer or author is reduced, that may be unfair to the composer or author, because his work still has the same value. By reason of the performing right being given to somebody else, i.e. a recording company, he will receive less for his toil, for his work.

**Senator Flynn:** I think as far as the composer's right is concerned, it is more a matter of bargaining on his part than anything else.

**Mr. Richard:** No, it is not, sir.

**Senator Flynn:** Oh, gee whiz! If I compose something that is very popular I am going to ask for more.

**Mr. Richard:** That is not the point.

**Senator Flynn:** Certainly.

**Senator Cook:** You do not know if it is going to be popular until afterwards.

**Senator Beaubien:** It is too late when it is popular.

**Senator Flynn:** Maybe the first work, but the second will certainly be worth more.

**Mr. Richard:** I think we have to be conscious of the provisions of the Copyright Act when we make these sorts of statements. I draw your attention to section 19 of the Copyright Act.

**Senator Flynn:** That is right, but that is something else.

**Mr. Richard:** I beg to disagree with you. I do not want to enter into a debate with you, because I know I am a witness.

**Senator Flynn:** You can enter into a debate with me.

**Mr. Richard:** Thank you. Section 19 of the Copyright Act says that once an author or composer has allowed his musical work to be recorded once, anybody else can record that music for two cents per side.

**Senator Flynn:** Two cents, I know that.

**Mr. Richard:** That is all he gets.

**Senator Flynn:** I was not arguing against that. I was saying that a very popular composer is in a position to ask for more than someone who is unknown.

**Mr. Richard:** All he would be entitled to receive after he has given permission is two cents.

**Senator Flynn:** After it has been given, but on what conditions?

**Mr. Richard:** No conditions.

**Senator Flynn:** Oh!

**Mr. Richard:** The conditions are two cents per side.

**Senator Flynn:** No. If I sell my author's right I can ask more if I am more popular or better known.

**Senator Cook:** He gets a greater number of two cents.

**The Chairman:** The factor you are multiplying by two cents would be much greater.

**Senator Cook:** Yes.

**Senator Flynn:** I am just meeting the argument that if it were included in the amounts paid to CAPAC and BMI it would not necessarily take away from the composer.

**Mr. Richard:** It necessarily has to take away from the composer.

**Senator Flynn:** No, not necessarily.

**Mr. Richard:** Because he will be receiving less money than he is receiving now. His right is quite distinct from the right the recording companies are asserting.

**Senator Hays:** Did I understand that earlier this morning you said that the American broadcaster does not have to pay?

**Mr. Richard:** That is right.

**Senator Hays:** So there is not complete parity; Canada would have to pay United States broadcasters.

**Mr. Richard:** That is right.

**Senator Hays:** Would not this be a much better argument than dealing with the philosophy of a political party or political parties?

**Mr. Richard:** You see, we have probably cast our net very wide today and introduced all the factors we thought you should know. The important ones are the ones we discussed earlier—whether there should be a copyright or not, and the fact that where the majority of these recordings originate, i.e. the United States, the broadcasters in that country do not pay any performing right to their sound recording manufacturers.

**Senator Connolly (Ottawa West):** Do broadcasters in any country pay?

**Mr. Richard:** Yes.

**Senator Beaubien:** England.

**Mr. Richard:** As I said, the examples given to us of broadcasters who pay in other countries are of state-owned industries, state-owned broadcasters: England

except for the Isle of Man, Sweden, Norway, Germany, Holland, France and Australia. Australia has a mixed system, private and commercial. There was no evidence introduced as to any payments being made by the commercial broadcasters in Australia; the only evidence introduced was in respect of payments being made by the state-owned broadcasting system.

**The Chairman:** The whole thing then was on the basis of contract?

**Mr. Richard:** Yes.

**The Chairman:** In other words, if you want to use some of my records we make a deal.

**Mr. Richard:** But the Copyright Act in those countries also provided for copyright for a sound recording company.

**Senator Hays:** You have to pass it on, so Canadians will be paying more than Americans.

**Mr. Richard:** That is right.

**Mr. Audet:** For something they are not willing to pay at home.

**Senator Hays:** And the reason they are doing this is because they found a loophole, they think, in the act passed in 1921?

**Mr. Richard:** Yes, sir.

**The Chairman:** Senator, I may agree with what you are saying, but when you use the word "loophole" I think that is a distortion, because it is an obvious right that is in the section of the act, it is not a case of the discovery of a loophole, it is right there. All you have to do is to read it and see that there is a performing right.

**Senator Hays:** But that is what Bill S-9 is all about; it is like the income tax and plugging a hole.

**Senator Desruisseaux:** These broadcasters are already paying fees to two different organizations. If they have another, they have to pay a third. How does that compare with the United States situation?

**Mr. Richard:** There are two associations in the United States as well.

**Senator Desruisseaux:** The sound recording people have not got this...

**Mr. Richard:** No, they do not have a right to claim such fees.

**Senator Desruisseaux:** How would this affect us in Canada if we had a different set-up from that in the United States? Would it affect you really?

**Mr. Richard:** Certainly it will affect us. That is what I have been trying to say. We would have to obtain a licence from SRL to use their records on our radio and TV stations, and would have to pay them whatever fees the Copyright Appeal Board approved.



**Senator Flynn:** Would not that force you to use more Canadian composers' works?

**Mr. Richard:** I just suggested to you that 90 per cent of what is being produced in Canada comes from abroad in any event.

**Senator Flynn:** You might use more Canadian music.

**Mr. Richard:** Let me make this point. We have spoken of the Canadian Talent Library, and the broadcasters themselves have recently started a recording company of their own to record musical works in Canada.

**Senator Connolly (Ottawa West):** If your argument holds and the Government gets this bill, do you think you will still have all the access you want to foreign produced records?

**Mr. Richard:** I see no reason why not.

**Senator Connolly (Ottawa West):** Would they agree to sell to you even though they cannot collect a performing right?

**Mr. Richard:** They would not sell to us, they would give to us; they would go out of business if we did not play their records because there would be no other way of promoting their records at comparable cost.

**Senator Connolly (Ottawa West):** So they cannot afford not to supply?

**Mr. Richard:** That is right.

**Senator Connolly (Ottawa West):** In other words, so far as they are concerned you feel you are sitting in the driver's seat?

**Mr. Richard:** Except that section 4(3) puts us in the position that if we accept their records and pay them, we have to pay them substantial fees.

**Senator Connolly (Ottawa West):** But section 4(4) would eliminate that, the need for that payment.

**Mr. Richard:** It would handle that situation, that is right.

**The Chairman:** Do you not need these records?

**Mr. Richard:** I am not denying the fact that we need records, no.

**The Chairman:** I ask that question in view of Senator Connolly saying you were in the driver's seat. Maybe to the extent that you need them they are in the driver's seat too?

**Mr. Richard:** I think we are both in the driver's seat. That is what I said, both industries have grown up relying on one another, and I think that situation remains unchanged.

**Senator Molson:** The proportion of Canadian records of the total in North America must be very small. They could surely get on without you, the American industry?

**Mr. Richard:** Yes, but to sell records in Canada they have to be heard in Canada.

**Senator Molson:** In Canada, yes, but I am speaking of the total. You say you are in the driver's seat. You are in the driver's seat in Canada, but you are not going to put those companies out of business by quarrelling with the American producers of records.

**Mr. Richard:** But it is a \$100 million industry, just in records. They are not going to give that money up very easily.

**Senator Molson:** I do not think so. It is a question of degree. Would you answer my question: what is the proportion of the Canadian market of the total?

**Senator Beaubien:** Six per cent.

**Mr. J. Lyman Potts, President, Standard Broadcast Productions Limited:** Canadian produced records?

**Senator Molson:** No, no, of the North American market, the volume. Is it 10 per cent of the total?

**Mr. Richard:** The total records consumed in Canada?

**Senator Molson:** What is the percentage of the total records consumed in Canada of the North American volume? Is it 10 per cent of the total?

**Mr. Potts:** I doubt it.

**Senator Beaubien:** That is 6 per cent produced in Canada. Now he is asking what is the Canadian market as a whole.

**Mr. Audet:** We know the American market is about ten times larger than the Canadian to start with.

**Senator Beaubien:** What reason, if any, is there for the inclusion of this section in the act of 1921?

**Mr. Richard:** It was copied from the British Act, that is all I can say. It occurred in section 19(1) of the British Act.

**The Chairman:** If there is anything that you have not developed, or feel you would like to add, now is the time to do it.

**Mr. Audet:** Mr. Chairman, if I could make one remark, it would be to the effect that we are very grateful to you for a sympathetic hearing. We enjoyed speaking to you, and we are at your disposal if we can supply any additional information.

**The Chairman:** The fact that we have argued with you does not give any indication of our intentions. After all, you are presenting your support for this bill.

**Senator Desruisseaux:** I have one question. Do you represent all private stations, AM, FM and TV—every one of them?

**Mr. Audet:** Just about.

**Senator Desruisseaux:** Is there unanimity amongst you on this?

**Mr. Richard:** Yes.



**The Chairman:** We shall now hear from the CBC. Representing the CBC is Mr. Jacques Alleyn, General Counsel.

Mr. Alleyn, you have had the opportunity to hear the presentation by the CAB. Am I right in assuming that regardless of the means by which you come to your conclusions, you support the bill?

**Mr. Jacques R. Alleyn, General Counsel, Canadian Broadcasting Corporation:** Mr. Chairman, and honourable senators, I would like to say that Mr. Davidson wanted to attend this session of your committee, but he has to be in Vancouver to be present at the laying of a cornerstone by Princess Anne. He asked me to do my best to put forward the corporation's view.

We have prepared and filed with your committee a brief. I do not intend to cover the ground which was covered by the CAB. However, I think the position the CBC has taken in the course of the SRL hearings is slightly different because I suppose we have to be different from the private sector.

We have submitted that the Copyright Act, though it may be ambiguous in so far as Section 4(3) is concerned, should be clearly interpreted that it does not provide this kind of right to the manufacturers. The reason for this is that although Canada is not bound to give protection to records of foreign manufacturers it is, however, internationally bound by agreement to protect the works of composers of music. Schedule 3 of our act, which happens to be the Rome revision of the Berne Convention—which must not be confused with the Rome Convention—provides explicitly that members of the Berne Union at the Rome level, 1928, must provide to foreign authors of musical compositions a certain level of protection. This is section 15 of Schedule 3 of our act, and it basically states that composers of musical compositions shall have the exclusive sole right to authorize the making of mechanical contrivances by means of which musical compositions can be performed. There is also the exclusive right to authorize the public performance of their work by means of these instruments.

So my understanding of the act, so far as Section 4(3) is concerned, is that it cannot be read as providing copyright to manufacturers of records; that this is a right that must be under the exclusive control of the composers of musical compositions as a matter of international commitment.

If I may I would just like to discuss a previous question, not put to me but to others. I think one distinction that can be made between musical compositions and works and records, so far as this possible imbalance between foreign and Canadian interests is concerned, is that Canada is internationally committed to provide protection to musical works, but is not committed to provide protection to manufacturers. I think this appears to be a very important consideration.

I would say if we are providing this to other countries that do not provide it to us—perhaps this is in the area of politics, and I should stop there, but I do not think we will have much to bargain with if we ever try to get this right for our own manufacturers because it will all have

been given away, and nothing will be left to give in consideration of their recognition of manufacturers' rights. There may not be very many Canadian manufacturers, but whatever their number is they would probably like to have the same treatment elsewhere.

I submit that the matter of interpreting the act should be clarified. I think Bill S-9 has this effect of clarifying the act, so far as it may need clarification. If it is adopted, I think that Canada will be responding to its international commitment from the point of view of the Berne Union.

**The Chairman:** Are you suggesting, Mr. Alleyn, that at the present time we are in default in our international obligations and commitments?

**Mr. Alleyn:** That may be a question that you should ask a lawyer rather than a delegate of the CBC, but my private view is, that if this right is recognized and maintained, and you have to secure the authorization of only the composer of the music to perform by means of these instruments, then possibly the letter, at least, of the Berne Convention will not be lived up to.

**The Chairman:** I have difficulty in following that because the Berne convention was in 1928, and this section of the act goes back to 1921 or 1922. At the time they were talking at Berne and making all their settlements, they knew what our law provided.

**Mr. Alleyn:** I would say that there was a change, Mr. Chairman, that was brought about to introduce, I think, the Copyright Appeal Board's functions. There was also this matter of compulsory licencing which was really an exception to that right in section 13 of the Berne Convention.

Section 13 of the Berne Convention, Revision of Rome, provided in paragraph 2 that conditions and limitations may be imposed by national legislation to these provisions, the rights we have mentioned earlier, but that this can only be done by countries which have put them into effect—that is the expression used in the convention. I do not know what exactly "put them into effect" means. I get the impression that nothing much with regard to the government's efforts has been put into effect until very recently. This is my submission on that point.

**The Chairman:** This may be a question you may not want to answer, and if you do not I will understand, but would you agree that, quite apart from talking about the Berne Convention and the understanding among various nations by reason of that as to what the obligations were, the real question to decide here is: Is there a performing right of some kind in what the record maker does that should be entitled to copyright protection? Is not that the point?

**Mr. Alleyn:** I will try to answer that.

**The Chairman:** All the other things are just going down detours and sideroads.

**Mr. Alleyn:** I think there is one right that still remains and would remain even if Bill S-9 were adopted, that is

the right to prohibit copying of records. The only other one that would clearly not exist is the performing right in a record. I have, in the course of this hearing, tried all kinds of intellectual gymnastics to find what the "performance of the record" might be, as distinct from what the "performance of the work" means. The only understanding of it that I could to, and after this I have my own limitations, was that actually what they were talking about was really the performance of the work contained, be it in the public domain or be it protected, and which took place. I could not really see that the performance of anything was taking place because you were using a record. It would be possible, I suppose, to conceive of a silent record, containing no sound at all, as being a proof that the studio was absolutely sound proof. But if you put on sound and you have a performance, then if a musical work is embedded in the record I think the performance that takes place is basically a musical work. The record is just an instrument, and the instrument does a certain amount of performance. That is my submission.

**The Chairman:** In the act, as it stands now, Parliament relieved you from all that rationalization by saying that you should look upon a performing right in like manner as if it were a musical work. So you do not have to improvise or do anything else. You just say that Parliament has said "that is a musical work it is to be treated in the same way as a musical work."

**Mr. Alleyn:** In like manner.

**The Chairman:** Yes, in like manner.

**Mr. Alleyn:** Mr. Chairman, I was told in law school, when talking of constitutional law in England, that Parliament can do most everything but not call a man a woman—well, it can do that.

**Senator Flynn:** Yes, it could.

**Mr. Alleyn:** Yes, so that it quite possible; anything can be inscribed in legislation, in an act. There is no limit to that. But, in my humble submission, if some meaning is to be given to section 4(3), I think it should be related to what is possible with the record, and that is to perform—it is an instrument to perform a work.

**The Chairman:** You want us to conclude that there is not that right existing at the present time in the law?

**Mr. Alleyn:** I would like to make sure, Mr. Chairman, that my interpretation is the correct one.

**The Chairman:** This is not any part of our job, as I see it, to interpret what an existing law is. How could we fly in the face of the Government department that administers this law, when they present a bill asking us to amend on the basis of taking this right away? That is where we have got to start.

**Mr. Alleyn:** The only excuse for what I have said in this matter is my own personal incompetence and lack of knowledge, and I apologize for that.

**The Chairman:** Now that we have eliminated the side issues, let us get down to the main issue.

**Senator Connolly (Ottawa West):** Is the main issue not this, Mr. Chairman? We are talking about performing rights and I think what the previous witnesses have said, and perhaps this witness is saying, too, is that there is no property in a performing right. I have no doubt that people who will come here later to represent the record companies will say, "We have a property right, and we ought to get paid for it". I can understand the reluctance of the broadcasters to say, "You have other benefits and you really do not need it; you will hurt the broadcasting industry." But I think what we have to find out, first of all, is where there is a valid property right in these people that produce these records, and whether that right should be recognized. I think you have to approach that with an open mind.

**The Chairman:** If we start on the basis that the law now is that there is a performing right, then what we have to decide is whether that should continue. Is there a reasonable or logical basis in the national interest for saying that should be continued. It seems to me that as long as we stay right on that line we are being very safe and not being influenced by all these other side issues about national culture, and sending a lot of money out to the United States. If we do not send this money to the United States it may be we will send at least as much in other directions. So these are not the sound arguments.

**Senator Flynn:** I suggest that if the Copyright Appeal Board, instead of authorizing the tariff that has been proposed by SRL, would grant them only 10 per cent of what they are asking, then those supporting the bill might not support it as strongly as they do. For instance, instead of the \$840,000 which is estimated to be paid by the Canadian Broadcasting Corporation on the basis of the tariff now before the Copyright Appeal Board they would have to pay only \$80,000 a year, they probably would never have asked the department or anyone to present this bill.

**Senator Cook:** Is there an analogy here? If this does not go through and the law stays as it is now, and we feel that these manufacturers have some copyright, as it is called—something for which they should be reimbursed over and above getting paid for the article itself, as they do every time they sell it would not the situation be the same as when a book is lent by a public library, and should not the publisher get paid every time a person takes a book out?

**Senator Flynn:** That is the argument in the report of the Economic Council. But if you go on television and read a book, and identify the edition of the book, then that might be something then other than the private reading of a book.

**Senator Cook:** To carry through the analogy further, the public library does little or nothing for the author or producer. As is said here on page 8 of the brief:

The evidence adduced before the Copyright Appeal Board in the course of the SRL hearing indicates



that record manufacturers rely very heavily, if not exclusively, on the broadcasting of records to create and develop the market for the sale of their records; the use in broadcasting of these records creates a benefit in favour of the manufacturers and contributes to their economic success in the sale of records to the public.

**The Chairman:** That is good argument for making the tariff substantially less. It is only a quantum argument.

**Senator Flynn:** It is against recognizing the performing rights of the singer or musician, because the more often his work is performed on television or radio, the more he gets.

**The Chairman:** I would like to get the discussion back on the main highway.

**Mr. Alleyn:** This is what I had in mind. I have heard Senator Flynn talk about the performing right of the artist, the musician and the performer. I had the impression that this is not what really section 4(3) dealt with. That actually dealt with the record manufacturers and the performance in the physical record itself. If that were legislation to provide performers and artists with remuneration of some kind, I would have thought it would have to be found somewhere else than in the Copyright Act. I submit that there is no work created; they will be marvellous, unique renditions of authors and performers, but they do not create works per se as defined in the Copyright Act. So that would be strictly an offshoot of providing manufacturers with something, but not a statutory link between the manufacturers and the performers and artists.

**Senator Flynn:** I agree with that, but in the submission of the Association they raised as an argument the amount that they paid to the performers, which is over \$5½ million. That is why I wanted to be clear this morning between what they are paying as a composer's copyright and what they are paying under their contractual obligations.

**Senator Beaubien:** I am not a lawyer but, as I look at it, it seems to me that the whole thing is rather simple. We passed a law in 1921, copied from the English statute, which had nothing to do with recording manufacturers' rights. It was on the statute books until a few years ago when some other smart lawyer, reading what the first lawyer had written so that anything might be construed out of it, came up with the idea that he would get \$5 million from recording manufacturers simply because the law of 1921 was not very explicit.

**The Chairman:** It does not say \$5 million.

**Senator Beaubien:** Well, whatever it is; it does not matter what the amount is. All the record manufacturers, by going back to a statute and reading it in their own way, think they will get some money out of it. Is that not what we are considering? So the Government decides that it never was the intention of that law passed in 1921

to give the record manufacturers a commission. For that reason Bill S-9 is introduced, making a law of 1921 stand up and be sensible.

**The Chairman:** No, the purpose of this bill is to cancel or repeal the earlier law.

**Senator Beaubien:** Well, whatever it is, that is what the Government thinks is the sensible thing to do. Is that not what we want?

**Senator Flynn:** Your argument is correct that they have never used the right before. But just think of the performing rights of the musicians and artists; they are not even in the law and they have been successful in obtaining them.

**Senator Beaubien:** That does not change the facts in this case.

**The Chairman:** We have heard the points of view of Senators Beaubien and Flynn. Maybe I can now get Mr. Alleyn back on the subject. Is there any way in which you can help us in saying that there should not be a copyright? Can you rationalize why there should not be a copyright or a performing right in a record? How would we go about breaking it down to decide whether it contains an element worthy of copyright?

**Mr. Alleyn:** The only point at time in which a performing right can be considered, in my very conservative approach, is that there should be a bona fide copyright work, in the sense that there is no original creation of something in the copyright law generally. Up to now these theories of works have not included performances of artists, musicians and I think that generally they have not included the process of the manufacture of records as producing a work. Therefore I would just say that I do not think that there is any originality in a record per se. Its only originality is derived from the relative merit in the musical composition which it embodies or of which it is the material support.

Unless we could conceive that there is a creation of a work by a performer, artist or musician, we could go further. No performance or work in the sense of copyright for performance by artists, performers or musicians and no work in the sense of a copyright for the manufacturer who produces a physical thing. The only thing remaining is the work of a musical composition, so that is where it should reside.

**The Chairman:** Maybe we should take a different approach to the elements in a copyright. You say the author writes something, therefore he has a copyright in it. If that is something to be performed, maybe the definition of a copyright could be broad enough to include all the elements that go to make that viable? Maybe the performing right is inherent in the author's right, because that is the way in which it becomes viable and is used for producing money.

**Mr. Alleyn:** It is quite true that many physical operations take place before a copyright work can be put to use. We ourselves use antenna systems to perform works.



We have not filed tariffs for antennae yet, but there are many physical operations put in motion to eventually make the work available to the public. However, most of the time these do not create works themselves; it is the original work which is moved through a variety of mechanical or technical means and ends up by being viable to the public.

**Senator Cook:** And which is copied; the record is only played over and over again and is not copied.

**Mr. Alleyn:** We have no quarrel with the fact that records should not be copied; we admit that.

**Senator Flynn:** As Senator Beaubien mentioned, the law was written in 1921, under conditions which were totally different from those of today. Maybe we should revise the whole act as far as this problem is concerned. However, it seems to me that we are just attempting to plug a hole of some kind. I will not say a loophole, because I do not think it is one, but a hole of some kind. When we touch it we find that the problem is much wider than is envisaged by the bill. That is why I am reluctant to deal with this one very narrow aspect of the whole problem.

**The Chairman:** But, Senator Flynn, the position and importance of records in 1921 could not be compared with what it is today.

**Senator Flynn:** That is right; there was no radio or television.

**The Chairman:** In the light of all the developments that have taken place and since we are in an entirely different concept that is what I have been trying to obtain from Mr. Alleyn.

**Mr. Alleyn:** Mr. Chairman, I cannot give you what I do not possess.

**Senator Carter:** Can we not go a little further? Fifty years have passed; should we not look ahead another 10 or 20 years, by which time the changes may be even more profound?

**The Chairman:** We should be updating if the circumstances are so entirely different, but I cannot get any help.

**Senator Beaubien:** In the meantime it clarifies one point.

**The Chairman:** Of course, Senator Flynn says there are many similar points in the copyright and I agree with him. We have been told that it is being revised, but it has not yet been presented.

**Senator Lang:** The record business is on a great decline. I assume it is on a decline because instead of buying a record it is simple to hook a tape recorder into a radio. Therefore the record manufacturer is paid nothing. It would be the same thing if all records were free. Then the manufacturer in order to receive some remuneration would have to obtain something like a copyright

so that he could be paid on the basis of the use of his product.

**Senator Cook:** If he is not paid he will not make the records.

**The Chairman:** Mr. Alleyn, when a record is played by a broadcasting station or on the television, is that known as a performance, a production, or something else?

**Mr. Alleyn:** I would say that if we put a record on a turntable, pick up the impulses, transmit them and eventually by the effect achieved the receiver vibrates in the same way and reproduces what is happening at the other end, we have a good, bad or marvellous performance of that musical composition. If the record or equipment is bad or the antenna not in good condition, there may be very bad reception. If everything is at the maximum and the musicians have rendered at 100 per cent what Beethoven had in mind, then I suppose what we get is a marvellous rendition of Beethoven's Ninth Symphony.

**The Chairman:** It would not be an improper use or misuse of words to call what occurs there a performance or a production?

**Mr. Alleyn:** We have the CAPAC and BMI tariffs, on which we pay substantial sums for the public performance of these musical compositions. I think we have always been quite ready to pay them, and there is no problem there at the moment.

**Senator Flynn:** Because of the habit.

**Mr. Alleyn:** No. I have recently joined the corporation and I do not have any bad habits yet!

**The Chairman:** You are not suggesting that time will have that inevitable result?

**Mr. Alleyn:** I would improve with time.

**Senator Flynn:** I would suggest to the witness that if Bill S-9 gave the Canadian Broadcasting Corporation and the other private organizations the right to dispense with payments to BMI and CAPAC, they would support it.

**Senator Beaubien:** I hope the CBC would; they are losing enough money now.

**The Chairman:** Are there any other questions?

**Senator Grosart:** I should like to make a comment, if I may. First of all I should declare an interest.

**Senator Beaubien:** Do you have a radio?

**Senator Grosart:** It so happens that in my office, where we do a good deal of publishing, we publish a magazine called *Canadian Composer*, so to that extent I have an interest on the side of the composers. As part of its operation that magazine, has discussed this whole question over a period of some five years. I would just like to draw the attention of the committee to one or two things that may not have been brought to its attention to date.

First, you asked, Mr. Chairman, quite properly, what is the nature of the special right that the composer has that

others might not have in the whole line of production and performance. I am now playing back to some extent what has been said at international conferences around the world, particularly at the very extensive hearings on the subject before the committee of the United States House of Representatives and the Senate, where there has been discussion of the whole question of copyright act revision in which this very problem has been included. It has been going on now for about five years. The reason why the copyright acts, our Copyright Act and others, have tended to limit the performing right to the composer-author is that he is in a different position from all the other people along the line, in that the performing right is almost entirely his only source of income. The record manufacturer is in the business of recording, making and selling records.

**The Chairman:** On that point, you understand that there is no contest here. This amendment does not deal with the composer's rights at all.

**Senator Grosart:** Of course it does.

**The Chairman:** No.

**Senator Grosart:** With respect, Mr. Chairman, the suggestion has been made in the hearings before the Copyright Appeal Board and elsewhere that if this tariff was granted—and this submission has been made officially—that whatever amount was granted should come out of the composer's share.

**The Chairman:** You mean the suggestion was made that it should?

**Senator Grosart:** Yes.

**The Chairman:** But where is there anything to do with that in this bill?

**Senator Grosart:** This is obviously one of the results this bill is intended to prevent.

**The Chairman:** Well, it is not obvious.

**Senator Grosart:** With respect, it is obvious to me, Mr. Chairman. It may not be obvious to you, but it is obvious to me and that is why I am speaking about it.

**The Chairman:** You go ahead and develop the subject as much as you like. All I am pointing out is that it is not the subject of the amendment.

**Senator Grosart:** With respect, Mr. Chairman, you yourself brought up the very subject, and I am answering the question you raised: why is the composer's interest in the copyright in the performance a special thing?

**The Chairman:** No. I think what I said was that the definition of "copyright" is broader than just the element of the composer.

**Senator Grosart:** That is exactly the point I am making. I am suggesting the element is narrower, which is a direct response to your suggestion, if I may say so.

**The Chairman:** All right, go ahead.

**Senator Grosart:** That is the main reason the composer has insisted, as he has over the years, that this should be an exclusive right, the performing right, because it is his one source of income; it is in a very different category from the additional income that some other party to the manufacture and performance might have. That is the first point.

The second point is that the whole history of copyright lays stress on originality, original creativity. No matter what the method and mechanics, of the performance are, the assumption in copyright has been from the beginning, from Queen Elizabeth's time, that it was the original, the first creation that was protected. In the music field this consists of the words and the music of a song, popular or otherwise, or a composition in the field of serious music. That is the second reason, and the second answer I would give to the question asked.

The suggestion has been made that record sales are going down. I think the facts are that the record of the last few years is the very opposite: record sales have been going up and up. The performance is so important to the record companies that, quite naturally, they go to great lengths to persuade disc jockeys and others to perform their records. The purpose in doing that is, of course, to extend the popularity of the song and the record, and therefore to sell more records. I therefore suggest to you that there is much more to this than merely thinking in terms of how many people are getting into the spectrum of performance.

As the counsel for the CBC has pointed out, if you keep on extending it it means that you might bring in all the instrumentalists, and the many technicians who would be involved in the making of the record and the performance of the record over a radio station. You could quite possibly go beyond that and extend the number of people who might be said to have an interest in the performing right that subsists in the original work to thousands of people. You would therefore have to fragment any payments, if you were to carry that logic to its extreme, among thousands of people. Again I say there has to be a limit somewhere, and the suggestion of the composers is that the limitation should be at the point of original creativity, and only the original creator of the work should be entitled to special copyright protection, particularly in the matter of performances.

**Senator Flynn:** You mean we should go further. The performing right is not presently included in the act. Do you mean we should clarify the act so as to enable the dispensation of payments of performing rights?

**Senator Grosart:** No, the act is very clear.

**Senator Flynn:** No, not on this score.

**Senator Grosart:** I may have misunderstood you. The act is very clear, of course, about the fact that a performing right subsists in relation to the original author.

**Senator Flynn:** The author, yes, but it is not a performing right: It is perhaps a performing right, but not by a performer.



**Senator Grosart:** Well, it is a performing right that subsists in the original author and in no one else, unless the interpretation is placed upon the act that has been placed upon it, by some, that a secondary performing right subsists in the record itself. I think the general consensus is that a copyright does subsist in the record.

I would draw this to the attention of the committee, which is perhaps the most important single element in this whole discussion. That right is taken away for some records under section 19; that is, for those made under a compulsory licence, because the compulsory licensing section introduces a completely new concept into copyright; it restricts.

A fact that I do not think has been brought before the committee yet is that the right that subsists concerns probably only a handful of records made in Canada. The vast majority of those records are made under the compulsory licence, and I think almost any reading of the act will indicate that section 19 completely withdraws the performing right from a record made under the compulsory licensing section.

**The Chairman:** Are there any other questions? Thank you very much Mr. Allyn.

**Mr. Allyn:** Thank you, Mr. Chairman, and I wish to thank the honourable senators.

**The Chairman:** Honourable senators, we now have the Canadian Council of Performing Arts' Union. Mr. William Dodge, the secretary treasurer of the Canadian Labour Congress, is going to make the opening statement. He has his panel here, which he will introduce to you, and any member of the panel may answer your questions.

I will have to go very shortly, and Senator Desruisseaux will carry on, if you approve of that.

**Mr. William Dodge, Secretary-Treasurer, Canadian Labour Congress:** Honourable senators, on my right is Mr. John Simonds, who is secretary of the Council of Performing Arts' Union; Mr. Alan Wood vice-president of the American Federation of Musicians; Miss Margaret Collier, of the Association of Canadian Television and Radio Artists; Mr. Hamish Robertson of Actors' Equity Association; M<sup>me</sup> Jeanne Sauvé, representing both the Federation des Auteurs et des Artistes du Canada and the Union des Artistes de Montreal; and Mr. Bernard Chadwick, president of Actors' Equity Association.

I am going to make a very brief statement which I will read. I do not consider myself to be an expert in this exceedingly complicated field. If there are any questions of fact or concerning statistics and mechanics of the industry, I shall have to refer to one of my expert companions.

I can state our position on Bill S-9, which is one of opposition, in a few simple sentences.

It is based entirely upon the matter of recognition of rights. As many as four different elements may contribute to the production of a recording of a musical or dramatic performance. These elements are the author, the composer, the performing artists, the manufacturer or producer.

**Senator Paul Desruisseaux (Acting Chairman)** in the Chair.

**Senator Connolly (Ottawa West):** What is the distinction between the author and the composer?

**Mr. Dodge:** The author may write the lyrics or a play. The composer is generally referred to as the person who makes a musical composition.

Each of these four contributing elements receive a return in the form of a royalty when a record is made or sold to individual customers. Some of these individual customers are broadcasters and the purchase of a very small number of records enables them to deliver thousands of performances to the public. They do not do this as a contribution to culture or entertainment, or even to Canadian unity. It is just the principal means by which broadcasters sell commercial advertising which, in turn, is the source of their profit—assuming that they make profits.

When records are played on the air, the author and the composer receive royalties or fees by virtue of a right given to them by the Copyright Act. The rights of two of the elements in recording production are thus legally protected and effectively rewarded.

The right of the third element, the producer and/or manufacturer has also been heretofore protected under the Copyright Act. Although they have never, until recently, invoked their right as a means of obtaining a recompense for the use of their product by the broadcasting media, in fact it is this recent attempt to invoke it which has precipitated Bill S-9, because Bill S-9 has only one purpose: the removal of the right of manufacturers or producers from the Copyright Act.

The right of the fourth element, the performing artist, has never been recognized in the Copyright Act, although in every sense it is equal in merit to the rights of authors, composers and manufacturers.

**Senator Connolly (Ottawa West):** It is a different category. I think you may weaken the case by saying it is equal.

**Mr. Dodge:** Perhaps it has greater merit, I do not know.

**Senator Connolly (Ottawa West):** Who can tell? That is right.

**Mr. Dodge:** I will strike out the word "equal", if you like, and say "merit of the same sort".

**Senator Connolly (Ottawa West):** It is high in order.

**Mr. Dodge:** Yes.

**Senator Grosart:** You may also wish to strike out the word 'every'.

**Senator Connolly (Ottawa West):** I would submit the artist performing may make a very original interpretation.

**Senator Grosart:** There is a special creative element in the original composition that is recognized in the act and,



in fact, the special word creative contribution is recognized in the recent study by the Economic Council of Canada.

**Senator Connolly (Ottawa West):** Does it help you to say that probably a lot of the work done by the manufacturer is under patent; and, therefore, at least at one time, was original.

**Mr. Dodge:** I think that is a fair statement. I think in any case.

**Senator Connolly (Ottawa West):** We are all interrupting you.

**Mr. Dodge:** What happens when a recording is made—some of my fellow-delegates can perhaps enlarge on this later—is that the job of bringing together the elements in the studio which is going to produce a record of one kind or another, you can take any one of a dozen versions of a particular musical composition, a full orchestra, a vocalist, a quartet, you can have all kinds of things. Who decides the quality of the musicians put together is somewhat analogous to a producer of a dramatic show on the Canadian Broadcasting Corporation producing the show. I think, in that sense, there is a creative element in the putting together of the elements which will make a particular recording.

**Senator Grosart:** Would you agree, Mr. Dodge, that all those are paid for at a negotiated rate?

**Mr. Dodge:** The artists are, as has been testified to already. Again, Mr. Wood, for instance, could give you some details as to how that is provided for, but the manufacturer is not paid at that point. He is paid when the records are put out for sale.

**Senator Grosart:** Yes, or when he sells it.

**Mr. Dodge:** Our position is that the rights of these four elements are clear and justifiable.

**Senator Connolly (Ottawa West):** Property rights?

**Mr. Dodge:** Indeed, the denial of any of these rights in order to protect the right of exploitation of the broadcasting industry, in our opinion, is unjust and indefensible. Bill S-9 has that purpose.

The principle underlining this proposal is, in our opinion, clearly discriminatory. We support the right of the manufacturers to the recompense they are seeking because it is evident to us that if the rights of others are applied, this applies to the composers as well, Senator Grosart.

If the rights of others are abrogated by the adoption of measures such as Bill S-9, then the attainment of a primary objective of this performing arts council of ours, the statutory recognition of the rights of performing artists will be a difficult, if not impossible, task to achieve.

Therefore, we respectfully ask the Government to withdraw this bill or, failing that action, the honourable senators defeat it when it is up for third reading.

I have heard some argument about this being a right which sort of accidentally got into the Copyright Act and

we are now just tidying it up by taking it out. "Plugging a loophole," I think, was the expression used at one point.

I think it ought to be known that this is a right which, in advance, is universally recognized. It is discussed in the Economic Council's report and, incidentally, the recommendation of the Economic Council that this section of the act be deleted is the first recommendation ever, coming out of the Economic Council on which there was not unanimity on the part of the members of the council and the dissenting views are specifically referred to in the preface of the report.

The fact is that in a particular Rome convention, the one in this document, which was the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, known as the Rome Convention. It was adopted on October 26, 1961 and is a registered convention of the United Nations.

**Senator Connolly (Ottawa West):** Has Canada recognized it?

**Mr. Dodge:** Canadian representatives participated in this conference, but Canada has not endorsed the convention. I will read you Article 12, it is only a few lines and very explicit:

If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law, may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

Artists, such as those represented by the organizations present here, participated in the discussions leading to the adoption of this convention and fully subscribe to the theory that a manufacturer or producer has a creative input in the production of records and is entitled to recompense when those records are played over the broadcasting media.

They also, of course, strongly contend—and they have a much more important private interest in this—that a similar right ought to be recognized for performing artists. No such right is at present in the Copyright Act. We think this is a very serious gap in the act.

**The Acting Chairman:** Mr. Dodge, if it is so that these rights are there, why have they not been asserted until now?

**Mr. Dodge:** So far as the manufacturers are concerned, I have no idea, senator. I am afraid you will have to ask them.

**An hon. Senator:** In the United States manufacturers are apparently not paying this tariff, so the Canadian consumer will be paying more than the American consumer, if you are correct, to the extent of \$4 to \$5½ million. How do you rationalize this?

**Mr. Dodge:** I think it ought to be expressed in the first place, that the application as I understand it, is for a

tariff of that amount, that would recover for the manufacturers that amount. Someone emphasized this morning that that is a sort of bargaining figure. Presumably the appeals board can make the decision which goes all the way from not granting the application at all to granting it in some modified form. So I do not think we could take it for granted that that round sum is what is going to be recouped by the manufacturers. In the long run, what the ministry responsible for the administration of the act is concerned about is if the broadcasters have to pay out more to performing artists in the form of royalties of tariffs, or to producers and manufacturers or in royalties and tariffs, that this somehow will seep down into advertising bills for commercial advertising that are submitted to advertisers on radio and television, and that they in turn will pass that on to the consumers of the products that are purchased by the consumer. Really, I think this is going to be spread so thinly over all the products advertised on radio that it will not amount to a hill of beans. I have no way of figuring out how that will work but I am sure it will be a very insignificant effect upon the total cost to consumers.

**The Acting Chairman:** Why has this convention not been ratified by Canada? It has not been, but why not? Would you know the reason?

**Mr. Dodge:** I guess it is a sort of problem there of opposing pressures that work out. Before we started on this discussion here, we had two groups of people interested in the trade business and textiles and, as we saw, two diametrically opposed opinions were expressed here on this issue. It appears to me that the reason why it has not been adopted is because the pressure against its adoption has been greater than the pressure for it. This is probably our fault to some extent, that we have not generated enough pressure for it and enough public opinion for our point of view.

**Senator Hays:** You do not agree with the figure of \$4½ million to \$5 million?

**Mr. Dodge:** I think that if the tariff which has been applied for were granted in full, that is the figure it would come out to.

**Senator Hays:** So the Canadian consumer would be paying \$5 million more than the American, or 25 per cent per person more?

**Mr. Dodge:** Unless a substantial portion of it were absorbed by the broadcasters, and I think that is quite possible. It is quite possible that they could or should do that. I think it is an extremely specious argument to talk in terms of how much money is going to go to the United States. This is something they should have thought of a little earlier in the piece, the kind of distribution of revenue that occurs now, it is surely the result of the excessive use of non-Canadian recordings in the past. To invoke this as an argument today in favour of the adoption of Bill S-9 seems to me to be quite irrelevant.

**Senator Connolly (Ottawa West):** Suppose we followed your argument and acted on it, is there any assurance whatever that this additional money for performing

rights, or tapes, that the benefit would go perhaps some to the composer, some to the author, perhaps some to the performing artists who perform the work, perhaps some to the technicians who make it possible to have the recording? How would there be any assurance that these additional moneys would benefit these various people?

**Mr. Dodge:** You mean, if the tariff were granted by the Copyright Appeals Board?

**Senator Connolly (Ottawa West):** Yes, if this bill were not proceeded with. That is another way of saying it.

**Mr. Dodge:** Of course, the composers and authors get theirs by virtue of their own right, through BMI and CAPAC.

**Senator Connolly (Ottawa West):** In other words, they make the best deal they can with the publisher of their work, so they are out of it once they have made their deal.

**Mr. Dodge:** You are asking if the artist would have a means, through a tariff of this kind, of obtaining a share. I think the answer has to be yes.

**Senator Connolly (Ottawa West):** What I am asking you really is, what are the mechanics for the money which, under the tariff, would be paid to the producers of the record, the manufacturers of the record? How would that money be channelled back to the artists who performed the work for the manufacturer, and to the technicians who make it possible for the equipment to be used so that you get a good production?

**Mr. Dodge:** There is every possibility of such a sharing of the proceeds being arrived at by mutual agreement between the unions represented here and the manufacturers and/or producers of records.

**Senator Hays:** It was my understanding that the manufacturer is going to get this, period.

**Senator Connolly (Ottawa West):** That is what I say, and what I wanted to know is this. How does it get back to the performers—I mean the violinists, the pianists, the 'cellists and all the others who actually go into the studio and play the music that results in this work being put on to a plate. And, further than that, to the technicians who work in the studio and ensure that the work of these performing artists is properly recorded so that it will be a satisfactory record.

**Mr. Dodge:** May I pass the question to Mr. Wood, who is from the musicians union?

**Mr. Alan Wood, American Federation of Musicians, Canadian Labour Congress:** Senator, if I may I will answer that question in two ways. First of all, we are here representing just the performing arts group. This is our function. We represent musicians, singers, actors and this is our only function. So I feel quite sure that we cannot answer your question so far as technicians are concerned. We basically have nothing to do with technicians as such.



**Senator Connolly (Ottawa West):** Mr. Dodge was speaking about technicians and argued their case for them. That is why I included it.

**Mr. Wood:** Talking about the performing artists, it is possible, and it should be possible, obviously, for the reason we are here, that there is not only a possibility but there are in fact negotiations with the producers at this particular time to share the moneys that are collected according to law.

**Senator Connolly (Ottawa West):** This is, Mr. Wood, over and above any wage scale that they have reached by collective bargaining for the work that they do?

**Mr. Wood:** Yes sir.

**Senator Cook:** On page 7 of your brief, you say:

In conclusion, we support the retention of the right of the manufacturers in the Copyright Act because we consider it to be fair and reasonable and because we do not wish its removal to serve as a basis for future government opposition to the recognition of the rights of artists.

Do I gather from that that you in due course want to go a step further and have another copyright tariff?

**Mr. Wood:** Yes, sir, very definitely.

**Senator Cook:** Which would go to the artists, over and above the tariff which now goes to the composers, and the tariff will then go to the manufacturers. There will be still another one?

**Mr. Dodge:** We think that the rights of each of these elements stand by themselves.

**Senator Cook:** Therefore one of your reasons for opposing the bill is because if it is passed now any hope of achieving recognition of the rights of the performing artists is pushed that much further away?

**Mr. Dodge:** Precisely.

**Mme Jeanne Sauvé, Fédération des Auteurs et des Artistes du Canada:** It must be remembered that the law does not recognize the rights of the performers.

**Senator Grosart:** Mr. Wood, do I understand you to say that you are actually negotiating for a share of the fees manufacturers might obtain? I emphasize "might obtain" because of section 19.

**Mr. Wood:** That is correct.

**Senator Grosart:** Are you concerned that you are negotiating for something which you do not have, and are not even asking the right to have?

**Mr. Wood:** No sir.

**Senator Grosart:** You are quite prepared to say that if the manufacturer receives his money you will find some way to make him share it, in spite of the fact that under the Copyright Act at the moment you have no right. You are asking for money from the performance of the original work in which the performing right subsists.

**Mr. Dodge:** We think we have a right; it just is not recognized.

**Senator Grosart:** I am sure, Mr. Dodge, that you have read the discussion of the Economic Council in this regard. They make the point, with which I am not sure I am in full agreement, that no property right exists in anything. It buttresses that argument by saying no one has a property right unless he has it in law. Therefore it would seem an extraordinary position to take to say that you have a right when at the same time you admit you do not have it in law.

**Senator Cook:** They have the moral right.

**Senator Grosart:** We all have many moral rights.

**Mr. Dodge:** If you are referring to lapses in the law, we think the real lapse is not having put into the statute the right of performing artists; it is not an error to have put in the rights of manufacturers. That I think was certainly a sound proposition.

**Senator Grosart:** I emphasize the fact that you are attempting to carve up the proceeds of a right which you do not have. May I say this, of which I am sure you are well aware; there is a discussion on the extension of copyright, not only in our own act, but in acts in other countries. This whole question of whether it should be extended to performers is a very live one and under proper circumstances I am not too sure that the majority of composers would object too strongly to it.

**Mr. Dodge:** It would be rather inconsistent for them to do so.

**Senator Grosart:** There is nothing inconsistent about it. A composer is in a much closer relationship to a performer than is a manufacturer, who is producing something to sell. Composers, of whose views generally I have some knowledge, have sympathy with the feeling of the performer that he is also creative and making a creative input in the sense of the Copyright Act and its conventions, in all of which the term "intellectual property" is used.

We sometimes forget that the essence of international copyright, as it has existed since 1880, is the intellectual property right. I put "property" in quotation marks because of the remarks in the Economic Council's Report. So I do not think you should give the impression that composers generally are not sympathetic to the general and broad basis of the act. I am not briefed by them in any way, shape or form. I have lived with composers; I attended the Convention of the Canadian Guild of Composers in Victoria this year, so I am familiar with their views. They are not unsympathetic to the possible extension, under proper circumstances which I will not detail, to a recognition of other creative intellectual inputs.

Please do not think that I am speaking for any performing rights society or any group of composers. I am giving a personal view of this whole problem.

Have you considered the possible effect of section 19?

**Mr. Dodge:** What is referred to in section 19?



**Senator Grosart:** I am sorry I have not the act before me, but section 19 in effect cancels the section which gives a performing right in a record under compulsory licence. The reason for that, and I think the committee should be aware of this, is that with respect to the original intellectual creative right, for various reasons through history, largely in the UK, but also in Canada and other countries, it was decided by the legislators in their wisdom that the right of a composer to complete control of the recording should be prescribed. So the law provided that under certain circumstances it would insist on any member of the general public having the right to make a record of an original composition. If recording company "A" is licensed to make a record, then anyone can tender a statutory fee, which is not subject to bargaining but laid down by the act, and make records. Therefore there would be no control over the proliferation of record-making of the composer's composition. Section 19 provides that in that circumstance the performing right in the record is null and void.

The facts of the matter are that the vast majority, probably 95 or 98 per cent, of all records made in Canada are made under a compulsory licence. The effect of this is that the original author, from whose right all other rights stem, could insist that when he gave the record company "A" the right to make a record be excluded the performing right in the record. If he does this he has given a licence to record company "A" from which he has withdrawn the performing right; he has not assigned the performing right, but has deliberately withdrawn any such right that might subsist in that record. This would be subject to some legal controversy, but I would suggest if that happened the subsequent records made under compulsory licence would also have withdrawn from them the performing right in the records per se.

**Senator Flynn:** If you are right this bill will achieve very little. It would be useless.

**Senator Grosart:** This is probably so. It is entirely possible that the effect of this bill would be practically nil.

**Mr. Dodge:** I do not know whether I am following your explanation here, Senator Grosart. It is rather a complicated legal matter.

**Senator Grosart:** It is.

**Mr. Dodge:** It appears to me that if, as Senator Flynn says, it would make Bill S-9 unnecessary and useless, it means the right of one artist is subordinated to that of another.

**Senator Grosart:** This is unquestionably so. It always has been so. There must be an assignment from the original author.

**Mr. Dodge:** I think we must stand on the position that we take, that there are rights morally held by the various people—the composer, the artist, the performer and the producer.

**Senator Grosart:** Would you advocate a technician's performing right?

**Mr. Dodge:** I know the technician is a contributor to the work at the producer level, and he is therefore involved in the creative process, such as it is at that level.

**Senator Grosart:** Would you include the switchboard girl? I think that is a proper question.

**Mr. Dodge:** I think she is included in the right given to the manufacturer; she is included to some extent in the right given to the composer.

**Senator Grosart:** Then would you agree she should get a share in that?

**Mr. Dodge:** The administering apparatus of the rights of composers and artists is a very substantial organization. BMI and CAPAC maintain offices and machinery for the logging of time of performances. I remember a story of Bernard Shaw receiving a personal note from a lady in the United States who said how much they had enjoyed putting on one of his plays at the church ladies' society. He replied and said, "I will have to check with my agents to see whether they collected the royalty on the performance." These apparatuses are very extensive, and no doubt also have a switchboard operator who is paid, and if the composers have an association that has a switchboard operator, then her right is dependent upon the exercise of the right by the composers.

**Senator Grosart:** That is rather different, because I think what you are forgetting is that any performing rights society is the assignee of the composer.

**Mr. Dodge:** Sure.

**Senator Grosart:** He is the assignee in the legal sense, because the performing rights society cannot operate unless it has an assignment at least of performing rights.

**Mr. Dodge:** Perhaps I might just pick up a point raised earlier which has not been dealt with yet. It is the position taken by the Economic Council. In our brief we say on page 6:

Our Congress takes the position that intellectual properties cannot be lumped with industrial properties and studied in the same context without losing sight of the significant differences inherent in such properties.

As you will see, we quote the Chairman of the Economic Council, who said that further study in the light of this issue might have produced a different conclusion than the one contained in the report.

**Senator Hays:** As I understand Bill S-9, it says that the manufacturer will not get a royalty on records. What you are saying, Mr. Dodge, is that your people feel he should get a royalty on records. The reason you feel this way is because you feel you will get a part of it, or all of it, from the manufacturer for the performing artist.

**Mr. Dodge:** I said it is a distinct possibility that that could be done.

**Senator Hays:** But that is your reason.

**Senator Cook:** No. An even more important reason is because you want to advance your own rights.

**Mr. Dodge:** That is right. It is not our reason for it. Our reason is that we believe our own right as performing artists ought to be recognized, and the removal of the manufacturer's right will make it impossible for our right to be subsequently recognized. Theirs will go, and we think this is a point at which this warning can be sounded to Senator Grosart; we feel his may go too.

**Senator Hays:** You feel that the bill did not go far enough, but this bill just says the manufacturer will not receive a royalty, and if nothing is done he has, within the law now, the right to receive a royalty to a certain extent, and earlier witnesses have said 90 per cent of it will go to the United States. You are saying the manufacturer will turn some of this back.

**Mr. Dodge:** These people will be appearing before you and I think it is a valid question to ask them, just how much of the money will be going to the United States.

**Senator Hays:** If I may be a little realistic, they will put every bit of it in their pockets.

**Mr. Dodge:** May I say that the point here really is that at least in confrontation with the manufacturers we have somebody with whom we can negotiate. In the case of the broadcasting industry there is no such possibility.

**Senator Lang:** Theoretically do you think it is fair or consistent that a person should receive a fee for service and a royalty for the same act?

**Mr. Dodge:** A fee for service?

**Senator Lang:** A fee for service and a royalty for performing the same thing.

**Mr. Dodge:** If you are talking about a performer I certainly do. I just happened to make a note while listening to previous submissions. We have a very popular singer in Canada today, Miss Anne Murray.

**Senator Isnor:** She has sold a million records.

**Mr. Dodge:** Anne Murray makes a recording and gets a royalty for each of her records sold to individual consumers in the record shops. Her voice is probably heard 1,000 times a week on the radio, but she does not get one red cent for that.

**Senator Cook:** But it helps sell her records though.

**Mr. Dodge:** That is a moot point.

**Senator Connolly (Ottawa West):** This was the whole point made by earlier witnesses we heard, that the record makers are concerned, the manufacturers, get their bag out of the popularity the record achieves as a result of being broadcast, and they sell records as a result of that popularity; that is how their money comes in.

**Mr. Dodge:** There is a certain amount of truth in that, but let me not answer that one; I am not a singer.

**Senator Connolly (Ottawa West):** You are not a record maker either.

**Mme Sauvé:** For the performer it is a case of diminishing returns as well. It is true that if a person becomes popular through the playing of records on the radio it will help that person to sell more records. However, it also makes the lifespan of an artist much shorter, because he gets great over-exposure on the air through the device of the record, and his artistic life is diminished.

**Senator Connolly (Ottawa West):** I think this over-exposure argument is a valid one.

**Mme Sauvé:** There are new stars every week. As you know, artists pay their income tax. No matter what happens to them, they pay the income tax on one year; it is never spread out over ten years. In the year they are popular they can make a lot of money, but the next year they can go broke.

**Senator Cook:** How will this bill cure that?

**Mme Sauvé:** How?

**Senator Cook:** How will what you are seeking cure that situation of overexposure?

**Mme Sauvé:** At least for the overexposure she will get some return; she will get some recompense for the overexposure.

**Senator Flynn:** If you look at it from the viewpoint of the profit the performer derives from the number of times the record is played you have to be realistic too. Broadcasting stations sell time, and it is with the performances that they are able to sell time. They have to make a popular presentation. Everybody is interested from the profit viewpoint, even if the Canadian Broadcasting Corporation is not too interested apparently.

**Senator Grosart:** May I make two comments on the very good points made by Mme Sauvé. The first is, I have had a good deal to do with artists and performers for many years, and I have yet to hear of an artist who asks a radio station not to play a recording in spite of the over-exposure problem.

The second, of course, comes back to the point I made earlier, that all of these people are being paid for whatever they are doing—for whatever input they are doing they are being paid. The composer only has one source of income. At one time you sold sheet music when there was a piano in every home. Many composers had a substantial income from that. The fact of the matter today is that there is no other possible source of income to the person who created the work that everyone else is using and making money on. He has no other source of income except performing rights.

**Mr. Dodge:** Except that he sold his rights entirely for a lump sum.

**Senator Grosart:** That does not happen very much any more. It is true that Billy Munro sold "When my Baby Smiles at Me" for \$300 and it was 28 years later, under the American system of renewal rights, before he ever started to get any money again. I am happy to say I had something to do with that.



But this does not happen any more, largely because of the operation of performing rights societies, who discourage, in fact, will not permit, the member to sell his performing right outright because the minute he becomes a member of the performing rights society he immediately assigns all of his performing rights to that society as trustee. So what Senator Flynn is talking about cannot happen any more to an original author and I use the word in the widest sense.

**Senator Flynn:** In practice; not as a matter of law.

**Senator Grosart:** In practice; not as a matter of law. In law he could still alienate his right if he was not a member of a performing rights society.

**Mr. Dodge:** Could I ask Mr. Wood to discuss this question?

**Senator Cook:** We are really dealing with the manufacturers and you are dealing with another subject that is not covered by the bill itself.

**The Acting Chairman:** I think that is quite right.

**Senator Flynn:** The argument here is by restricting the field of a copyright you jeopardize the present system whereby performers can.

**Senator Cook:** It is set out very clearly on page 7 of the brief.

**Senator Grosart:** I would say, Mr. Chairman, our witness has quite properly, from this point of view, made a very good "foot in the door" argument.

**Mr. Wood:** I suggest, Mr. Chairman, in answer to the senator, that nearly every record contain musicians and 90 per cent of the records that are used in broadcasting today contain nothing else but musicians. The original intention of making a record, sir, was to make it and receive payment for the sales to the public for home use only. Never was it intended as a recording to be used in the broadcasting medium.

I suggest that on the label on that record it is clearly stated "For home use only and not to be broadcast". I further suggest that this could still be placed on the label and quite legally sold, according to some of the legal counsel we have obtained for this purpose. Therefore, the original payment was only made to the musician for the sale of that record, and not for the broadcast use of that record.

If we can negotiate, which we have successfully been able to do, on royalties on the sale of the record, then it is our opinion that we can successfully negotiate for further use of that record which was not intended in the first place.

The same thing happens in all aspects of our industry. We call it a residual in many, many cases, which I am sure you are well acquainted with. Musicians do not like to have their product used 24 hours a day without receiving any pay whatsoever.

**Senator Grosart:** I think you are weakening your argument. Mr. Dodge told us the reason they want in on the

manufacturer's share, if he gets it, is that they have been unable to negotiate with the broadcasters. You are raising the very point I might have raised. You are already doing it. Your rights are the result of negotiations with broadcasters, of course, so I wonder why Mr. Dodge says they have been unable to negotiate.

The statement you made about the label is quite true. I can tell you the company was Decca. No one paid a bit of attention to it. They tried and tried to enforce it, and it had no effect whatsoever, as I am sure you would agree.

**Mr. Wood:** I suggest to you, if I may, that it is on existing records today.

**Senator Grosart:** Yes, but no one is paying any attention.

**Mr. Wood:** I am afraid they are, sir. It is on existing records and on existing jackets.

**The Acting Chairman:** Why has not the United States adopted this?

**Mr. Wood:** I cannot answer for my counterpart in the United States. I do know, however, at the present time they have a bill in before Congress for practically the same right as we have today.

**The Acting Chairman:** Would it be wise for us to go ahead and do something they have not yet done over there?

**Mr. Wood:** I would prefer we always go ahead and do something they have not done over there.

**The Acting Chairman:** You represent the Federation of Musicians.

**Mr. Wood:** I represent the Canadian membership.

**Mr. John Simonds, Director, International Affairs Department, Canadian Labour Congress:** Mr. Chairman, honourable senators, I think the same parallel can be drawn with respect to the question of the recognition of these rights in the United States and in Canada along with the question of the ratification of the Rome Convention.

There was quite a bit of comment made this morning by some of the other presentations about the fact that the United States has not ratified the Rome Convention and neither has Canada. I think that they also said that the countries where the Rome Convention has been ratified are primarily those countries where they have a large national broadcasting system. I think the answer is quite simply that in the United States and in Canada where we have a very large commercial radio operation that they have been able to mount a tremendously powerful lobby in the United States and in Canada to prevent the ratification of the Rome Convention, or the recognition of the payment of these for public performances. We are saying, first of all, of course that we would prefer to see Canada ratify the Rome Convention, which would grant and recognize in their own rights, both the authors and composers, the manufacturers and producers, and the interpreters. Quite simply, this is what we are saying in the



brief. But we want to protect our individual rights. But we also recognize that these rights exist for others.

We have also said in our presentation that we would certainly have preferred that the Economic Council of Canada have examined the question of intellectual properties, separate and apart and in a much more detailed fashion, than they were able to do when they lumped it in with their consideration of industrial and intellectual properties. We are sure that had they done this, the report would have reflected far more in our favor than it does at the present time.

**Mr. E. Russell Hopkins, Parliamentary Counsel:** If Canada had adopted the Rome Convention, then our act would have to be made to conform to that convention.

**Mr. Simonds:** That is correct, sir, and by saying that you would recognize, collectively or individually, the individual rights of both the manufacturers, the interpreters—that is, performers—and the authors and composers, which is the only just and fair system that could possibly be used.

**The Acting Chairman:** Do you have any other points you would like to make?

**Mr. Dodge:** I would just like to make it clear that, in reply to something that Senator Grosart said, we simply believe it is within the realm of possibility to negotiate in agreement with the manufacturers of records, and within the realm of possibility that we could do it with the other people, too. But the one has tremendous advantages over the other in terms of just meeting and discussing them. If you had to do it with the broadcasters, you would have to do it with each individual radio station from coast to coast and I see no way of handling a problem of that magnitude. I say that this is the theory behind it but I do not want any misunderstanding on the point that we are talking about rights. Basically, we are talking about the rights of these various elements that go to make up a record. We think each of the rights stands by itself. We believe the rights of performing artists should be recognized and we find it a very retrograde step that a right that the manufacturer already recognizes should be taken away from them.

**The Acting Chairman:** But once you assume that the rights can be negotiated, as I understood you to say, the manufacturers have these rights?

**Mr. Dodge:** I am simply saying that if they have a right, they invoke it, and they are successful in obtaining "X" amount of money as a result, there is a possibility that some of the money could be channelled to desirable uses in so far as we are concerned.

**Senator Cook:** But in addition to that you have got your own rights, which you want to see recognized.

**Mr. Dodge:** That is exactly the point. In fact, much has been made of the fact that a lot of this money may go to the United States. I do not know what the answer to that is. Presumably, you will ask them that. But clearly, it need not go to the United States and whether it does or not is a matter for decision by them or perhaps decision by the Government of Canada. There are lots of ways of

preventing it from going to the United States without taking the right away from them in the act.

**Senator Carter:** I wonder if Mr. Dodge could clarify one point for me. I cannot understand the rationality of the manufacturer's having a right. How he can have a right? On what basis does he acquire a right simply by making something to which everybody else has contributed. If there is not any author, composer, or group of musicians, he would have nothing to record. When all these have done their work, all he does then is make a device by which other people can enjoy it. How does that give him any inherent right? I do not quite understand that.

**Mr. Dodge:** I have used a term which I do not like, "manufacturer and/or producer", because there is an involvement of producing, in the putting together of the inputs for the production of a recording.

**Senator Carter:** Take one person who is going to sing a song—take Anne Murray, if you like. She is going to sing a song and the technician is going to set up the apparatus and the turntable is going to go around and her voice is going to be reproduced on this master copy. In doing that, how does the person who produces the master copy acquire any inherent vested right?

**Mr. Dodge:** They are part of the varying amounts of input. Even the simple choice of whether or not she would just sing it with a pianist, or whether she would sing it backed up by a full orchestra, or whether she would sing it under other circumstances, is a critical and creative decision. It is the difference between putting on a national ballet on a full-scale performance on television, or having Dinah Christie read a poem on television. And yet each of them has its creative aspect. You cannot say that one is creative and the other is not. There may be differences of degree, but the extent that the manufacturer has the responsibility for the production and the decision-making, about how it is staged and put together, in this sense there is a creative influence.

**Senator Carter:** Yes, but are you not just talking there about what we are calling the master copy?

**Mr. Dodge:** Yes.

**Senator Carter:** That is fine, but when other people buy this master copy and then go out and reproduce records from that master copy, how do these people, who are the manufacturers, acquire a vested right in them?

**Mme Sauvé:** They cannot copy.

**Mr. Dodge:** Of course, it comes back to the original.

**Senator Flynn:** It is the same as getting a film.

**Senator Carter:** It is not copying, they are reproducing from the masters.

**Mr. Dodge:** The company makes the master copy.

**Senator Carter:** But all of this creative business that you have been describing takes place when the master copy is made. That is all done. All that is done after that is to reproduce this.

**Senator Flynn:** You would destroy the patent right—in your argument—because once you have invented the first thing with a patent, all the others are merely copies. They are manufactured in chain production.

**Senator Carter:** Yes, I know that.

**Mr. Dodge:** Every record has a master, to begin with, and from that the production goes on. I guess it is really a question you should put to the people who make them. I do not know how they are made. All I know is that they get these big vats of plastic or something and they stamp them out. My idea of it is that the master is made from the performance in the studio, which may be located in London, England, or New York, or Toronto.

**Senator Carter:** I can understand there might be some creative work there.

**Mr. Dodge:** Once the master is made, the inputs and the production are the same. All that goes on from then is that they stamp as many records as they think they can sell.

**Senator Carter:** Another person might buy that master copy. These master copies can be sold, can they not?

**Mme Sauvé:** I think you are right. The master copy is often copied and you have a proliferation of small record manufacturers who copy from an original production, manufacturing of one record. This does happen and there has been in Paris last month a small meeting dealing with what they call piracy.

**Senator Grosart:** It is quite illegal.

**Mme Sauvé:** As to the creative right of record manufacturers, which we have just been discussing, I think you have to take into consideration also that there is what I would call a commercial right. The original object that was manufactured was destined for a private person, and instead of going to a private person that same thing is taken and put on the air and diffused to many other persons.

**Senator Grosart:** At the instance, almost invariably, of the manufacturer of the record.

**Mme Sauvé:** That is irrelevant.

**Senator Grosart:** Who keeps a large staff to make sure that the radio stations play the record, because he knows the benefit he will derive.

**Mme Sauvé:** They are in the driver's seat.

**Senator Grosart:** Are you aware of the fact, and I think it is a fact, that the majority of recording companies, that is the manufacturers of records, are also either "publishing" companies themselves or own "publishing" companies and as a result are already in receipt of 50 per cent of the original performing right that would otherwise accrue to the composer?

**Mr. Dodge:** I am not aware of it but I am not surprised to hear it. However, it does not make any difference to our position.

**Senator Grosart:** It makes a very great deal of difference, I suggest, because the manufacturer is already in receipt of 50 per cent of the fees that accrue from the right of the original creator.

**Senator Flynn:** By negotiation.

**Mr. Dodge:** Who gets the other 50 per cent?

**Senator Grosart:** The composer. Perhaps I should explain it for the benefit of the committee. The historic picture is that originally the interest of a composer was in having his original work published, because there was a market for sheet music. So under the normal performing rights society contract, 50 per cent of the total fees collected by the society go to the composer, and 50 per cent to the publisher. This was a highly equitable arrangement, because the publisher not only went to the expense of publishing sheet music, but also did the job of exploiting the song. He went to the radio stations and promoted the use of that composition. The publisher in that sense does not exist any more. Therefore in a quite good business sense the record manufacturers have moved in and decided they would become the publishers of what they record. In some cases the first recording of a song is by a record company which has also made a deal with the composer to obtain half the fee. I put that on the record as something I believe, because I have been around the business for a long time, although I am not in it any more.

**Mr. Dodge:** I am not in a position to dispute it; I do not know whether any of our colleagues might care to.

**Mr. Wood:** That is a negotiable situation with recording companies.

**Senator Grosart:** Would you agree, Mr. Wood, that that is roughly the situation today?

**Mr. Wood:** In certain instances; it all depends. It is all done through negotiation with the performer, composer or whoever it may be. In this day and age publishing does not mean what it used to mean. Sixty per cent of the recordings made at the present time are not published works. Most of it is up here with the musicians and if you ask them to write it down they could not do it anyway.

**Senator Grosart:** But this does not mean that there is not someone who says he is the publisher, and that "someone" is the recording company.

**Mr. Wood:** If he negotiates with the performer, you are right.

**Senator Grosart:** From your knowledge is that not the normal situation in the business today?

**Mr. Wood:** Yes.

**The Acting Chairman:** I want to thank you, Mr. Dodge and your colleagues, for coming before us and giving us your views, which will be taken into consideration.

The committee adjourned.



Publications

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 24

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WEDNESDAY, MAY 19, 1971

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Fourth Proceedings on Bill C-180,

intituled:

“An Act respecting the packaging, labelling, sale, importation  
and advertising of prepackaged and certain other products”

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(Witnesses:—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Heath, seconded by the Honourable Senator Kickham, for the second reading of the Bill C-180, intituled: "An Act respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products."

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Banking, trade and Commerce.

The question being put on the motions, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, May 19, 1971.  
(27)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to *further* consider the following Bill:

Bill C-180, "Consumer Packaging and Labelling Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Grosart, Haig, Isnor, Lang, Martin, Molson, Welch and White—(17).

*Present, but not of the Committee:* The Honourable Senators Casgrain, Inman and Urquhart—(3).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

### *Department of Consumer and Corporate Affairs:*

The Honourable Ron Basford, Minister;

Mr. J. B. Seaborn, Assistant Deputy Minister, Consumer Affairs Bureau;

Mr. G. R. Lewis, Chief, Commodity Labelling Division, Standards Branch.

The Honourable Mr. Basford submitted two proposed amendments to the above Bill respecting Clauses 3 and 11, for the consideration of the Committee, as follows:

Clause 3, *Page 2*: Strike out lines 31 and 32 and substitute therefor the following:

"provisions of this Act that are applicable".

Clause 11, *Page 6*: Strike out lines 27 to 33, inclusive, and substitute therefor the following:

"product, the Minister shall seek the advice of at least one organization in Canada of consumers and one organization of dealers in that prepackaged product or class of prepackaged product and may seek the advice of the Standards Council of Canada or any organization in Canada engaged in standards formulation".

### *Department of Justice:*

Mr. J. W. Ryan, Director, Legislation Section;

Mr. D. Beseau, Legislation Section;

Mr. J. A. Scollin, Director, Criminal Law Section.

At 11:30 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, May 19, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-180, respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products, met this day at 9.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. Our first item of business this morning is to consider a number of points in Bill C-180 which we stood last time in order to get the views of the minister. I am referring to clauses 3, 11 and 20(3) of the bill.

Certain things have been done in the interval. With our law clerk we prepared what we thought would express the view of the committee in relation to the complicated changes in clauses 3 and 20(3). Those were submitted to the departmental representatives for their consideration, and I expect they are prepared to deal with them today.

Mr. Minister, if you have not any special order, could we start with clause 3?

**The Honourable Ron Basford, Minister of Consumer and Corporate Affairs:** Mr. Chairman and honourable senators, I do not have an opening statement. I have looked at the record and have read the reports of your meetings and I know the concerns that you have. I think it would be best if I just answered questions honourable senators have.

I may say that this bill results from a large number of recommendations from the Consumers Association and the Batten Royal Commission, as well as from a joint committee of both houses of Parliament. The bill is an attempt to solve those consumer problems, and I am sure, Mr. Chairman, that the committee in looking at the various clauses of the bill, and in its deliberations on the bill, will have foremost in its mind the question of how we are going to pass legislation which will solve these consumer problems and concerns.

There are, I recognize from the record, problems and concerns in the committee and among senators, but I am sure that uppermost in their minds will be the desire to help alleviate the problems in packaging and labelling that have been brought to light by these various inquiries and by the Consumers Association.

That really is the spirit in which we should look at the bill and direct our attention to it.

With that brief comment I would be happy to answer any questions honourable senators have.

**The Chairman:** Mr. Minister, the first clause we stood in order to have your views on it is clause 3.

**Hon. Mr. Basford:** Yes.

**The Chairman:** I think you know the history of the conferences we had yesterday. The draft was prepared by the law clerk and the Chairman of this committee and was submitted to your representatives. I understand the official reaction was that clause 3 appeared to go too far. The amendment proposed appeared to be too restrictive. At the end of the conference your representatives were going to attempt to draft something that might give us the best of both worlds.

Are we now ready for that this morning?

**Hon. Mr. Basford:** Well, I am happy with clause 3 as it stands, Mr. Chairman. It was debated very carefully in the other place and I see it has been examined carefully here. The purpose of clause 3 is to make this most recent statute clearly the predominant one, so that in respect of products covered by this or other acts there will be, for the benefit of consumers, processors and manufacturers, a clear indication of which regulation or which rule prevails. I reiterate what my officials said in the committee the other day, that one of the main purposes and principal foundations of this legislation is to bring to the packaging and labelling regime co-ordination and uniformity that does not exist now. That is a complaint that consumers make to me. They urge me to get uniformity in packaging and labelling, and that is a complaint that concerned manufacturing groups also make to me. We are told that we have a confusing picture in Canada, federally and provincially and within the same Government between different departments, and that the whole thing should be co-ordinated. It can only be co-ordinated and made uniform if there is one principal act that is clearly the predominant act.

I might say, Mr. Chairman, that at another hearing of this committee you quoted to me at great length, in objection to a statement that I was making, a learned professor from Osgoode Hall, Professor Ziegel, when we were discussing the Corporations Act. I would refer you to his evidence on this act in which he said that clause 3 was in no way an unusual provision and should not be regarded with the alarm that some people had regarded it with. So I should like to quote your own authority to you, Mr. Chairman.

**The Chairman:** Our own authority? You mean your authority.

**Hon. Mr. Basford:** No, your authority.

**The Chairman:** No. I do not adopt him, and I have not adopted him. He went before your committee. He has not appeared here. But let us put the thing in focus, Mr. Minister. As to the principle of the bill we have heard your view, but let me state or recall to the committee what the points of objection to clause 3 were. They were these: Firstly, that clause 3 proposed by regulation to permit the superseding of existing legislation in this field. Secondly, that the regulations made under this bill would therefore, unless there was some qualification, supersede regulations under the existing acts which deal with a variety of products. For example, regulations deal with agricultural products and provide for standards, for labelling, and so on. And we said that there should be some way of resolving this; in other words, of involving the know-how and knowledge in connection with, for instance, the Fertilizers Act, the Inspection and Sale of Articles Act, which covers flax fibres and binder twine, and the Forest Products Act, where you have, and have had, both administration and regulations going on for a very substantial period of years. But this clause 3 would enable regulations under this bill to cut across those regulations; so we said there should be some co-ordination.

Now, we made a proposal, but apparently we are not going to hear anything from the department this morning in relation to that proposal, because the minister appears to be ready to fight for the section, as is, without any change. We proposed that when it came to making regulations under this bill—and those regulations were in relation to products already covered by other existing legislation—the recommendations leading to regulations under this bill should be joint recommendations; they should not be only from the minister who is administering this act but also from the minister who is administering the other act where you already have a plan of regulations, et cetera.

Yesterday this was described as being too restrictive. We had expected that we might receive some suggestion of the department's position, but I gather from the minister's attitude now that they are going to stand or fall by clause 3. Is that a correct interpretation, Mr. Minister?

**Hon. Mr. Basford:** I understand there were discussions last night, to which I was not a party, Mr. Chairman, with the draftsman of the bill and that a suggestion from the law clerk was discussed. I think, with respect, the suggestion would destroy the principal purpose of the legislative program that is envisaged here. It does not appreciate the need here and what is endeavoured to be done by this piece of legislation and the regulations that would be passed under the legislation. At any rate, the draftsman, subsequent to your discussions with him, has suggested one alternative wording that would get round the difficulty that some honourable senators are having with clause 3. It is here, Mr. Chairman, which would leave clause 3 reading, as I understand it, as follows:

Subject to subsection (2) and any regulations made under section 18, the provisions of this Act that are applicable to any product apply notwithstanding any other Act of the Parliament of Canada.

**Senator Connolly (Ottawa West):** Do you think that would be a satisfactory wording for the section, Mr. Minister?

**Hon. Mr. Basford:** Yes, from the point of view of what is the policy decision of this act.

**Senator Connolly (Ottawa West):** In effect, what you suggest is ruling out the words in lines 31 and 32, "by the terms of this Act or the regulations".

**Hon. Mr. Basford:** Yes.

**Senator Connolly (Ottawa West):** I think this committee, Mr. Minister, is very impressed with the value of this legislation. We have had a great many witnesses here who have indicated that the general purport of the legislation is very good from the point of view of the consumer, and it is your statutory responsibility, as you have said many times, to protect the consumer. We have had, however, expressions of concern from certain people, and you as a lawyer will understand the concern, who have said that to amend or change other acts of Parliament by regulations made pursuant to this act would be a very far departure from what we normally like to see in legislation. Indeed the legislation that the Government has given us in respect to statutory instruments seems designed to prevent the administration from changing acts of Parliament simply by the regulatory process.

Having said that, nobody has yet come to us to say that the words "or the regulations" do not mean precisely that. I listened very carefully to your opening statement in which you said that this act should be a co-ordinating act, that it should have a supervisory role in the general field of labelling and packaging, and I do not think that anybody would quarrel with that. But there may be a legal explanation for the use of that phrase that is now proposed to be eliminated, but no one has come here who seems to put a different interpretation on it than the one I have put on it here just now. I think it would go a long way towards helping the effect of this act if it was made crystal-clear that this act is a predominant act, but it should also be made equally clear that the regulations under this would not have the effect at any time of amending sections of other pieces of legislation.

**The Chairman:** Senator Connolly, I may say that reading this proposed change, it would appear that it eliminates one of the two objections we had.

**Senator Connolly (Ottawa West):** I am only concerned with this one.

**The Chairman:** It eliminates the one in connection with a regulation superseding an existing act of Parliament. But it does not deal with the other one, that is that in the administration of this act you can override the administration of an existing act of Parliament on the subject matter of labelling and standards, etcetera, in relation to a product.



**Senator Connolly (Ottawa West):** Frankly, Mr. Chairman, I do not see a difficulty there, certainly not one as great as the one I have mentioned. In fact, I doubt if I see a difficulty at all in that because I think the administration under one act must in effect co-operate with the administrators under another act. And while in effect this act is paramount because it is broader and there are new statutory responsibilities placed upon the Minister's shoulders as Minister of Consumer and Corporate Affairs, think that having passed that other act where the establishment is important, there is something to be said for making the responsibility in this field and in this act the paramount one. I am not purporting to express the opinion of the committee, but that is my own view. On the other point, I think it would be helpful to the administration and it would make for better legislation to remove those words. They seem to me to be the crux of the matter.

**Senator Cook:** Does that not go a very long way to meet our objections, Mr. Chairman? I thought our principle objection was that you did not want the law of the land amended by the civil servants without coming to Parliament.

**The Chairman:** There were two things, if I may answer your question. If you go back and read the report of the committee of last week, you will see that there were two points; one was directed to the possibility that by regulation this could supersede an existing act of Parliament. Now this would appear to deal with that situation. The other was that you have existing acts of Parliament in this field in relation to particular products and I referred to some of them like binder twine and flax fibres and an infinite variety of things which are justified under Agriculture and the Minister of Agriculture administers many of them. Now those regulations and labelling requirements in those particular acts require a considerable number of things to be done in connection with labelling, and some of those provisions appear in this bill as part of the substantive law proposed by this bill. What we were saying was that with that know-how that has been acquired in the administration of those statutes, under this bill they should not be able to regulate independently in relation to those other products.

**Hon. Mr. Basford:** Could I answer that? I appreciate the concern, and if one could speak about what goes on in one's own office when things are being drafted, I share your concern about regulation-making powers. I have endeavoured and the draftsmen have endeavoured to allay the fear here that the passing of some regulation, by the Governor in Council, or the executive, could upset something that had been approved in another act by Parliament. We have tried to deal with that.

On the question of administration, maybe I am not grasping the point of concern. We have a great many acts relating to packaging and labelling, some of which are already administered by this department and under this act more will be. But in the co-ordination of administration, I think my officials have tried to make clear that in this particular case, there is a Cabinet directive to make sure that the administration is co-ordinated. There is also

an interdepartmental committee, and I think I should speak about how the regulations are made, because it is important. There is first an Interdepartmental Committee on Consumer Affairs which is a permanent interdepartmental committee within the Government, and representatives on it are officials of all departments who have some concern about consumer matters, Food and Drug, Health and Welfare, Department of Agriculture, Trade and Commerce, etcetera, etcetera, that is, all departments who may be affected by regulations passed under this act. If there is some interdepartmental concern as to what we are doing or proposing to do under this legislation, that is dealt with in that interdepartmental committee and each committee and the officials representative of various interests and various administrations have a chance to put their point of view and iron out the problems. The regulations are then drafted by the Department of Justice and have to be approved by them. They are cognizant of all the other regulations and watch for the fact that there are no competing regulations or duplication of regulations.

**Senator Connolly (Ottawa West):** Or conflict.

**Hon. Mr. Basford:** Or conflict. And if they see a conflict, they come to the Department and point it out and straighten it out and resolve the conflict. Then if the regulations involve a matter of policy, it has to go to Cabinet to be dealt with there in the Cabinet Committee on Government Operations or the Cabinet Committee on Economic Policy at which, of course, every minister or every official of the Government has notice and an opportunity to have an input to resolve any conflict or lack of co-ordination or duplication. If it is purely a matter of implementing some policy by way of regulation, it goes to a special committee of Cabinet which deals with Orders in Council. But again if there is any interdepartmental conflict or duplication, it is resolved and sorted out in that committee. That is just what happens within the Government, long before anything sees the light of day. Before something sees the light of day people outside of Government, in the private sector are consulted and talked to as to what are practicable regulations and as to what is workable. Surely, that is where areas of conflict would develop.

Lastly, Mr. Chairman, I would like to make a point I think has been overlooked in this bill, and it is section 19 which I regard as extremely important. I think it was overlooked in the House Committee; it has been overlooked in this committee, and it has been overlooked in the submissions that both Committees have had. This is rather a novel provision in this bill by which the proposed regulations must be published as proposed regulations, and anyone has a chance to comment on them before they become effective. There is only one other act of Parliament in which I know that kind of provision exists, and that is in the Motor Vehicle Safety Act which was passed a year ago.

**The Chairman:** Mr. Minister, I think we should give you marks for this.

**Hon. Mr. Basford:** All right. Surely, where the proposed regulations are published in the *Gazette*, if the



fertilizer industry or the farm implement industry or the binder twine industry see that these regulations are not practicable for them, or create difficulties, they see it here and bring it to the attention of Government, bring it to my attention and particularly to the attention of the department which represents their sort of interest. Again, that is resolved.

**Senator Connolly (Ottawa West):** Just before you go on, you do us a slight injustice, because we had a discussion on this particular item with some witnesses here.

**Hon. Mr. Basford:** I think it is an important one.

**Senator Connolly (Ottawa West):** It surely is.

**Hon. Mr. Basford:** It is an initiative of this department. I wanted it in there. People say we are not interested in consulting, which is untrue, and I wanted to put in this statutory right which people have.

**Senator Connolly (Ottawa West):** The only objection they had was that they do not read the *Canada Gazette*. Maybe sales will go up.

**Hon. Mr. Basford:** Maybe.

I make one final point, on eliminating lack of co-ordination or duplication that you are concerned about, Mr. Chairman, and it is that there would be a last and final kick at the cat under the Statutory Instruments Act—which is before the Senate now?

**The Chairman:** No, it has been passed.

**Hon. Mr. Basford:** Which has been passed—which again provides a whole range of remedies and solutions to deal with the regulatory-making power of Government, to make sure that the regulations are not improper.

I think the second point you raised surely is answered by all that I have said, in the administration of the act and of the various acts, and is answered by section 19 and by the Statutory Instruments Act. With all due respect, I submit that very seriously.

**Senator Molson:** I think the minister has explained most of the matters that concerned me, but does he foresee that a manufacturer, dealer or importer is going to find himself subject to such a series of acts or regulations that, in fact, he may have considerable difficulty in operating in a normal way? This superseding other acts where appropriate, for example, does that mean his life is going to be complicated unduly or simplified?

**Hon. Mr. Basford:** I do not think so. There are those who say that any regulations complicate life and, of course, that is true, because they have to know the regulations and the fact that there are regulations under the Canada Agricultural Products Standards Act, and so on. So that complicates their life. Undoubtedly they do. It would be easier to have no regulations, if one is in the producing business.

I do not see that it is going to make their problems any more difficult, and as the program of packaging and labelling reviewing is put in place and improved I would hope and foresee that it simplifies matters.

I could table some of the conflicts between the existing regulations which you have under the various acts administered by different departments, different regimes that have developed. If you are in the making of pork and beans you fall within one category as to how you put your net weight on the label, but if you are in the business of making beans with pork you fall literally under a different regime and put your net quantity in a different way. It seems to me that that kind of thing should be eliminated from the producers' point of view. It has an incidental benefit to the consumer, in that if you have a uniform regime he knows where to look for net quantity and how it is expressed. But if there could be one regime for the declaration of net quantity, that seems to me to assist the manufacturer and not make his life more complicated. We are getting into federal and provincial regulations here, but there are over 20 different regulations relating to the labelling of margarine, which is surely quite wrong.

**Senator Connolly (Ottawa West):** What do you mean by "20 different regulations"?

**Hon. Mr. Basford:** Provincially, if you are packing for one province you have to pack one way and for another you have to pack a different way. If I were a manufacturer I would object to that, as they do, quite rightly, and as the Minister of Consumer and Corporate Affairs I object to that because it is confusing to the consumer and is cost inducing.

**Senator Connolly (Ottawa West):** But by this act you are not able to remedy that.

**Hon. Mr. Basford:** I would like as a department to try to engender uniformity and co-ordination, not only between departments within the same Government but provincially also. I think that uniformity and co-ordination have benefits not only to the consumer, which must be my prime statutory responsibility, but also to the manufacturer and processor also, and I think that makes his life easier and not harder.

**Senator Lang:** As I understand it, this section 3, as it now stands, applies to any product, not to any prepackaged product. In other words, it extends to any article that is or may be the subject of trade or commerce.

**The Chairman:** Yes.

**Senator Lang:** It is a very sweeping inclusion. It would seem to me very questionable to put the power in the hands of a regulatory authority to deal with any article that is or may be the subject of trade or commerce, that may otherwise be dealt with by other legislation, such as the Motor Vehicle Act to which the minister has referred.

**The Chairman:** Except, senator, if the object of this bill, as the minister has stated, is to achieve uniformity in packaging and labelling requirements, of course, the packaging and labelling refers to products, so you would have to go back and get authority from the beginning, that is from the product stage. You are thinking alternatively that this should be limited to prepackaged goods.

**Hon. Mr. Basford:** I would like to answer Senator Lang, if I may. If one looks at section 18, the regulatory section, one sees that every subdivision of that applies to prepackaged products, except subsection (h), which is made subject to other acts of Parliament. So the regulating power under section 18(1)(a) to (g) and (i) to (l) relates to prepackaged goods; (h) is the one that relates to products and it is subject to any other act of the Parliament of Canada.

**Senator Connolly:** It refers mainly to bulk goods.

**Hon. Mr. Basford:** You will notice that section 4, the substantive section, relates to the prepackaged product. Section 5 says "prepackaged product". I am reading as I go along here. Sections 6 and 7 also refer to prepackaged. So the substantive sections relate principally to prepackaged goods.

**Senator Flynn:** Did you say "principally" or "exclusively"?

**Hon. Mr. Basford:** Principally. Subsection (h) of section 18(1) is drawn subject to other acts of Parliament.

**The Chairman:** And (1) is a general clause for making regulations, and generally for carrying out the purposes and provisions of the act.

**Hon. Mr. Basford:** The purposes of the act are expressed in section 4, which relates to prepackaged goods.

**Senator Flynn:** "Purposes", to me, has always been a rather subjective term. I do not see why it should be included, as you say, for carrying out the provisions of this act. If you have explained your purposes they should be found in the terms of the act and not otherwise. "Purposes", to me, would enable someone to go beyond the wording of the act.

**Senator Connolly:** I do not think that regulations which go beyond the scope of the act would have very much effect.

**Senator Flynn:** You could say that the purpose of the act is to protect the consumer.

**Hon. Mr. Basford:** The act has very specific requirements relative to consumer packaging and labelling requirements.

**Senator Flynn:** One would argue that this is the purpose of the act.

**Hon. Mr. Basford:** You have to pass any regulations within the powers given within the substantive sections of the act, and if they go beyond that power they would be *ultra vires*. That is what Senator Connolly is saying.

**Senator Connolly:** Yes; that is sound.

**The Chairman:** Somewhere you have to get back to basics, and the basics would be the products.

**Hon. Mr. Basford:** "Products" must be defined in the definitions section. "Prepackaged" is defined, so you have to define "products".

**The Chairman:** At some stage you have to have some authority relating to products. Are there any other questions?

**Senator Croll:** Broadly, it seems to me that what the minister is saying, in effect, is that the Department of Consumer Affairs is breaking new ground. We have to be tolerant in this respect. When we speak of the Fertilizers Act, the Forest Products Act and various other acts, those acts and regulations were of another day. This act deals with packaging and labelling in the modern sense, as we see it at the present time.

The minister is also saying, and rightly so, that, by virtue of the number of acts that have come before us from the department, they are specialists in that particular line and for this reason...

**Senator Flynn:** You mean the Consumer Affairs Department?

**Senator Croll:** Yes.

**Senator Flynn:** By comparison with departments that have had experience for years?

**Senator Croll:** With other products, but not in the field of packaging and labelling that is required here compared with what it was at another day.

**The Chairman:** If you look at these regulations in the different acts you will find that they have been updated. Some acts were revised in 1969.

**Senator Croll:** But this is, of course, 1971. What we are now trying to do is reach some uniformity. Here is an act in connection with which we can say on the basis of uniformity that we can start from here. The minister has already indicated to the committee that this matter has been widely discussed and considered, and there have been no objections from the other departments. The other departments will even look to the Department of Consumer Affairs for guidance. So there will be meaning in relation to all products rather than on specialized consumer products that we ordinarily come into contact with.

We must be somewhat tolerant in that respect and give them the opportunity to see how it works out, since there are safeguards in here. I do not know who reads the *Canada Gazette*, but I imagine that the people involved do read it and will know what is contained therein.

Another thing that impresses me considerably is the fact that the bill came to us from the other place and was unanimously endorsed by that house. They are in touch with the situation—no more, perhaps, than we are, but they have discussed it and have come to a conclusion on this particular item.

**Senator Flynn:** There was argument on this point.



**Senator Croll:** Yes, there was argument on this point. It was not overlooked. But in toto they decided that it gave the Department of Consumer Affairs an opportunity to clear up the situation once and for all, or to attempt to do so, and it seems to me that this is the time to give them that opportunity. It is a new concept. It is hard to see what it will bring about, but it is a good beginning. There may be some difficulties later on, but we will be here to correct the difficulties if they arise.

**The Chairman:** I should like to make only one comment. I am surprised to find you putting that forward in support of this bill, Senator Croll, saying that there was unanimity in the Commons in respect to the bill. This may be a factor, but we exercise our own judgment here, and I cannot think of a senator who holds that view more strongly than you yourself.

**Senator Croll:** I said that I was impressed by what had come about. In addition, the various ministers who are touched by these various regulations have all endorsed it. They have seen it and are prepared to go along with it. From their departmental point of view they are not complaining.

**Senator Flynn:** The best point against your argument is that all the other ministers are in agreement, that with their experience they should be willing to amend regulations and make them conform to the desires of the new and inexperienced department. It would be much better to proceed in this way, rather than legislate without knowing what you are legislating about. You are going to amend legislation without knowing why you are doing so.

**Senator Croll:** Except that the people who are concerned will know and will have an opportunity of making a presentation.

**The Chairman:** Are there any other questions?

**Senator Connolly (Ottawa West):** Senator Croll referred to the need to be tolerant about this act. Actually, we go further than that, and think we should because we passed the bill here. We set up the Department of Consumer and Corporate Affairs. We imposed upon the minister certain responsibilities. In the discharge of those responsibilities he brings in this legislation and, except for a few minor points, one of which I have already referred to, this is good legislation. I think we all think it is good legislation. But it is more than simply a question of tolerance. The minister is trying to discharge a responsibility. He puts it before Parliament and we have to view it in the light of the act we passed which established his department. So it is more than tolerance. It is an exercise of the discharge of his responsibility.

**Senator Cook:** Mr. Chairman, we all love the minister, but we are dealing here with legislation and not with the minister.

**Senator Connolly (Ottawa West):** Sure, that is right.

**Senator Cook:** And we give him all the support we can.

**Hon. Mr. Basford:** That is very kind of you, senator.

**The Chairman:** That is right. Despite all the garlands we are throwing around, we still have to look at the bill. If there are no other questions on this section, I suggest we pass on to clause 20. The minister has only limited time here this morning. I would suggest that after he has left we could deal with the representations on Bill S-9 and then, later this morning, come back to Bill C-180 and review the various clauses again.

If it does not throw your plan of presentation out, Mr. Minister, I would suggest that we deal with clause 20(3).

First, may I just recall to the attention of honourable senators the point made in connection with clause 20(3). The language of the clause reads as follows:

Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

There is a lot of opposition to this on the basis that one of the formalities or elements of proof is that the corporation is guilty, then that should be guilty by legal process. But then we find that this clause, pretty much in the form in which it is, occurs in many other acts of Parliament. For instance, I think this same wording appears in section 134 of the Income Tax Act. The same section appears in acts which predate the present Income Tax Act, going back perhaps to 1925 or thereabouts. You find this language being used. You will find it in the Unemployment Insurance Commission Act, the Weights and Measures Act and the Bankruptcy Act. But the strange thing is that there is practically no jurisprudence on it. The only thing I have been able to find is two cases. In both of those cases the corporation had been convicted. But there are statements made by the judge in the first instance.

**Senator Connolly (Ottawa West):** Do you know whether a committee ever thought about the point before, Mr. Chairman, when dealing with some of these other acts?

**The Chairman:** No. It is difficult to get *Hansard* going back that far. The question was certainly debated at great length in the committee in the House of Commons when it was dealing with this bill. Mr. Scollin, the head of the Criminal Law Section of the Department of Justice, appeared before the Commons committee. He argued, apparently successfully, against the objections, and the section remained in the form in which it was presented in the bill.

What your Chairman and the law clerk had attempted to do in order to meet what we thought were objections of this committee was to make a draft of a revised section. We did this because in the Commons committee the question was put to Mr. Scollin, or perhaps it was Mr. Seaborn or some other witness: "Why do you want the power to prosecute a director without prosecuting the corporation?" The explanation that was given was that at



the time when you may be contemplating prosecuting the corporation the corporation might have surrendered its charter or it might have made a voluntary assignment or it might have been declared bankrupt under the Bankruptcy Act.

So taking that as the cue, the draft that we submitted to the minister's departmental officers and to the justice people divided that section in two. In the first part it said, "Where a corporation is convicted of an offence under the act, then any director or officer or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and may be prosecuted." We then went on and provided in the second subsection that, "Where a corporation is guilty"—using the language here, where you do not have to convict the corporation first—"Where a corporation is guilty of an offence and the corporation at the time of contemplated proceedings has surrendered its charter or has made a voluntary assignment or has become bankrupt, then the director or officer who participated in the commission of the offence may be prosecuted without the necessity of prosecuting the corporation."

We thought we had met both sides, but we were turned down so far as any consideration of it was concerned on the basis that the department felt that there was some deterrent value in having this sort of threat hanging over corporations who might be subject to this act.

I can see a difference in the deterrent effect as between the administration of section 134 of the Income Tax Act and the administration of this act in connection with labelling. It may well be that you need more deterrents in the Income Tax Act or in the Bankruptcy Act or in the Weights and Measures Act than you do in this act. I do not know. But I am just throwing this idea out now. Mr. Scollin is here today and can deal with it. I believe the minister would like to say something first, however.

**Hon. Mr. Basford:** I should like to say something, Mr. Chairman, if I may. Then I will have to rely on Mr. Scollin as the legal expert. I should like to discuss briefly the policy as I see it behind this section and correct first the statement that you made. The suggestion that was made by your law clerk was considered very carefully. I wish that I could oblige you by agreeing to it right now. However, I do not think that it solves the policy problem. I think one of the difficulties that senators have, and some of your witnesses have had, is that you look at the kind of companies you are familiar with, acting for them as lawyers or as members, or looking at the well-known national companies that everybody is familiar with, and you think, "What conceivable good is it having a section allowing a charge to be laid against a director of Heinz, or Libby's or Procter and Gamble?" And so on. Well, frankly, there is none. Those companies, to start with, will bend over backward to make sure they live within this act or any other act and that they are not in difficulty in the courts. If you want some deterrent value, a charge against the company is quite sufficient for any

deterrent because the publicity associated with any charge is really quite catastrophic.

I appreciate all this, but I think honourable senators have to bear in mind that there are some companies operating that are beyond your knowledge, experience and familiarity, and these are the real fly-by-nighters, the real high-binders who are out there, unfortunately and sadly, and they will organize themselves in such a way that it is impossible to get at them through their corporations because they will have a whole string of companies so that it will be impossible to find out who is doing what, and yet it will be one man. I think it is essential, as it was in the Weights and Measures Act, which was passed only a few weeks ago and had this section in it, that for proper law enforcement and proper protection of the marketplace, we should be entitled to take that type of high-binder to court and charge him if he has been a party to this offence. This is why we need this section; that is the policy behind it. I could come in here with my Operations Branch and bring a filing cabinet full of cases that support what I have said.

One type of case was very familiar in years gone by—it has now died down a bit but it is familiar to you all—of people who sell freezer plans where you buy a whole steer cut up for your freezer. There were cases in my own province where the advertisements were for a steer of such-and-such a size, quality and grade. The inspectors finally bought one of these and put it together and found it was not one steer at all but was bits and pieces of eight different steers and all the worst parts of the eight steers. When we went to charge the individual responsible, he quietly nipped across the border to the United States and the poor Americans have to deal with him now. But that is not the Heinzes, or the Libbys or the Campbells, because they are not what we are concerned about here. We are concerned about the real crooks. Unfortunately, there are a few out there who are preying on the consumer, and on the marketplace, and in my view they are destroying the credibility of the marketplace, and I think they go a long way towards destroying the credibility of the free enterprise system. So I think it is essential that we write laws that allow us to reach those people. That is the policy behind this section, and that is why we need it. I state this with the strongest of pleas because there is that small, totally undesirable minority, that needs to be dealt with.

I know that this committee, just as the House committee, has had difficulty with the words "where a corporation is guilty", and I hand you to Mr. Scollin to deal with that wording. But I think the policy and principle is that where a director in certain instances has authorized, or participated in or assented to the commission of an offence, there should be a remedy within the law allowing for proper enforcement and protection and that the authorities, subject to a judicial hearing and a trial and all of the protection of civil liberties involved in a trial, should be entitled to get at that person. I think it is essential.

**The Chairman:** Mr. Minister I think that I should tell you that when we were considering amendments to the Bankruptcy Act, a number of years ago, this very point

that you make on the question of policy was emphasized most strongly by the Minister and by the Registrar in Bankruptcy as to the types of companies and the manoeuvres in this field of bankruptcy law that they had to try to work against, and certainly the presentation at that time was strong enough that we did not insist on any change in the provision. So there is a lot in what you say, but if Mr. Scollin has anything to add on the legal aspects, we will hear him now. On the general principle, Mr. Scollin, as to where a corporation is guilty, it is quite obvious on the two decided cases—one was *Anisman*, and I have forgotten the name of the other—that if you went into court and charged a director and did not charge the company, one of the elements you would have to prove was that the corporation was guilty. The *Anisman* case was a case where the corporation had been found guilty and when they prosecuted the chief officer, the Crown attempted to produce a Certificate of Conviction, and the judge in that instance said, "No, you must prove by affirmative evidence in this proceeding that the corporation was guilty."

**Senator Connolly (Ottawa West):** A trial within a trial?

**The Chairman:** No, it was one of the elements of proof. You adduce evidence the same as you would establish any other element of the offence. So as to procedure, that is the way you would have to do it. There are no assumptions. So under the present state of the law, I do not think there is any question, where a corporation is guilty of an offence under this act and what follows under subsection (3), that there is any doubt as to the manner in which you would have to proceed legally. I do not know whether you are going to address yourself to the form or whether the Minister has already addressed himself to that. That is a question of policy. But if you have anything to add, we will listen.

**Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice:** I think, Mr. Chairman, unless you or any of the members of the committee are left in any doubt as to the advisability of passing it in the legal form in which it appears, then it would be idle of me to say anything, but I would be happy to answer any questions.

**The Chairman:** I think that is how we can get at it. If there are any questions to ask of the Minister on policy, or of Mr. Scollin on the legal aspect, let us have them.

**Senator Burchill:** As I understand it, before you can proceed against a director, you have to prove that the corporation is guilty.

**The Chairman:** Not before you proceed, but in the proceedings.

**Senator Burchill:** But you cannot proceed until the corporation is found guilty?

**The Chairman:** You can under this section, and a judge who is trying the director must have it established in evidence before him that the corporation was guilty and such evidence must be adduced from which he can conclude that the corporation was guilty.

**Senator Lang:** That is based on the findings in one case.

**Senator Flynn:** But your objection, Mr. Chairman, is that if you proceed in this way, you establish an offence by a party who is not accused and who is not on trial, and this is a problem.

**The Chairman:** What I said, senator, was that somebody's face would be awfully red later on if subsequent to the trial and conviction of a director, the corporation by any chance was put on trial and found not guilty.

**Senator Flynn:** I would imagine they would not try them then. But from a strict level of principle, it seems strange that you should prove an offence by one who is not a party to the proceedings.

**The Chairman:** Well, what I felt and expressed the last day, as you will recall, was that if there were situations of the kind that the Minister has spoken about and the policy which they have evolved in relation to the use of this section which you find in other acts, that those situations are the ones in respect to which we shall give this much broader power, and that is what we attempted to do in the draft prepared by the law clerk and myself.

**Senator Flynn:** But you would try to summon the corporation?

**The Chairman:** It is conceivable, Senator Flynn, that a corporation might be charged and found guilty, and then a director might be charged and found not guilty on the basis that it has not been established in that second trial that he was guilty.

**Senator Flynn:** I understand, but as far as the question of regulating the fine imposed on the corporation when the company becomes insolvent or disappears—I can understand that—you could achieve this with another process other than the one here.

**The Chairman:** I think perhaps I should ask Mr. Scollin if he would address himself to the suggested amendment which was presented to his departmental associates yesterday and to make some comment on it.

**Mr. Scollin:** Mr. Chairman, firstly, I am not sure of the object of the amendment, but could I just say that its general effect seems to be that in the case of a going concern there is no way that the director could be criminally liable under this section, unless the corporation has actually been convicted of an offence.

Perhaps you might wish to consider that there will be situations in which, technically speaking, a corporation might be guilty and perhaps a conviction could be obtained, but where it would be quite unfair because the primary responsibility is really that of the individual officer of the company.

I might just point out a comment that was made by the court in the *Somers* case, which you may recall was 13 years ago, in 1958, in British Columbia, where it was proved that some acts were done by an accused or directed by him as agent for the company, and it was held that he was personally responsible, and the court observed:



Where a man does wrongful acts he is responsible for them. If he does them as a duly authorized agent his principal may also be liable, but the primary responsibility is that of the agent.

Harking back to the general principle that is contained in the criminal law, in particular in the Code, dealing with parties to an offence in section 21 there may well be situations where the Crown would, in fairness, wish to say that it would be inequitable, unfair and unreasonable to prosecute the company and convict it where the primary evil, the real wrong, has been done by an officer using the company simply as a tool.

In the first place, so far as the draft is concerned, to that extent I would suggest, with respect, it goes too far, in making it a condition precedent in the case of a going company that the company should have been convicted before an officer can be prosecuted or convicted.

As to paragraph (b) of the draft, which is the alternative, where you have not a going concern, where it has been declared bankrupt or has made an assignment under the Bankruptcy Act or has forfeited its charter, and so on, where I mentioned these instances before the other committee they were just instances. There can be situations in which you could not get the responsible individual at all under this draft—for example, a company that has ceased to carry on business in Canada, or that does not in fact carry on business properly in Canada but does have officers here acting for it. In the major things it would be quite impossible to convict a non-resident company, although it may very well be quite proper in those circumstances to go off to the one who actually did the authorization. So, in that respect, I think it is dangerous in paragraph (b) to try to select these things, because the very case that is going to arise and look absurd is the very case you have forgotten about, so that to be as specific as this, I think, is dangerous.

In a way also it perhaps looks rather odd to legislate in this particular way, as suggested in the draft, because it does look as if it is discriminatory against the individual businessman. He himself may be doing something exactly the same as an officer of a company, yet he is directly liable to be dragged into court because he is, say, a small businessman, an individual who has not the fees to go to a lawyer and become incorporated, and so on, and he is immediately and directly responsible. Then it looks almost as if you are into what we might call, "The dance of the corporate veils," where until you get the company you cannot get the individual who is an officer. In that respect it may appear to be discriminatory to legislate in this way.

**The Chairman:** Except, Mr. Scollin, what the bill does in section 3 is that very thing. That is, you are saying that if you cannot get the corporation, then you cannot get the officer. But here the nature of the offence that is created is one where you must establish in evidence that the corporation has been guilty before you can nail the director or officer or agent of the corporation, so you are making them inter-dependent.

**Mr. Scollin:** Perhaps I ought to indicate this, that I am not satisfied that this excludes the operation of the ordinary law where, in fact, the individual who happens to be an officer is responsible for an infraction of the act, but not *qua* officer. It may be the fact that he is individually responsible in any event.

**The Chairman:** The same thing occurred to me, and I was wondering why you did not create the offences separately.

**Mr. Scollin:** Again, perhaps because of the traditional use of this form. I know that there are very few reported cases, but in fact sections of this sort have been used in practice in the courts without questions arising, so that you have behind you a series of cases where the courts have in fact acted on a section of this sort.

**Senator Croll:** Mr. Scollin, "traditional use of this form" is your term.

**Mr. Scollin:** Yes.

**Senator Croll:** Just name a few.

**The Chairman:** I did.

**Mr. Scollin:** Well, the Income Tax Act, for one, section 134; the Bankruptcy Act with a comparable provision, though not quite the same but similar in principle.

**The Chairman:** Weights and measures.

**Mr. Scollin:** Yes, weights and measures.

**The Chairman:** Unemployment Insurance?

**Mr. Scollin:** Unemployment Insurance, the union and labour information. These are some. I would suspect that if you searched through the statutes you would probably find there are more, but these are ones that come to mind.

I would suggest that there is some sense to staying with an established form so that at least the jurisprudence would be consistent.

**The Chairman:** You mean travelling the known way?

**Mr. Scollin:** Yes.

**Senator Connolly (Ottawa West):** Without going into legal technicalities, is the situation this that you have a product marketed in a manner contrary to regulations made pursuant to this act, and the proof of a company's guilt lies in the production of the exhibit which demonstrates the fact that there has been a violation of the regulation. That, I take it, in your view, is sufficient evidence of guilt of the company, and then you go to the individual and say, "You have this, that and the other thing to do with this infringement, therefore you are guilty." Is that the practical effect?

**Mr. Scollin:** Generally speaking, that would be the practical effect, but there might be situations in which because of the nature of the way the thing came on to the market you would have to show it was a knowing act of the company and not an individual act of a director outside his authority.



**Senator Connolly (Ottawa West):** Would not the court be expected to presume that if it came out on a label which bore the company's name, had the company's trademark and standard type of container, and that sort of thing, that it was the company's product?

**Mr. Scollin:** Yes. There are certain express provisions in the bill itself—sections 21 and 22. Section 21 is the converse case, sufficient proof of the offence to show that it was committed by an agent or employee. Then in section 22:

In any prosecution for an offence under this Act, evidence that a label applied to a product bore identification purporting to identify...

—and so on, would be adequate as a practical matter, but it would be subject to contradiction.

**Senator Flynn:** It is sort of *mens rea*.

**Senator Connolly (Ottawa West):** You mean if the company were there. The company may not be there. That is the basic thing with us. It was modified a little this morning by the statements that have been made.

**Senator Flynn:** Section 21 would make that an offence. In a way you could prove *mens rea* on the part of the corporation.

**Mr. Scollin:** Section 21 is a standard halfway house of the absolute liability offence or no offence, and is a case where the Crown has to prove complete knowledge and participation. This is the halfway house, and it gives the company an out if it can show that due diligence was exercised.

**Senator Flynn:** That is why you would require discretion in not prosecuting a corporation, but rather in choosing an officer or director. Is that it?

**Mr. Scollin:** In the ordinary operation of the criminal law there are cases where the responsibility is so minimal that it would be unfair to prosecute the company when the obvious primary blame is on the individual.

**The Chairman:** In the prosecution of a director or officer of the company under section 20(3) *mens rea* is an essential element.

**Mr. Scollin:** Yes, in the sense that he was a conscious party to the act, but the offence itself might not involve proof of knowledge or intent; it may be just conscious participation.

**The Chairman:** This is a use of words which may not distinguish very much between the idea I was trying to put forward and what you are saying, namely, conscious participation.

**Mr. Scollin:** It is a voluntary act.

**The Chairman:** But you cannot have a voluntary act unless you know what you are doing.

**Senator Cook:** He might be acting contrary to the duties of the company.

**Mr. Scollin:** He may be acting contrary to the laid-down policy of the company.

**Senator Flynn:** Would it be sufficient for the accused to say that he was not aware of the regulations?

**Mr. Scollin:** No.

**Senator Flynn:** Nor of the effect of section 3 which amends the other regulations?

**Mr. Scollin:** No.

**The Chairman:** In other words, he must know what he is doing. Are there any other questions?

We pass now to the third item, which is section 11, the proliferation section. Mr. Minister, since there are elements of policy contained in this, perhaps you will open the discussion.

**Hon. Mr. Basford:** I do not agree with your position, Mr. Chairman, that the section is unnecessary. I am quite happy, if there is to be an amendment to other sections, to have an amendment under this one to make it clear that in the preparation of these standards I consult with consumer and producer groups. I take the position that that is already provided for in the operation of Government and that it is made mandatory under section 19 since any standardization would be by way of regulation. Anyone has that statutory right already. It is a mandatory right. I take that position quite strongly. If honourable senators want to amend it, I will be happy with an amendment that makes it clear in subsection (2) that we seek the advice of consumer groups or dealer groups in connection with that product or that product line.

**The Chairman:** Instead of "may" we would say "shall".

**Hon. Mr. Basford:** A little more than that. I would not want it mandatory that one must seek the advice of the Standards Council or a standards-setting body. I say this without any reflection on them. The Standards Council is just being formed. It will be a long time before it is in a position to deal with anything of this nature. It really is a co-ordinating body. I included it in case there was a specific case or if it were desirable. The Canadian Standards Association is up to its ears in work. If it were mandatory that those bodies be used, it could take years to do anything under this.

I am quite happy because I would in any event seek the advice of consumer groups and particular dealers in that product. I take the position that that is required under the appropriate section. I have a wording here that the minister shall seek the advice of at least one organization of consumers in Canada and of dealers in a pre-packaged product, and may seek the advice of the Standards Council, et cetera. In fairness to myself, there have been all sorts of allegations in the financial press that this section is arbitrary and authoritarian. I take the position that it is mandatory to consult under section 19 and that under certain circumstances it is the practice of the department to seek advice and to consult people. I dispute some of the allegations that have been made.

**The Chairman:** Would you deal with some of the other points? The point put forward in committee was that under earlier sections in the bill the label should contain a clear statement of net weight or numerical count. The point raised was that under section 11 the undue proliferation of sizes of containers, and any action that the minister might take or the Governor in Council might take, is based on the fact that the Governor in Council is of the opinion that the effect of undue proliferation of sizes is to confuse or mislead or is likely to confuse or mislead the consumer as to the weight measure or numerical count of the prepackaged product.

The position as represented by the views expressed here was that if net weight or numerical count appears on the package, any person who buys a package of any size is not deceived as to what the net weight is if it is correctly stated.

**Senator Lang:** If they are literate.

**The Chairman:** If they can read. On the basis that the net weight or numerical count appears on the package, you could say that the consumer is likely to be confused or misled. We had Consumers Affairs here, and a women's organization.

**Hon. Mr. Basford:** It is an organization of consumers.

**The Chairman:** But they were represented by women. They did an excellent job. They suggested that because of the net weight appearing on one package—it might be 8½ ounces and another package might state 6½ ounces—it was difficult, and a woman buyer could not do the arithmetic to relate the weight to prices in order to determine which one would give her better value. I then asked them whether they were in favour of a unit price, and they said, "no, not at this time." I concluded that they must have read the minister's statement before the Commons Committee, or the Seaborn statement, stating that unit prices might be stepping on very delicate or sensitive ground in relation to federal-provincial relations and authority. Therefore unit prices were not included in this bill.

**Hon. Mr. Basford:** With the greatest respect, I dispute your suggestion that even if the weight is declared on the package, in accordance with earlier sections, there can therefore be no confusion. The whole purpose of this section and the whole purpose of the standardization is to make products within the same product line comparable as to value. I think that even when the weight is stated there can be, through the proliferation of sizes or shapes, considerable confusion or considerable difficulty in arriving at comparability and the ability to compare one article with another.

I suggest with the greatest respect, Mr. Chairman, that I could send you down to the local supermarket and ask you to run in with a dollar to buy toothpaste and be back out in two minutes, and you could not do it. I would defy you to do that.

**The Chairman:** But I may not be the best shopper.

**Hon. Mr. Basford:** Well, you are a very smart man, and even you could not do that.

**The Chairman:** I would not expect you to legislate only for me.

**Hon. Mr. Basford:** You are a matter of great concern to the Department of Consumer and Corporate Affairs.

**The Chairman:** Really?

**Hon. Mr. Basford:** If you could not do that, what about poor people like me? It takes me a long time to figure these things out.

**The Chairman:** I thought you were the master of this.

**Hon. Mr. Basford:** No, I am not. That is why we need some legislation to deal with it. I think that the product lines or areas where this section has application are quite limited; that is, the places where it could be used are limited. But I think there are areas where it applies and should be used. One of the favourite examples, perhaps I should say "favourite whipping boys", is in the line of toothpaste. Perhaps it is not important whether people can compare or not, but that is one line in which there is a great deal of confusion.

**Senator Connolly (Ottawa West):** We had pretty good evidence on toothpaste.

**Hon. Mr. Basford:** I am not saying that we are legislating to deal simply with toothpaste, but it is a classic example of where they are all declared very carefully as to the weight and quantity and yet you cannot compare one with the other.

**Senator Connolly (Ottawa West):** You could if you had a computer with you, in the cases that were shown to us here.

Mr. Minister, on the subject of confusion, it was suggested that one pickle producer might use a 6½-ounce bottle, a 9½-ounce bottle and a 14½-ounce bottle. That is confusing enough. But another producer of the same product might use a 4¼-ounce bottle, an 8¼-ounce bottle and a 16½-ounce bottle. The confusion within products put out by one manufacturer is bad enough, but the confusion resulting from the various products of various manufacturers is almost impossible for consumers to deal with. From that point of view your legislation is good.

**The Chairman:** From what point of view, senator?

**Senator Connolly (Ottawa West):** From the point of view of trying to eliminate various sizes of containers and of content, which I think inevitably lead to confusion.

**The Chairman:** Do you mean you would be in favour of standardization to the extent that, no matter who made the toothpaste, it would all come out in the same sizes and the same kinds of packaging?

**Senator Connolly (Ottawa West):** I suppose there is room for some latitude there. Life would be pretty unin-



teresting if everything was put out the way it is put out in the Soviet Union, for example.

**The Chairman:** That is exactly what I was thinking.

**Senator Connolly (Ottawa West):** There is a practical problem as well. That is, manufacturers usually have their stocks of containers ordered well in advance. In many cases they also have forms of containers which bear trademarks.

**The Chairman:** And they have machinery to produce them.

**Senator Connolly (Ottawa West):** They do not always manufacture their own containers, but no matter who manufactures them there is a considerable investment in that kind of thing. Would the minister care to say something about what might be done in the way of softening the blow that would result from having to change from one size container to another. There could be very costly capital expenditures if all at once all the containers were to be required to be standardized regardless of the stocks available and so on. It might very well increase the price of the product.

**Hon. Mr. Basford:** I appreciate that position. The record of this department indicates that we have endeavoured to deal with the question of the implementation of regulations and the implementation of changes. We recognize the implications of writing regulations and putting an effective date on them. We have to allow time for the "pipeline" to be cleared and for people to make the changes in an orderly fashion and in the least costly manner possible. We have done that under the Hazardous Products Act, for example, and we are doing it presently under the Textile Labelling Act. Every set of regulations we have passed has a time limit that has been discussed with industry.

**Senator Connolly (Ottawa West):** The urgency to regulate under the Hazardous Products Act, for instance, Mr. Chairman, would be much stronger because that is a matter of life or death in many cases.

**Hon. Mr. Basford:** Yes.

**The Chairman:** I would expect your hand would be heavier there.

**Hon. Mr. Basford:** But even there we have time lags and working-in periods.

**Senator Cook:** What has worried some of us, Mr. Chairman, is the possibility of needless interference by government in industry, but that is softened by virtue of clause 19 which states that a reasonable opportunity shall be afforded to consumers, dealers and other interested persons to make representations in respect of each regulation or amendment to a regulation that the Governor in Council proposes to make. They can come forward and be heard if they think they are likely to be hurt by legislation that may be well-intentioned but is unnecessary in a particular instance.

**The Chairman:** Senator Cook, have you any comment on the language with respect to where the authority rests in the minister and what he may deal with? You will notice that it says "any prepackaged product or class of prepackaged product". So that if it were limited to a class of prepackaged product where you would be getting a uniform treatment across the whole industry that was dealing with this particular product, that would be one thing, but to think that you could single out any prepackaged product and deal with it where the effect might be upon just one person in the industry or one prepackaged product in a line—that is quite another thing. Why are the words "any prepackaged product" in there? For example, in the case of toothpaste that is a class of prepackaged product, surely. Do you disagree with that interpretation?

**Hon. Mr. Basford:** Well, your interpretation catches me a little by surprise. I never for a moment conceived that this wording would allow such an interpretation, that there could be a situation where we would be dealing with, for example, Colgate toothpaste and no other toothpaste.

**The Chairman:** Well, there is the authority there, in my opinion.

**Senator Croll:** Is one product to be overlooked because it happens to be one product rather than a class of products? If the abuse is there it must be dealt with. Should they not deal with it whether it is in a class or not?

**The Chairman:** That is the question I have raised, senator.

**Hon. Mr. Basford:** Surely toothpaste, to use your example, would be a product. It would not just be Colgate toothpaste but "toothpaste". Dry cereals would be another product.

**The Chairman:** You can only deal with products, Mr. Minister. Any example you are going to give here is going to be a product.

**Hon. Mr. Basford:** I thought you were implying that the wording means that we could deal with Colgate toothpaste and not Procter and Gamble toothpaste.

**The Chairman:** You could deal with any prepackaged product or class of products.

**Senator Carter:** Mr. Chairman, we are all sympathetic with that this section wants to do, but one of the problems is that the way it is worded now it does not accomplish what the intent of the section is. Was not the problem this, that the way it is worded now does not accomplish the intent of the section because the real problem is that you cannot mislead as to weight if the weight is already printed, no matter what size the package is. So, the problem is not one of misleading, but that of comparing the different weights to the different size packages. The way this is worded now does not remedy that problem.



**Hon. Mr. Basford:** Believe me, senator, I wish it could be worded differently, but I am advised by the advisers to the Government that it cannot be worded in the way which I suspect you and I would like to word it, for constitutional reasons.

**The Chairman:** Could we have the viewpoint of your advisers on this point, and as to why you have not included the question of unit price?

**Hon. Mr. Basford:** Mr. Chairman, if the Senate wants to put unit price in, I certainly urge you to do so.

**Senator Connolly (Ottawa West):** We immediately infringe upon jurisdiction. It is impracticable, Mr. Minister, for this reason: if it is to be put on the package, it has to be done by the manufacturer, and nobody knows what the retailer is going to sell it for after it goes to him.

**Hon. Mr. Basford:** Well, it cannot be put on by the manufacturer because that would be resale price maintenance, but there are experiments being conducted in Canada and far more extensively in the United States where the unit price is put on by the retailer. We have gone as far on this legislation as I am advised we can go.

**Senator Connolly (Ottawa West):** I think the real problem with the consumers who were before us the other day was in this field, but I do not think we could help them on that point.

**Senator Carter:** If you were to cut out this "likely to confuse or mislead consumers as to weight, measure or numerical count," because that has already been taken care of, and put in there something to cover confusing consumers in making comparisons—because it is in the making of comparisons that the problem arises and that is where they are likely to be confused—would that wording also be unconstitutional?

**Hon. Mr. Basford:** I am advised that this is the safest wording.

**Senator Flynn:** Constitutionally?

**Hon. Mr. Basford:** Constitutionally.

**The Chairman:** I gather you are aware of the law they have in the United States under which there is a provision or power to negotiate voluntary agreements in relation to sizes and things like that. Have you authority to do something similar under this bill do you think?

**Hon. Mr. Basford:** No, because I do not think you would need legislative authority to negotiate any kind of voluntary agreement.

**The Chairman:** Except there, as I understand it, there is a little bit of a sanction. That little bit of a sanction is that there is a report made to the Department of Commerce in Washington and also to Congress on those who do not fall in line with the voluntary restraint, and I think there is a bit of intimidation in that. It is more or less to say "If you do not get in line, on a voluntary basis, you are going to be reported." Then there may be legislation.

**Hon. Mr. Basford:** I think our section 11 goes way beyond what you find in United States legislation, in the whole regime of the Food and Drugs Act, the Canada Agricultural Products Standards Act, taken together with this act. It is a far more enforceable regime than in the United States, where the existing provisions you mention are under very severe attack by consumer groups in the United States as having proved almost ineffective.

**Senator Connolly (Ottawa West):** Is there anything in this legislation which makes it mandatory to display prices?

**Hon. Mr. Basford:** No.

**Senator Connolly (Ottawa West):** Because people go into some of these huge supermarkets and first of all there will be a plaque up there where the prices are normally displayed, but there will be nothing on it, and then when you pick up a package, you find that the ink has not taken too well and you cannot read the price. Several times since this legislation has come before us, I have gone shopping with my wife—and I have had my glasses on—and I have examined packages of every possible shape and size and have come across several cases where I did not know what the price was and I was buying simply because I like it. That is performance.

**The Chairman:** I am sure the Minister would like to help you if he could.

**Hon. Mr. Basford:** There is no requirement under the act that prices shall be shown.

**Senator Connolly (Ottawa West):** Do you think you should have one?

**The Chairman:** I do not see any constitutional violation there.

**Mr. J. W. Ryan, Director, Legislation Section, Department of Justice:** I think, Mr. Chairman, when you are in a store purchasing an article, you are there to enter into a contract of sale with the proprietor of the store. Obviously by our customs they display their price for their convenience so that you know what the offer is that they are making for the particular product they wish you to buy. If you go into another type of store, a smaller store—and there may be still some in the country—you can barter about the price or negotiate the price on a small article. For instance, if you tell a grocery store proprietor that his competitor down the street is selling a particular article for a cent or two less, he may come down in his price. But to require that in their offer of sale they specify the price, is getting away somewhat from the basis on which this bill was prepared which is in the area of criminal law and weights and measures.

**Senator Lang:** But why are we pushed into section 92 of the BNA Act by this unit price? Is that not still under Weights and Measures?

**Mr. Ryan:** That has been discussed at great length by the draftsmen and the consultants we used in the Department of Justice, and we are of the opinion that you are getting into an area of provincial rights.

**Senator Connolly (Ottawa West):** We thought that too. But there is this other gap, and we do not want to give the Minister any more power than he is seeking.

**Senator Croll:** I did not think we were trying very hard this morning.

**Senator Connolly (Ottawa West):** I think this is good legislation, but you may be back for an amendment on this.

**Hon. Mr. Basford:** The only matter relating to that is in section 12, where it was felt that you could put in things relating to research. I appreciate the problem you have raised about price marking, and it would certainly be constitutional to say something about not showing the price in such a manner as to be deceiving.

**Senator Connolly (Ottawa West):** I do not think it is a matter of deception. But there is one other thing which I think is probably only my own personal problem. I notice on page 4, section 7(2)(b), referring particularly to the word "symbol", and there it is prohibited to use a symbol that implies or may reasonably be regarded as implying that a prepackaged product contains any matter not contained in it.

Perhaps I am repeating in my old age, but we had the grocery products people here who produced some packages of Jell-o. These packages had various symbols on them. If it was a lemon flavour, they would show a lemon, but there was no natural lemon in the product. If it was an orange flavour, they would use a picture of an orange, and so on. It was urged that the use of that symbol was in fact not misleading but was helpful to the consumer, to the shopper. They said that on the package the words "lemon flavour" or "orange flavour" were included, but the fact that the depiction of the fruit itself was there would appear to be completely prohibited by this. The argument made was that people in a hurry going to shop are helped a great deal when shopping, say, for Jell-o products and they want to get lemon or lime Jell-o, if they see a picture of the fruit on the package.

**The Chairman:** Should they not know that it is synthetic flavouring?

**Senator Connolly (Ottawa West):** I think it is marked on the package.

**Senator Carter:** Mr. Chairman, I think Senator Connolly is wrong there. I think the word "flavour" is left off the package. This picture indicates it is a natural product.

**Senator Connolly (Ottawa West):** All right, let us say that it is left off and that the regulations require it to be put on; that is fine. But it still remains, even if that wording is there, that that symbol cannot be used because of the wording of subsection (2)(b) of section 7.

**Senator Flynn:** Unless you write right on the lemon "Artificial flavour." It would not be misleading then.

**Senator Connolly (Ottawa West):** The symbol is not there for the purpose of misleading, and I do not think anybody is misled in that case. There may be other cases

where you do use the symbol and where it would be misleading, but in this case I do not think it is, but there is no discretion.

**Hon. Mr. Basford:** It has to be read in connection with section 18(1)(g) which allows us to prescribe regulations in this area. This is an unresolved area, the whole question of vignettes and symbols for natural foods and synthetic flavouring. As a result of some of the practices that industries have engaged in, they have ended up getting an act passed in British Columbia which allows the Government to rule off the market any food they want. They have no one to blame but themselves because a few of them put out totally artificial foods and put fruit symbols on the front and did not say a word about their being artificial or manufactured.

You say that the industry says it is handy to have a lemon on a lemon flavoured thing and the housewife can go into the store and quickly grab the one she wants but, as the Chairman said, you are also entitled to know that it is artificial rather than real flavour. That is the dilemma. Sure, use the lemon symbol, but also make it clear to the consumer that it is artificial lemon flavour. That is what this act is all about.

**The Chairman:** You have the power by regulation to deal with that, in any event.

**Hon. Mr. Basford:** Yes.

**Senator Desruisseaux:** How does that conflict with the Food and Drugs Act?

**Hon. Mr. Basford:** In this particular area it does not, but there are other products not covered by the Food and Drugs Act. There are regulations relating to symbols under the Food and Drugs Act, but there are other products where the symbol is used that are not food.

**Senator Connolly (Ottawa West):** I take it that the provisions of section 7(2)(b) are considerably watered down in the department's view by the provisions of section 18(1)(g). In other words, there is a shifting of the onus there, and if it can be shown there is nothing misleading, then the absolute prohibition in section 7(2)(b) is avoided.

**Hon. Mr. Basford:** That is right, and I think we could say that where people are using symbols they will have to use the word "artificial" in relation thereto, and then that will be fine and permitted.

**Senator Connolly (Ottawa West):** Even if in small print, you do not think the use of the lemon would be misleading?

**Hon. Mr. Basford:** The Food and Drugs Regulations require a certain size of print in relation to the nature of the product.

**Senator Flynn:** There is one other question that I and my colleague on my right, Senator Casgrain, wanted to raise on that. It is in relation to section 18(1)(f) concerning the languages in which any information or representation is required.



Some criticism has been levelled as to the wording because it does not indicate necessarily it would be both in French and English at least. Along with Senator Casgrain, I was wondering why, and we would like to find this out from the minister.

**Senator Casgrain:** Because if the minister is sympathetic now it is only in the regulations, and why is it not included as a principle that it be bilingual? We have had criticism all over about that.

**Hon. Mr. Basford:** Because I do not think you can have within the statute a blanket provision that would apply to every product, regardless of its nature or origin. I think there are going to have to be exemptions and, therefore, it has to be dealt with under the regulations.

For example, there are certain exotic items that come into this country that I would expect to be exempted for one reason or another. Coming from the city I do, or in any city you see products—and I hesitate to name products...

**Senator Connolly (Ottawa West):** Well good Italian wine.

**Hon. Mr. Basford:** I hesitate to think that escargôts from France would be labelled in English. Most of them are not and there is no confusion. And lichee nuts from China which are big sellers in my city come in labelled in Chinese only. Anyone who wants lichee nuts knows where to go to buy them.

To have such a blanket statutory provision will create difficulties, both in French and in English, and will create difficulties both in Quebec and outside Quebec.

Some people in Quebec, such as the little cigar maker in Chicoutimi—and this was one of the examples put to me—he does not want to put his labels in English. I stated in the house last December a firm policy of the Government to require on a national basis bilingual labelling, subject to certain exemptions which are going to have to be worked out with industry. I put a deadline on it under the acts which I administer. Under the Hazardous Products Act, for example, every regulation passed, right from the beginning of the passage of regulations, requires mandatory French and English labels. The Food and Drug Directorate are working on making that the case, or making changes in the food and drug regulations so that they are bilingual. The Department of Agriculture is looking at its agriculture regulations to bring them into line with the policy that I initiated with the Government last December. To put in here a substantive provision that is statutory, that does not allow for exemption, will create difficulties on both sides of the language question.

**Senator Casgrain:** Kellogg's and Kraft, the two big food companies, have bilingual labels in Quebec. In western Canada they are subject to competition by those companies who do not use bilingual labels.

**Hon. Mr. Basford:** I do not think that is really true. I know that some manufacturers claim that it is so. They may have done surveys that I have never done. I think

the country is ready for national bilingual labelling. Some marketers disagree with me. I was brought up in Winnipeg and in Vancouver, and I never noticed that the sale of Kellogg's was hurt in western Canada by the fact that it had bilingual labelling, which it has always had since I was a boy. That is where a lot of westerners learned French. I have not noticed in western Canada that the sales of Kellogg's over the years have been hurt because they had bilingual labels. For people to claim they are put at a competitive disadvantage in western Canada by reason of having to have bilingual labelling is rather misleading.

The policy I announced would require national bilingual labelling for a product such as you mentioned. I see this as a saving. The people who will object will be the small regional marketing people. National firms think it is a cost-saving. If they are required by regulation to do this, they will have a one-production run rather than two, and one label design rather than two.

**Senator Casgrain:** That has been one of the big criticisms. They say it is a regulation that can be abolished later on.

**Senator Flynn:** May I respectfully suggest that your argument as to the exemption does not stand because you had this power in subsection (a) of 18. Even if you have a provision in the act that would state that all labelling should be bilingual you could still use this to exempt certain products.

**Hon. Mr. Basford:** But then it does not accomplish what is required by those who have come to me and said, "We want something in the act." They want something not subject to exemption.

**The Chairman:** Are there any other questions?

**Senator Connolly:** The plain fact would be that the smart merchandiser would accommodate himself to the market. So many of them are using bilingual labelling now.

**Senator Lang:** I presume the minister has considered immediately exercising his powers to exempt farmers' wives who bottle pickles and preserves and all the things that are sold in the market places in so many towns in Ontario and elsewhere.

**The Chairman:** Under regulation 18(a) he could do that. I wish to thank the minister for coming here this morning.

**Hon. Mr. Basford:** I appreciate the committee's hearing me this morning, and I appreciate your adjusting to my timetable. I have now to go to Vancouver, to introduce Ralph Nader. I will report that the Senate is deeply concerned with consumer problems and is writing a consumer bill which is far superior to anything in the United States.

**Senator Croll:** While this is fresh in our minds, should we not deal with it at the moment rather than with something else?



**The Chairman:** The minister was going to be available only this morning for a period of time. Although we had given a date and a time for representations on Bill S-9 this morning, we postponed this in order to hear the minister. I do not want to postpone this any longer. We can come back to this. We will not forget it.

**Senator Croll:** There are other committee meetings, although perhaps not of equal importance. I would like to

be here, and at the same time have an opportunity of attending the other meetings.

**The Chairman:** We all have this problem of trying to subdivide ourselves.

The committee then proceeded to the next order of business.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 25

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WEDNESDAY, MAY 19, 1971

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Second Proceedings on Bill S-9,  
intituled:

“An Act to amend the Copyright Act”

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Urquhart, seconded by the Honourable Senator Cook, for the second reading of the Bill S-9, intituled: "An Act to amend the Copyright Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, May 19, 1971.

(28)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce proceeded at 11:30 a.m. to further consider the following Bill:

Bill S-9 An Act to amend the Copyright Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Grosart, Haig, Isnor, Lang, Martin, Molson, Welch and White—(17).

*Present, but not of the committee:* The Honourable Senators Casgrain, Inman and Urquhart—(3).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

*Department of Consumer and  
Corporate Affairs:*

The Honourable Ron Basford,  
Minister.

*Baton Broadcasting Limited:*

Mr. E. A. Goodman, Q.C.,  
Director;

Mr. L. M. Nichols, Vice-President,  
Finance and Administration.

At 12:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, May 19, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-9, to amend the Copyright Act, met this day at 11.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we shall now proceed to Bill S-9, and this morning we intend to hear from Baton Broadcasting Limited. Mr. E. A. Goodman, Q.C., a director of that company, is appearing as spokesman. With him is Mr. L. M. Nichols, Vice-President, Finance and Administration.

**The Honourable Ron Basford, Minister of Consumer and Corporate Affairs:** Mr. Chairman, before I leave may I deal with something in connection with Bill S-9?

**The Chairman:** Yes, although we are reserving a special date for hearing you on this bill.

**Hon. Mr. Basford:** I should like to read this letter into the record. I think it bears materially on what the witnesses appearing before the committee will say. It is addressed to you, Mr. Chairman, and bears today's date. It is signed by myself.

**The Chairman:** Does this concern the award by the Copyright Appeal Board, or the tariffs for which the SRL applied?

**Hon. Mr. Basford:** This is the award of the Copyright Appeal Board. The letter reads as follows:

I have just received from the Copyright Appeal Board its report concerning the tariffs requested by Sound Recording Licences (SRL) Limited for the performance of its records. In accordance with the Copyright Act I am having the tariffs, as determined by the Copyright Appeal Board, published in the Canada Gazette as early as is practicable.

In the meantime, since Bill S-9 is before you, I thought I should provide you immediately with the following summary of the tariffs the Copyright Appeal Board has awarded to Sound Recording Licences (SRL) Limited:

(a) All subject to the tariffs pay only a nominal fee of \$1.00 for the public performance of sound recordings from January 1, 1971 to June 30 next;

(b) Television stations pay only a nominal fee of \$1.00 for 1971;

(c) Radio stations have been cut from a requested tariff of 2.6 per cent of gross revenue to 0.15 per cent of gross revenue, and this is applicable only to stations whose gross revenue is more than \$100,000. (In effect this means that the radio stations will pay approximately \$90,000 in 1971 instead of the \$3,000,000 or more which would have been received if SRL's claim to 2.6 per cent of gross revenue had been approved for the entire year.);

(d) CBC will pay only \$15,000 for the next six months rather than the SRL request which would have amounted to almost \$900,000 for the entire year;

(e) Theatres using recordings will only be required to pay a nominal tariff of \$1.00 for 1971.

In order to ensure that all parties interested in Bill S-9 have this information, I would have no objection if you wished to make this letter part of the record of the Committee's proceedings.

**The Chairman:** Thank you. Would you proceed, Mr. Goodman?

**Mr. E. A. Goodman, Q.C., Director, Baton Broadcasting Limited:** Mr. Chairman, honourable senators, as the Chairman has informed you, I counsel for Baton Broadcasting Limited. That company operates station CFTO, which is a television station in Toronto. It also operates in partnership with the CBC a television station in Windsor, and, as well, it operates a radio station in Windsor.

I understand that you have already received a lengthy brief from the Canadian Association of Broadcasters. It is not my intention to repeat that, thereby making this a rather tedious exercise. I would only like to deal very briefly with one or two aspects of the problem.

I was counsel for the same interests at the hearing of the Copyright Appeal Board. As such, I was present for almost four weeks at that hearing. While I am pleased to hear of the considerable changes that have been made on the application of SRL, I think there is still a principle involved which should be dealt with, and is being dealt with, in the bill. Of course, I am here supporting the bill.

I would respectfully point out to honourable senators that what starts out in Year One as a very low award, in the period of 10 or 15 years manages to grow considerably. What may be now one-fiftieth of what they asked for can reach the original figure very quickly.

**Senator Cook:** That applies to all taxes.

**Mr. Goodman:** That is right, it does.



**The Chairman:** Mr. Goodman, one of the submissions you make concerning the amount of money involved is contained in your item No. 2, where you say that more than \$17 million is paid annually in respect of these records to foreign parent companies. Has that figure changed at all?

**Mr. Goodman:** No. I was going to explain that figure, Mr. Chairman. That is the figure that is paid at the present time. The evidence adduced established certain facts. First of all, it established the fact that the only shareholders in SRL are the major record distributors in the country, all of whom are wholly-owned subsidiaries of foreign companies. There are no Canadian shareholders in SRL at all. I might point out that Exhibit 3 of that hearing sets forth just who are the shareholders of SRL.

The situation is that during the course of evidence by leading officers of the various manufacturing corporations or distributing corporations, they said that there was a royalty of approximately 60 cents per record paid to the parent companies. Bear in mind that evidence also adduced showed that between 85 and 90 per cent—a minimum of 85 per cent—of the records sold in Canada are ones which are originally produced in other jurisdictions. Of course, the record industry is international in character and a great majority of records come from abroad—primarily from the United States, but also from England and Germany and, to some extent, from France.

The evidence disclosed that 90 per cent of the 11-inch records sold in Canada bear a royalty of 60 cents per record, which goes to the parent company that has licensed the Canadian subsidiary.

Exhibit 114 of that hearing consisted of some DBS figures for the number of records that that covers. Those figures show approximately 23,700,000, plus another 700,000 of monaural, for a total of 24,400,000 11-inch records. In respect of those, there was a royalty of 60 cents per record paid to the foreign parent. In addition to that, a larger royalty was paid on cartridges, of which there were 3,600,000 sold. So that means that there was a total, roughly, of 28 million records and cartridges on which a 60-cent royalty was sent abroad. That means that there was \$16,800,000 on those alone.

In addition to that there was the total of over 15 million 7-inch discs, the 45 rpm's, on which a royalty of between 15 and 20 per cent was paid, which is another \$3 million. So the evidence adduced by the record manufacturers themselves disclosed that there was in the neighbourhood of \$19 million of royalties being paid that went abroad.

**Senator Flynn:** That royalty is part of the price paid by anybody who buys a record.

**Mr. Goodman:** Right.

**Senator Connolly (Ottawa West):** That is just on the sale of the record.

**Mr. Goodman:** On the sale of the record alone, yes.

**Senator Connolly (Ottawa West):** Performance is not involved; it is just the sale.

**Mr. Goodman:** Up to now there have been no performing rights paid at all.

All I am saying is that there is an outflow entirely apart from the profits that are made in Canada, which are much less than the outflow. Quite apart from the profits there is this outflow of between 85 and 90 per cent of \$19 million which goes out of the country to the foreign parents.

**The Chairman:** I take it you urge that as a reason for supporting this bill. At least, Mr. Goodman, you say that CAB—and you joined in their brief, as I understand you to say—urged very strongly that the bill should be supported in order to keep money from going out.

**Mr. Goodman:** That is right.

**The Chairman:** But it would not keep this \$19 million from going out.

**Mr. Goodman:** No, not at all. I just wanted to get the facts straight, and then I will present my argument on those facts.

**Senator Connolly (Ottawa West):** There is a property right that these record manufacturers have. You do not dispute that?

**Mr. Goodman:** Not at all.

**Senator Connolly (Ottawa West):** The question might arise whether or not that royalty is too high. You have not said anything about that.

**Mr. Goodman:** I am not arguing about the royalty at all.

**Senator Connolly (Ottawa West):** You were just stating the facts. Is this royalty in fact on the sale of the records at the level that prevails in the trade generally in the world?

**Mr. Goodman:** There was no evidence on that. I would have to presume that is the case. I am in no position to say that it is not the case, and I would not ask, therefore, that anybody infer otherwise.

**Senator Cook:** They are getting jolly well paid now.

**Mr. Goodman:** I am coming to the relationship of that \$19 million when I show you what the result of imposing a performing right fee on them will be.

What I have said was just the first step that I was making before coming to the second fact that I want to put before you. The second fact established by the evidence was that they put in the contracts after some discussion under which the SRL shareholders got their rights. Those contracts provided that 50 per cent—I say “those contracts,” but there are one or two that did not so provide, but the great majority provided that 50 per cent of any performing rights these companies received was to be paid to the parent company either in the United States, in Germany or in England.

The reason I brought my first figure out was to show you that by imposing any further performing fee or by allowing any other performing fee you are only going to

be feeding the company, the foreign company, which already, I think, is receiving a very considerable amount of money. It is not my business or the business of anybody else at this stage to interfere in a free-trade arrangement made between the foreign parent and the Canadian subsidiary. That is something for Mr. Gray to decide at some subsequent time—or the Committee for an Independent Canada, and I am not here for the Committee for an Independent Canada—and I say that seriously. Under the present laws that is a perfectly proper business transaction. But I say it would be ridiculous for us to feed that perfectly proper business transaction with any more money and, right off the bat, 50 per cent of that performing fee that they would get from broadcasting, theatres or anybody else would have to be paid under their existing contracts to their parent companies. The reason I brought the large sum out in the first place is to show that it is not necessary for them to be treated in that manner. My submission is that to take money from the broadcasting industry to give it to the recording industry, 50 per cent of which would go abroad, in my respectful submission is not in the best interests of the people of Canada.

The second submission I would like to make is that there was the evidence, which was absolutely clear, that there does not exist any arrangement between the record manufacturer and the performers to pay to the performers any money whatsoever. Some hopes were expressed. Mr. Wood appeared for the musicians and he expressed the hope that he would eventually manage to get his hands on some of this money, but he frankly admitted that he had no arrangements, no contracts and at the present time there exists no obligation whatsoever on behalf of SRL to use any of these moneys to assist any Canadian performers. Not only that, but, first of all, they lose half the money, and, secondly, the money is in respect of records which are not made by Canadian performers because the evidence was that there were very few records manufactured in Canada, and most of those records are made by independent producers. In Quebec there are a few independent record producers making Canadian records, but other than that most of them are done by independent producers who will then sell their rights to the larger companies for distribution purposes. Therefore, I say that if we are to allow any performing rights in records, it is going to be of little significant benefit, if of any benefit, to Canadian performers.

Up until now Canada has not been a signatory to, nor has it ratified, the 1961 Rome Treaty in regard to copyright matters which allows or provides for this type of copyright. But even in the Rome Treaty they linked the record player's rights with those of the performers and we have seen absolutely no plan for that in Canada. So Canada has not subscribed to this theory and the present situation in Canada is such that there is no benefit to Canadians.

**The Chairman:** Where would you expect to find any such provisions, by contracts or by statute?

**Mr. Goodman:** By contract, at least.

**The Chairman:** I would like a better answer. Certainly if there were contracts, it would be good, but it would be more certain if it were by statute.

**Mr. Goodman:** May I make a point on that?

**The Chairman:** In England it is by statute.

**Mr. Goodman:** In most countries it is by statute. My understanding is that in some countries the Performing Rights Society is a combination of performers and record players. In Canada it does not even include the Canadian-based record manufacturers; it only includes the record manufacturers who are subsidiaries of foreign parents and my submission therefore is that this does not achieve what is the real principle of copyright. Copyright is to protect or to help the creative aspect of man. Stamping some records is not a creative aspect of man. The argument can be made that when you put the microphone a little closer and you get a certain type of performer and a certain type of arrangement, there is something creative about that, but my submission is that the real creativity is in the person who wrote the music or the song in the first place, and we have to get a licence from CAPAC or BMI to perform that work. A great majority of countries in the world today do not recognize copyright of this mechanical type. The evidence is that while some countries such as England and France, are included here—I think there are about eight out of all the countries in the world—the fact remains that to a large extent our industry is geared to the United States, and there is no copyright in record producing in the United States. Furthermore, our submission as broadcasters is that when Canadian broadcasters are in competition with American broadcasters and American programmers and they have obligations for Canadian content that do not exist in the United States, to impose this obligation upon Canadian broadcasters would not be in the best interests of the broadcasters or of the performers who are doing much better out of broadcasting than anywhere else.

My further submission to this committee is that no matter how low they keep it, it still does exist as a drain, it is a drain that can continue, and it is in the best interests of Canada to protect the broadcasting industry, which is a native industry under native control, rather than to weaken it at the expense of a foreign-controlled industry such as the record manufacturing industry.

**Senator Cook:** When you speak of a mechanical reproduction, are you saying that you can have a good mechanical reproduction or a bad one, but it is not creative?

**Mr. Goodman:** Yes, that is right. I say that there is no doubt that what is protected under section 4(3) is the actual physical reproduction from the plates, the making of the record from the original tape, master tape or master disc. I say that is a mechanical act.

**Senator Connolly:** And it is a skill rather than being creative.

**Mr. Goodman:** That is right. As a matter of fact, nowadays it is a pretty commonplace skill at that. The



evidence was that there is no differentiation, for example, between the way they make them. The evidence was that they can make records sometimes from just an ordinary record, and there is no distinction between the benefits that are derived from the type of record that is made.

**Senator Connolly:** Did you read the evidence of Mr. William Dodge of the CLC, who was here last week?

**Mr. Goodman:** No, I did not.

**Senator Flynn:** He was saying that the production of the record—and not just the stamping of the record—sometimes requires some creativity.

**The Chairman:** Do you know of companies like Phonodisc, Ahed, Quality Records, and Nimbus Productions Limited?

**Mr. Goodman:** Yes.

**The Chairman:** They have all made submissions to us and I shall have their statements Xeroxed and distributed.

**Senator Croll:** We have those already. I think you had better put them on record.

**The Chairman:** They say:

The performing rights now recognized by Canadian Copyright law provide a primary incentive, for this or any other company, to finance on a highly speculative basis the creative endeavours of those engaged in the performing arts.

They continue:

Without this right to control public performance and at least the opportunity to seek legal payment from those who wish to use our product for profit for public performance, the speculative nature of our enterprise would become financially unbearable.

Do you agree with their representation?

**Mr. Goodman:** I certainly do not agree.

**The Chairman:** They are opposed to this bill, I take it?

**Mr. Goodman:** Do not misunderstand me. I would say that those people manufacturing slightly over 90 per cent of the records are in favour of the bill. I am not suggesting for a moment that those independents are not in favour of the bill.

**The Chairman:** Do you say manufacturers of the records are in favour of the bill?

**Mr. Goodman:** I am sorry, are in favour of the right of having performing rights. I am not suggesting for a moment, when I say that SRL happens to have eight shareholders, that the small group of struggling Canadians do not support their position as well. What I am saying is that the evidence is clear that the performing society that would be getting these monies does not include any of these people. All they have is a pious hope that somehow or other in the future some of it might rub off on them. That is all they have.

My submission is that the evidence is clear that it is only a pious hope and that from the very contractual obligations of those persons who make the records they are obligated to send 50 per cent of this money out of the country, to begin with, and that they made their application for a tariff without making provision for any of the people—and representatives of those people appeared in front of the Copyright Appeal Board and admitted that there was no arrangement whatsoever to assist them and that there was no way they would necessarily get any money at all.

Furthermore, I say that those are only manufacturers. They are not helping the performers at all. Once again the performers feel, "Well, let us get some money out of the broadcasters. Maybe some of it will rub off on us," but my submission is that they also admitted there was no evidence at all that a single, solitary nickel would necessarily come to their aid or benefit.

**Senator Carter:** I was going to follow on from Senator Flynn. We have the same question. Our problem, I think, is to find a principle. You mention the iniquitous principle. In searching for a principle, would you draw a distinction between the creation or the manufacture of the master tape and the use of that tape after it has been made to manufacture records? Are these two distinct operations?

**Mr. Goodman:** Yes, certainly they are.

**The Chairman:** They are separate operations, but you want to take that question further, do you not?

**Senator Carter:** Yes. What is the essential difference between them? Is there any creative ability in the former? Is one creative and the other purely mechanical?

**Mr. Goodman:** The argument is made that there is some creativity in producing the original master tape. The argument is made that you have to know how to handle the sound equipment. The argument is made that you have to make certain types of arrangement for the usage.

**Senator Flynn:** Choose the artists or musicians?

**Mr. Goodman:** Yes.

**The Chairman:** And the set-up in which they perform, there may be something creative in that—they would have a director; there would be a layout.

**Mr. Goodman:** It is sound; there is certainly no visual layout. I said the relationship to the microphone and their relationship to their position, I concede that.

**The Chairman:** And there is creative ability in the development of the proper reproduction of sound.

**Senator Connolly (Ottawa West):** You have a producer, a director, an executive director, a sound man, a tape man, a light man.

**Mr. Goodman:** No light man, because there is no visual. I conceded at the outset this argument had been made, and I do not want to mislead the honourable



senators, but my position is that that type of creativity is of minimal benefit and is minimal creativity. It is a matter of choosing the artist. Of course, there is some creativity in all of that, but it is not really the type of creativity one connects with copyright. You think of people who write music and dramatic and literary works. Those, of course, are all protected, and broadcasters do pay to that type of person, through CAPAC or BMI. There is no doubt that the ability to sing is a creative, artistic capacity, and the artist himself has creativity.

My submission to you is, however, that the performing of a song which has been written by someone else does not come within the concept of copyright. You are paid for that particular performance on that occasion, and the whole industrial system that SRL is asking to have accepted is a system whereby the person who makes and manufactures the record gets the benefits of everyone else's creativity.

That is my position, that this type of legislation has only been accepted in very few countries in the world, and in Canada, from her whole position of entertainment—if one wants to look at entertainment as one industry—it would be a great mistake to take money from broadcasting and put it into the record manufacturers' pockets so that the record manufacturers of the United States and England could be reimbursed in this way. As a matter of public policy, I advance it to you.

**Senator Flynn:** This bill does not go far enough then, because up to now it will keep in Canada only a minimal amount. If you consider all the performing rights that you are already paying and that are already going outside Canada, the real problem is not in the record manufacturers' performing right, but it is in the performing rights you are paying to CAPAC and BMI. That is where the big problem is today.

**Mr. Goodman:** My clients pay in excess of a quarter of a million dollars in performing rights to other bodies. That is my client alone. You accept a system that has already grown up, but you fight ones that appear to be coming over the horizon, especially where in one case it is part of the real basic concept of copyright whereas, in our submission, this one is at the best on the outer fringes of copyright.

I have one last point to make, gentlemen, and that is all. In so far as the mutual benefits are concerned, my client, of course, is primarily in television. The minister did not read what they did on television, so I do not know. They only asked for a tariff for television of one-fifth of the radio tariff. The evidence was—and this is why we get such injustices—that when they monitored the use of records on television there was nothing except on a test pattern. So they did not need to produce any evidence of usage except of a test pattern and occasionally for lip singing. That is when somebody plays a record while somebody else pretends that he is singing. They could not produce any evidence that we play some records in the morning when they have their test pattern on before the programming starts. Their own evidence was that on that basis there would be less than an hour a week of record playing. So far as television was con-

cerned their tariff was outrageous. Furthermore, they admitted that broadcasting helps them by giving their artists an opportunity to appear. My submission is that broadcasting does a lot more for record manufacturers than record manufacturers do for broadcasting.

That is open to argument in so far as radio is concerned. They argue back and forth about this on radio. But so far as television is concerned there cannot be any argument, and they did not even try to argue television. For them to be able to take money out of television, which assists them far more than they assist television, would be iniquitous. There is none of this whatsoever in the United States.

**Senator Flynn:** When a TV station produces a program, nobody is allowed to copy that record and give public repetition of such a program. Is it in the Copyright Act that you are protected?

**Mr. Goodman:** Yes, I would think so. This act does not take that protection away from records either.

**Senator Flynn:** I know it does not. You sometimes sell a program that you have produced, do you not?

**Mr. Goodman:** Right.

**Senator Flynn:** Even if we pass this bill, do you think a record manufacturer could have stated on the record that it must not be performed in public? I recognize that there would be a problem of enforcement. Contractually could this situation continue despite the passage of this bill?

**Mr. Goodman:** Even though they have no performing rights, could they sell to you under a condition that you could not perform?

**Senator Flynn:** Unless you pay them a royalty of some kind.

**The Chairman:** It would be a matter of contract.

**Mr. Goodman:** I am inclined to believe that you could probably sell a record under any lawful condition you wanted to sell it, unless it could be held that the condition was against public policy. You could impose any condition you wished. You would have to hold that the condition was against public policy in order to hold that it was improper.

**Senator Flynn:** In some instances there is an indication that there must be no reproduction without permission. There is nothing creative in connection with the TV station.

**Mr. Goodman:** There is creativity in making a record and there is some creativity in making a television program plus sight.

**Senator Flynn:** I am pursuing the argument of a contractual right to exact payment for the public performance of a record or film.

**Mr. Goodman:** In fairness to the record players, unless they have performing rights they would never be able to achieve that.

**Senator Flynn:** Enforcement would be difficult.

**Mr. Goodman:** Not so much enforcement. They need radio stations to air their records. If this bill is passed, much as I would like to say they can do it that way, as a matter of practical fact they would find it impossible to achieve that type of sale. In fact, they give their records away to the stations now. The evidence was that they pleaded with the stations to play their records.

**Senator Connolly (Ottawa West):** Some people who were before the committee last week said they even paid stations on occasion to use records.

**Mr. Goodman:** I do not think the record manufacturer would be able to make it stick, because one or a couple would break the line and they would never be able to do it by contract.

**Senator Cook:** Supposing I bought a record and passed it on to you, there is no contract between the broadcasting station and the manufacturer.

**The Chairman:** The suggestion was that when records are sold there should be a condition of sale, "For private use only," or, "for public performance." If you buy it on that basis and you violate...

**Senator Cook:** I would be the one violating it.

**The Chairman:** It has been sold to you on the basis that it is for private use only.

**Senator Connolly (Ottawa West):** There would be a claim on the part of the manufacturer against the radio station in performing it without paying a fee.

**Mr. Goodman:** There is no fee. It would have to be a contractual arrangement.

**Senator Connolly (Ottawa West):** It is a violation of the Copyright Act.

**Mr. Goodman:** Yes, at the present time, but not if this new section is put in.

**The Chairman:** Let us assume that somebody got into a record place and stole some records which contained these labels and conditions, one "For private use" and the other "For public performance," and they bootlegged them to stations. Do you suggest that in those circumstances there would not be some enforceable right by the owner of the records?

**Mr. Goodman:** If this act is passed?

**The Chairman:** Yes.

**Mr. Goodman:** Yes, because there would be no such thing as performing rights. Everything would have to arise as a result of a contract. The original question, as I understood it, was that they could do this by means of a contract, and I said "Fine." I agree that if it is not against public policy they could do it by contract, but if there is no contract—it is not like a privity of the state in regard to land—all you would be doing is buying a chattel from a third party. Whatever was stamped on it it would only

be a stamp indicating the original contract between the manufacturer and the person you were buying it from. While he may be in breach of contract to the person he bought it from, nevertheless I do not think that would impose any liability on the person that is purchasing. In a purchase of chattels I do not know of any theory of law that would entitle the first vendor to impose a condition upon a subsequent purchaser down the line. I do not know of any theory at all.

**Senator Connolly:** As I read subsection 3, there is copyright in the record. If that record is performed without authority by the purchaser of the record in public, by a radio station, it seems to me, according to subsection 3, that if the radio station has not paid for the right, it is infringing that right.

**Mr. Goodman:** Subsection 4 limits the copyright. It says:

Notwithstanding subsection (1) of section 3, for the purposes of this Act "copyright" means, in respect of any record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced, the sole right to reproduce any such contrivance or any substantial part thereof in any material form.

**Senator Connolly (Ottawa West):** If I read that correctly, it means that the owner of a radio station cannot take one of these records and make another record of it, or a perforated roll, or any one of these other contrivances. Moreover, if the radio station operator plays the record he is infringing a copyright because of subsection 3.

**Mr. Goodman:** No, that is not correct, with respect, senator. That is what the whole argument is about. If this act is passed, the only right the record manufacturers will have will be to prevent anybody else from making the same record. But once they sell their record to anybody else they have no further rights whatsoever with regard to what happens to that record, provided it is not reproduced. That is the clear meaning of the act.

**The Chairman:** It depends on what the word "reproduce" means. It says that you cannot reproduce any such contrivance or any substantial part thereof in any material form.

**Mr. Goodman:** The important words are "in any material form". That means that you cannot make another record or tape or anything of that nature. It is not meant to give them any performing rights, however.

**The Chairman:** From the practical point of view, could I just take a record and put it on the turntable for radio broadcasting purposes and play it without having to make some adjustment or other?

**Mr. Goodman:** Yes. Radio stations just take the record and play it.

**Senator Connolly (Ottawa West):** In reading the explanatory note, I see that I was wrong, Mr. Chairman, because it bears out what Mr. Goodman has just said. The purpose of the amendment is to confine copyright to the reproduction of such contrivances.



**Mr. Goodman:** Senator, I am absolutely certain that what the department means is to limit the rights of the record manufacturers to that one thing. The reason we are supporting the measure is that it takes away any performing rights in records in the manufacturer.

**Senator Connolly (Ottawa West):** Under the present law the manufacturers have a performing right?

**Mr. Goodman:** That is right. Well, it is being debated.

**Senator Connolly (Ottawa West):** In fact, you say they do not exercise the right.

**Mr. Goodman:** They are trying to do so now. There are those who argue that they do not have a performing right, and that argument was made by counsel. I do not want to confuse this issue, but there are a series of cases and there are two groups of thought as to whether they do or do not have a performing right. I am not prepared to give an opinion on this, but the record manufacturers say they have a performing right, whereas certain broadcasters say they do not. This act says that if they did have a performing right they no longer have one.

**The Chairman:** Your opinion on the question is not strong enough that you would suggest that the bill be withdrawn and you stand on your legal rights?

**Mr. Goodman:** I did not argue that at the hearing, Mr. Chairman. I did not take that position at the hearing.

**Senator Connolly (Ottawa West):** Mr. Goodman, you say that the argument is made by the record manufacturers that they have a performing right and can assess a tariff. You further say that this bill takes away that right.

**Mr. Goodman:** Yes, sir.

**Senator Connolly (Ottawa West):** Where?

**Mr. Goodman:** In subsection 4. The definition of "copyright" in section 3 of the Copyright Act gives all of the rights that flow with copyright. It is a very long section. The existing subsection 3 of section 4 then says that "copyright shall subsist for the term hereinafter mentioned in records, perforated rolls, and other contrivances by means of which sound may be mechanically reproduced, in like manner as if such contrivances were musical, literary or dramatic works." What the new act does in subsection 4 is to change slightly the wording of subsection 3 of section 4, and it adds the new section which gives the nature of copyright in records and takes the rights of records out of the existing section 3 of the Copyright Act. Do I make myself clear?

**Senator Connolly (Ottawa West):** You do not to me. I may be thick-headed this morning.

**Mr. Goodman:** At the present time, senator, the section says that records have copyright as if they were musical works or literary works. Then, in order to find what right books or musical works have, you turn to section 3—not subsection 3 but section 3 of the act which defines "copyright". It goes on for over a page telling all the

rights that go to copyright, and one of them is the right to control performances.

**Senator Connolly (Ottawa West):** Yes.

**Mr. Goodman:** Now Bill S-9, by virtue of section 4, which has a black mark on the line here of section 3, says that the sole right of copyright in records is not to allow anybody else to reproduce them, to make the same records. That is the only copyright that will flow from records if this act is passed. Therefore, all the other benefits of copyright which the record manufacturers allege they have, as outlined in section 3, will be taken away from them, other than for the rights in section 4.

**Senator Connolly (Ottawa West):** In other words, there is a restrictive definition for the word "copyright" given by subsection 4.

**Mr. Goodman:** That is right.

**Senator Connolly (Ottawa West):** Let me take an example. If I am writing a book that is to be published and I decide to cite something from another published work—say, an opinion of an historian or philosopher or scientist—I must get the permission of the copyright owner before I can use that extract. In other words, he has a subsisting right in his artistic production and he has a copyright in it. Do you say that this amendment is taking that right away from him?

**Mr. Goodman:** No. This amendment only takes rights away from record manufacturers. It takes rights away from nobody but record manufacturers.

**Senator Connolly (Ottawa West):** So you are excluding the literary production, the scientific production and the dramatic production.

**Mr. Goodman:** I am not a legislative counsel, so I cannot really say why they have done what they have done, but in the past they said that records had copyright and they were musical productions, but this time what they have done is to say that again, but they have said, however, that the only copyright is the right to prevent reproduction. I might have done it differently. I would have said that the copyright shall exist in records so that they shall not be reproduced. Period! I do not know why they go back and use the words again, but that is a matter of draftsmanship.

It is abundantly clear that this act provides what I believe is the proper situation, namely, that you cannot copy anybody else's record. You can play it when you buy it, and that is what it was made for, but you cannot copy it. You may think it is a record and music you like, but you cannot go ahead and put it on a tape and use it.

I may point out that the record manufacturers have been given considerable privileges themselves in so far as making records is concerned. Normally, you cannot play any particular music or song without getting a licence from the owner of the copyright. If I write a song and some record manufacturer wants to use it, then under the normal law of copyright he would not be able to use it without my consent, that is, the consent of the owner of the copyright in the song.



Now, what has happened in Canada—and the situation in most other countries is similar—is that the record manufacturer, by virtue of section 19 of the Copyright Act, has been given a special statutory copyright to use any particular new piece of music by paying a royalty of two cents per side for any piece of music, for each record, that is used.

**Senator Connolly (Ottawa West):** In that case you, as the composer of the song, would get two cents per side every time it is produced?

**Mr. Goodman:** That is right. Every time they stamp it off, I get two cents. But what usually happens is that most composers assign their rights to a publisher and they keep track of how many records they make. If they make 10,000 records, they whip off to the owner of that copyright, who is the publisher, 10,000 times two cents.

**Senator Connolly (Ottawa West):** Four cents.

**Mr. Goodman:** No, because it would only be one piece if they have it on two sides.

**Senator Connolly (Ottawa West):** But you are a prolific fellow and you would have both sides.

**Mr. Goodman:** Not being as prolific as you are, senator, I only wrote one side.

**The Chairman:** We are getting mixed up with undue proliferation.

**Mr. Goodman:** I point that out because the record manufacturer has been given privileges which allow him to use these records for a minimum payment. It is not as though he was paying a common tariff or anything of that nature.

**Senator Connolly (Ottawa West):** He gets his copyright there.

**Mr. Goodman:** That is right, and he gets not the copyright, but the right to use it, and he takes that right which is given to him by the statute and gets a particular performer to perform the music or a particular orchestra to play it.

**Senator Connolly (Ottawa West):** He has the copyright in that contrivance.

**Mr. Goodman:** That is right.

**The Chairman:** What is it I get from the writer of a musical work, or whatever it is that I want to put on a record? What is it that I get that I can compulsorily satisfy any royalty obligation I owe for a copyright in that by paying this two cents for each side? Now as the record manufacturer, what do I get? Certainly, the composer cannot come at me for anything more than two cents for each side, no matter how many times that record may be used.

**Mr. Goodman:** That is right.

**The Chairman:** But is there something inherent in the record maker by virtue of the enjoyment of the right to use that composer's work that he passes on when he passes on the record?

**Mr. Goodman:** This is the interesting part, senator. For example, if I play the record of a composer's work which you have used, you cannot pass on to me the right to play or to perform that record. I still have to pay the composer. If you did a record of *Abie's Irish Rose*, and I wanted to play that record, I would still have to get a licence from the composer of *Abie's Irish Rose* before I could play your record. That is in public performance. Of course, this is the basis of the case I made to the Copyright Appeal Board, that they could not give me a clear licence. They cannot give the broadcaster a clear licence to play that record; he still has to be licensed by the composer of the song or the musical piece. When he gets that licence, he can play the record, and my submission was that—and this was before the Copyright Appeal Board—the act was not intended to give anybody any rights under section 48 that is outside the scope of this discussion.

**Senator Connolly (Ottawa West):** Then, going back to the composer, in the case that he has composed *Abie's Irish Rose* and has sold it to the record manufacturer for two cents a side, all the record manufacturer gets is the right to make records and sell them for private consumption. You are telling us now that if you as a radio station operator wanted to perform that record, you would have to go back to the owner of the copyright, in this case the composer of *Abie's Irish Rose*, and get from him a performing right and pay him.

**Mr. Goodman:** That is right, and that is what we do through BMI and CAPAC. You see, any record manufacturer can use *Abie's Irish Rose*—and usually there are seven or eight manufacturers who will make their particular record of a popular song that is written—and pay their two cents to the owner of the copyright in that particular popular song.

**The Chairman:** But, Mr. Goodman, if you took eight or nine records of *Abie's Irish Rose* manufactured by eight or nine different recording companies, would there be differences, creative differences in the production?

**Mr. Goodman:** The answer is, "Yes."

**The Chairman:** And who has put that in?

**Senator Cook:** I suppose if you have *Abie's Irish Rose* sung by Caruso, you will sell quite a number of records, but if you have it sung by Eric Cook, you will sell few.

**Mr. Goodman:** Ninety per cent of that creative input happens to be the capacity of the person that is singing it. If there is any creative aspect, senator, almost all of it, but not all of it, because there is certainly something to the way you get your sound out...

**Senator Connolly (Ottawa West):** But those are technical skills.

**Mr. Goodman:** The great creative output has to come from the performer, because you are using the New York Symphony or something of that nature, and our submission is that under the legislation as it exists at the present time there is no protection for those, nor does the

SRL propose any protection to the Copyright Appeal Board.

**The Chairman:** There is no creation and there is no art in the selection of the components that are put into the production of a record.

**Mr. Goodman:** I would not go that far. I have been cross-examined before, and I would not go that far. My submission is that there is some but it is not a major aspect and it is not a large factor in it. That is all I am saying. I certainly do think that arrangements mean something.

**The Chairman:** But if there is some creative aspect, this bill would take it away.

**Mr. Goodman:** No, not at all. What this bill does is take away the right to get performing rights, the creative thing and the benefits you get from that creative aspect from selling your records. That is where you get the benefit. I say that record manufacturers are very well recompensed by the benefits of selling their records, and that they are helped considerably by broadcasters to sell their records, and to give them additional money from the broadcasters would be a mistake. I do not have to say that there is no creativity, and I refuse to be put in that position.

**The Chairman:** England, of course, is a great example of where they maintain this performing right. We were given some information the other day, which I have checked, and I do not think the statement that was made was a correct one—that is, that while there had been a performing right in records, that had been changed by subsequent changes in the law.

I have before me the original state of the law in 1911 and the changes that were made in 1956, and certainly even today that performing right, subject to certain restrictions or limitations, still exists in England.

**Mr. Goodman:** That is right, Mr. Chairman, but it is also tied to the performer.

**The Chairman:** Yes, but it is a performing right in the record which the record maker enjoys.

**Mr. Goodman:** But under which he is obligated to the performer, which is not the situation as it exists in Canada. That same situation applies in France. I think there are eight countries where it applies, but there are 80 others where it does not. This includes the United States, which has the most effect on our markets. I am only here for the broadcasters and my own clients in broadcasting, and my submission is that insofar as broadcasting is concerned, there are more benefits flowing to the record makers than flow to them, and they should not have any performing rights insofar as broadcasters are concerned; that the creative aspect is at a minimum, and that the present system in Canada allows no benefit to flow to Canada. Therefore, I support this bill as being in the public interest.

**Senator Connolly (Ottawa West):** I ask you to comment on this position that was put before us in earlier hear-

ings. We had representatives of the performing artists with us. They said that the performing artists made a cultural, innovative input into the production of a given musical composition which is put on the record, and that that performing artist therefore had some copyright in that artistic input which resulted from his own interpretation and his own performance. It was put to the witness that when that performing artist was lured into the studio to make this recording, that artist was given a certain fee and that fee would cover any artistic input. Therefore, there should be no copyright in the performance by that particular artist of that particular musical production. Have you any comment on that?

**Mr. Goodman:** My position is that historically the way I sang a song was not something we recognized copyright in, and I was entitled to be paid for my particular performance and, therefore, having performed I received my fee. I accept that position.

What the record manufacturer is now trying to do is to work backwards. Having been given copyright as a result of their reproducing these particular things, they are now saying they are artistic because there is this performer who performs in them.

My respectful submission is that the benefits that the performers get, from having their works broadcast and appear on television, and from having the sale of their records increased, more than compensate them for the use by broadcasters of their performance.

**Senator Connolly (Ottawa West):** In addition to the fee they get for the actual work in making the record.

**Mr. Goodman:** Yes.

**Senator Cook:** The Canadian Council for the Performing Arts contend that not only should this bill not be passed not only should the record manufacturer get a royalty, but that they should also get a royalty in addition.

**Mr. Goodman:** And, of course the argument could be made that the arranger should get a royalty as well because he has arranged the music. My position would be that what will happen will be that it will destroy the industry which still promotes all these people and does the most good for them, and that is broadcasting.

**Senator Connolly (Ottawa West):** And you might make the product prohibitive in price.

**Senator Carter:** Let us take the case of the making of a master tape in which there may be a little creativity but it is on the fringe and is not significant. A manufacturer makes the master tape and runs off, let us say, 100,000 copies. Does it happen, to your knowledge, that he may sell the master tape to another record company who will run off more copies and sell them at a cheaper rate?

**Mr. Goodman:** No, with respect, what usually happens is that most of the records that we play in Canada are made from a master tape made in the United States. Then they make a series of other tapes from that master tape.



First of all, some private producer will make it and will go to one of the large record companies and he will sell the tape to the large record company, to MCA, Columbia or somebody of that nature, but he will sell it exclusively. None of the large record companies will take a tape that is going to be used by any other record company. Then they will take his tape, make copies of it, send it around the world to their various subsidiaries or, in some countries where they do not have subsidiaries, to their distributors who will manufacture records from it in that particular country. Then they will pay them so much royalty, and if in that particular country they have performing rights they will also pay them part of the performing rights. Then they will go back to the parent company in the United States.

Sometimes the parent company makes their own tapes and sometimes they use independent producers to make them and to buy them. It varies, and that is the general procedure, but I would suspect it is very rarely that any major company would buy the rights to a tape and not buy them exclusively.

**Senator Carier:** But if somebody else created the tape, an independent made the master tape and then sold it to one of these record companies, when they stamp records off if they have not any claim to any creativity that existed.

**Mr. Goodman:** They get an assignment of it. In most cases they get an assignment of all the rights, whatever exist, from country to country. If I make a tape and I go the MCA, because they are a large company, and they like my tape and they buy it, I may get it on a percentage basis or I may not, but they will buy whatever rights go with that tape. All the copyright that happens to exist, if it does exist in any particular country, will go to them. But in Canada—and this is the last point I will make—we have to get an assignment of the original copyright because it is the original tape under our act that counts, which means the original tape made in the United States. So in Canada what is really happening is that they are asking for performing rights in Canada from a tape made in the United States, which in the United States they are not entitled to any performing rights for. So we are paying performing rights in Canada on American creativity, if such exists; but in the United States, where it was originally made, they do not recognize the creativity as having any performing rights.

**Senator Cook:** In addition to some \$17 million that are taken from the general public anyhow.

**The Chairman:** I thought that last week we got away from the dollars and cents angle.

**Senator Cook:** I am just saying that \$17 million is enough money.

**The Chairman:** If you are going to accept a dollar-value argument, then you are going to look in all directions in relation to the monies going out. I am just recalling the evidence. In the evidence, when we asked the witnesses last week why they continued paying this money, they said, "Because the other people are in the driver's

seat." Then we said to them, "You are resisting here and are attempting to curtail the performing rights. Is it because you feel you are in the driver's seat here?" I think the acknowledgement was, "Yes."

To be logical, and I thought we resolved this last week, the real thing we have to look at is: Can it be said, as a matter of common sense or scientific knowledge or study of intellectual contribution to the making of a record, that it is possible to justify a performing right in a record? And let us stay away from the dollars. That is where we headed to last time. Maybe we can reverse the field.

**Senator Cook:** No, I agree 100 per cent. I do not care whether it comes in or goes out, but I am merely saying that \$17 million is enough to pay for the service, whether it is in Canada, England or elsewhere.

**The Chairman:** I would have thought, judging by the tariff that the Copyright Appeal Board came down with the other day, that they must have been influenced actually by amounts which have already been paid. The tremendous gap between what was asked for and what was granted is such that they must have looked at factors like that.

**Senator Connolly (Ottawa West):** Would it hold the committee up if I asked Mr. Goodman one more question? I do not want a long answer.

You said that you had not seen the television tariff but that you had heard something of the radio tariff, and the amounts that were approved were much less than those requested. You also said that in subsequent years they would reach very much higher levels.

**The Chairman:** He said they might.

**Senator Connolly:** Why?

**Mr. Goodman:** Because, firstly, that has been the history. Secondly, they are based on percentages and percentages will grow in themselves. My objection is to the principle. I hope I made that clear. I am arguing this on the basis of principle. The principle, I suggest, is that they cannot give a licence. I understand, from what the minister said, that the Copyright Appeal Board made it clear that they were not ruling on whether they had any entitlement under the act. The minister said that while they recommended the tariff they were not taking the position as to whether they had any entitlement. The argument was made that they could not issue the licence because they cannot give you the right to play *Abie's Irish Rose*. You would still have to get another licence. If they cannot give you a licence to perform, then they are not entitled to any moneys. That was the principle that I argue. They cannot give you a clear licence to perform and, therefore, they are not entitled to any money.

**The Chairman:** Mr. Goodman has inserted one word too many in his answer, when he spoke about "clear" licence. They do have a performing right at the present time, whether it is clear or unclear, or anything else. What the Copyright Appeal Board determined in that



hearing, as I understand it, was that they were told they had no jurisdiction, and they reserved and made a decision that they would go ahead. They issued a tariff. That is the value they put on the performing right that existed at that time.

**Mr. Goodman:** I have not read the decision yet, but I understood from what the minister said that they had taken no position on their own jurisdiction.

**Senator Connolly:** My question was directed solely to the problem of escalation.

**Mr. Goodman:** My basic position is that in principle I do not think they are entitled. The history of all these licences is that they have increased throughout the years, and we object in principle to what we believe should not be given to record manufacturers when there is clearly no evidence whatsoever that it helps performers.

**The Chairman:** Do you have something more to say?

**Mr. Goodman:** Thank you very much for a courteous and interesting hearing.

**The Chairman:** We do not have time to revert to Bill C-180. In view of the fact that we have other committee meetings and some members of this committee are interested in this bill and wish to be here when we are dealing with it, perhaps next Wednesday morning, as the first item of business, we will consider Bill C-180, decide on how we are going to report it, and then go into our consideration of Bill S-9. We have four delegations to be heard next week on Bill S-9 and this may take time. It may be that we will have to run into the afternoon to get through them all.

**Senator Cook:** With regard to Bill C-180, could we have a note of the suggested amendments?

**The Chairman:** I will circulate what we have suggested to the department and what they have come back with.

The committee adjourned.





THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

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No. 26

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WEDNESDAY, MAY 26, 1971

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Fifth and Final Proceedings on Bill C-180,  
intituled:

“An Act respecting the packaging, labelling, sale, importation  
and advertising of prepackaged and certain other products”

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REPORT OF THE COMMITTEE

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(Witnesses:—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Heath, seconded by the Honourable Senator Kickham, for the second reading of the Bill C-180, intituled: "An Act respecting the packaging, labeling, sale, importation and advertising of prepackaged and certain other products."

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, May 26, 1971.  
(29)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *further* consider the following Bill:

Bill C-180, "Consumer Packaging and Labelling Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa-West*), Cook, Croll, Desruisseaux, Haig, Hays, Isnor, Lang, Molson, Welch and White. (16)

*Present but not of the Committee:* The Honourable Senators Lafond and Method. (2)

*In Attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

*Department of Consumer and Corporate Affairs;*

Mr. J. B. Seaborn, Assistant Deputy Minister,  
Consumer Affairs Bureau;

Mr. G. R. Lewis, Chief, Commodity Labelling Division,  
Standards Branch.

*Department of Justice:*

Mr. J. W. Ryan, Director, Legislation Section;  
Mr. D. Beseau, Legislation Section.

Upon Motions, it was *Resolved* to adopt the following amendments:

*Page 2, Clause 3:* Strike out lines 31 and 32 and substitute therefor the following:

"provisions of this Act that are applicable".

*Page 6, Clause 11:* Strike out lines 27 to 33, inclusive, and substitute therefor the following:

"product, the Minister shall seek the advice of at least one organization in Canada of consumers and one organization of dealers in that prepackaged product or class of prepackaged product and may seek the advice of the Standards Council of Canada or any organization in Canada engaged in standards formulation".

Upon Motion, it was *Resolved* to report the said Bill as amended.

At 10.30 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*



# Report of the Committee

Wednesday, May 26, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-180, intituled: "An Act respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products", has in obedience to the order of reference of March 30, 1971, examined the said Bill and now reports the same with the following amendments:

1. *Page 2:* Strike out lines 31 and 32 and substitute therefor the following:

"provisions of this Act that are applicable".

2. *Page 6:* Strike out lines 27 to 33, inclusive, and substitute therefor the following:

"product, the Minister shall seek the advice of at least one organization in Canada of consumers and one organization of dealers in that prepackaged product or class of prepackaged product and may seek the advice of the Standards Council of Canada or any organization in Canada engaged in standards formulation."

Respectfully submitted.

Salter A. Hayden,  
Chairman.



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, May 26, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-180, respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products, met this day at 9.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have Bill C-180 before us this morning, and it is proposed that we run through the clause. There were indications of several amendments. Mr. Seaborn, the Assistant Deputy Minister, is present in case we run into factual or descriptive difficulties, and so is Mr. Ryan who can express an opinion on the legal side.

The first clause to which there is an amendment proposed, on which you will recall a draft was submitted by the minister last Wednesday, is clause 3. That clause raised the problem that you had authority there where in our view you could by regulation legislate, and we were not going to permit that. It was proposed that we strike out lines 31 and 32 and put in place of them this one line, "provisions of this Act that are applicable". Subsection (1) would then read:

Subject to subsection (2) and any regulations made under section 18, the provisions of this Act that are applicable to any product apply notwithstanding any other Act of the Parliament of Canada.

The offending word taken out is "regulations". Is there any discussion or any questions you wish to ask on that?

**Senator Connolly** (*Ottawa West*): Speaking as a lawyer, I think we were concerned about the possibility that the omitted words would allow the regulating authority to change not only this bill but another one that follows. There may be an argument on either side, but it seems to me that the deletion of these words—what anybody may say may change my mind—is a very beneficial kind of amendment. I am not quite sure, but did the minister indicate last week that he was in favour of this?

**The Chairman:** What I read to you is his draft. It is entitled, "Proposed amendments to Bill C-180, submitted by the minister".

**Senator Connolly** (*Ottawa West*): He then sees the virtue of the arguments we made.

**The Chairman:** That is right.

**Senator Connolly** (*Ottawa West*): I think this is very good.

**Senator Cook:** I agree, Mr. Chairman. I move we adopt the clause as amended.

**The Chairman:** Is it agreed?

**Hon. Senators:** Agreed.

**The Chairman:** The next amendment discussed, and in respect of which the minister submitted a draft, is to clause 11. This is the standardization clause. Some of the submissions we received, and some of the discussions we heard, centered on the question that the manufacturer of containers, or whoever is packaging or prepackaging food in containers, when he is going to be subjected to some order or direction reducing the number of container sizes, should have a right to be heard before the decision is made. The request was that subsection (2) be mandatory; instead of saying the minister may seek, it should say he must seek. That involves some rearrangement of subsection (2). The proposal is that we strike out lines 27 to 33. I will read the whole subsection as it would be with the amendment:

For the purpose of establishing packaging requirements for any prepackaged product or class of prepackaged product, the Minister shall seek the advice of—

And what follows is new.

the Minister shall seek the advice of at least one organization in Canada of consumers and one organization of dealers in that prepackaged product or class of prepackaged product and may seek the advice of the Standards Council of Canada or any organization in Canada engaged in standards formulation.

The differentiation there between "shall" and "may", if you recall from last week, was that the minister felt the Standards Council of Canada had not been organized to the extent that it was likely to be able to contribute very much in the short run. Therefore, if he decides they are in a position to contribute something then he may consult, but the "shall" was not to apply to that organization. The "shall" does require the Minister to consult with at least one of the dealers. This would appear to meet the points that were raised by the various people who made representations here.

**Senator Beaubien:** I move that we adopt the amendment.



**Senator Connolly (Ottawa West):** Mr. Chairman, as a practical matter, I suppose there will always be a consumers' organization and a dealers' organization in respect of whatever class of products are to be dealt with. These are voluntary organizations. Suppose they go out of existence and there are none to consult? I am not trying to make it difficult for the draftsmen, but from a practical point of view are we imposing an onus upon the Department that it would find it difficult to discharge? I just raise that question.

**The Chairman:** I do not think so, senator, because it would be easy, I would think, to develop one if there was not one existing at the moment.

**Senator Connolly (Ottawa West):** That is not the Department's business. It is expected that this would be an extra-governmental organization. Perhaps some of the members of the committee who have practical experience with this kind of thing would like to speak.

**The Chairman:** I do not think this is intended to be a government organization, but intended an organization of dealers.

**Senator Connolly (Ottawa West):** Yes, an extra-governmental organization.

**Senator Molson:** If I do think there is any doubt about there being an organization of dealers, having regard to the definition of "dealer", Mr. Chairman. Whether there will always be a consumers organization is perhaps a question, but I would very much doubt that one consumer's organization will not exist at any time in history.

**The Chairman:** You will remember that we saw some evidences here the last time of some very active and alert consumers' organization. The definition of "dealer" includes a person who is a retailer, manufacturer, processor or producer of a product, or a person who is engaged in the business of importing, packaging or selling any product.

Is it agreed that subsection (2) of section 11 be amended in the manner I read to you.

**Hon. Senators:** Agreed.

**The Chairman:** We had considerable discussion on subsection (3) of section 20. That is the famous subsection that reads:

Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

When Mr. Scollin was here the last time we tried out certain variations of this which the law clerk and myself had drafted. We asked the departmental representatives what was the purpose and what were the circumstances under which they would wish to prosecute the director

and not prosecute the corporation. The explanations that were given in the committee of the House of Commons were that by the time they got around to this the corporation might have surrendered its charter, and therefore there would be no corporation to proceed against, or the corporation might have made a voluntary assignment, or it might have been adjudged bankrupt, the Bankruptcy Act.

Mr. Scollin said that he did not want to tie himself down to that enumeration as being complete. He said quite frankly that since a section in substantially this form occurs in the Income Tax Act, the Bankruptcy Act, the Weights and Measures Act, and a few others, and had been recognized as a known way of proceeding, he would prefer to travel the known route than to suggest any change.

It still bothers me—but I am only one member of the committee—as to what we are doing with this language. When I asked the Minister last time, "What have you to be fearful of and to provide against in this bill?", he immediately said that the top dealers, manufacturers, and producers—he named some of them—would willingly conform at any time to any request. He said there would be some little people around who would be difficult to handle, and this would be a big stick to deal with them. Certainly, it appears to me that this provision in the form in which it occurs in this bill might be justified much more readily in the Bankruptcy Act than in this act. You are dealing mainly with a difficult category of people.

The question is: How far do we want to take this? The law clerk, as a result of our further negotiations, has come up with a suggestion, which perhaps I should read so that you can decide whether or not you wish to go any further on it:

(3) Where a corporation

- (a) has been convicted of an offence under this Act, or
- (b) has been declared bankrupt or has made an assignment in bankruptcy under the *Bankruptcy Act*, or has forfeited its charter, or in the opinion of the court is not in fact the principal offender, and, again in the opinion of the court, the corporation has been guilty of an offence under this Act,

**Senator Connolly (Ottawa West):** You state certain factual situations with respect to the company—whether it is bankrupt, or has made an assignment in bankruptcy under the Bankruptcy Act, or has forfeited its charter, or in the opinion of the court is not in fact the principal offender. Does not that really come down to what you now have in the clause, that you must have a trial within the trial to determine whether or not the corporation is in fact the principal offender?

**The Chairman:** Under the section as it stands, the corporation must be established in the trial of the director as being the offender, and as being guilty of the offence.

**Senator Connolly (Ottawa West):** As it stands, that seems to be a backward step in so describing it in the draft. It forces the court to express an opinion as to extending the guilt of a corporation.

**The Chairman:** That is right. The question is whether this is leading to confusion in interpretation and administration. It may be that, in our effort to cover the situation as we think it should be covered, we are adding as many problems as we started out with.

**Senator Connolly (Ottawa West):** What we want to do is improve the legislation.

**Senator Molson:** What would happen if the opening phrase were omitted, and the paragraph commenced:

Any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty . . . ?

**The Chairman:** You would be creating a separate offence in relation to those persons, which would be a perfectly proper thing to do. Mr. Ryan, have you any comment on that?

**Mr. J. W. Ryan, Director, Legislation Section, Department of Justice:** On the last question, Mr. Chairman?

**The Chairman:** Yes, Senator Molson's question. If we struck out the phrase starting with "where", and the last phrase starting with "whether", what would be your comment?

**Senator Molson:** No, not necessarily the last clause.

**The Chairman:** You would leave the last one in?

**Senator Molson:** Yes. I am suggesting we delete "Where a corporation is guilty . . ." and start with "Any officer . . .", and insert "an offence under this Act" in line 31 or 32. What would be the effect in law of that?

**Mr. Ryan:** I assume, Mr. Chairman, it would continue to read "...is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted"?

**The Chairman:** That is right.

**Mr. Ryan:** I am speaking now without having studied it in full detail. I am a little afraid of it, inasmuch as it may change the requirements of proving the offence by the corporation in the first instance.

**The Chairman:** Proving it where?

**Mr. Ryan:** In the trial within the trial.

**The Chairman:** There will not be a trial within the trial.

**Mr. Ryan:** You would have, "Any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of an offence under this Act . . ." Is that correct?

**Senator Molson:** That is right.

**Mr. Ryan:** "...is liable on conviction to the punishment provided for the offence whether or not..." You have to make a change here because we have not referred to a corporation in the wording.

**Senator Molson:** You have said "Any officer, director or agent of the corporation . . ."

**Mr. Ryan:** Whether or not the corporation has been convicted. I am reacting rather hurriedly to it, so I do not want to be held too closely to what I say. I am afraid that you might remove the requirement that, within the trial of the officer, it be established that the corporation has been guilty of the offence.

**Senator Flynn:** Otherwise there would be no offence.

**The Chairman:** Suppose they did, would not there be a proof required somewhere?

**Mr. Ryan:** I do not know which side I should be on, in that case.

**Mr. Beaubien:** Are we not going into the Corporations Act now?

**The Chairman:** No.

**Mr. Beaubien:** Is it the Companies Act or...

**The Chairman:** It is the Canadian Corporations Act.

**Mr. Beaubien:** Is it not covered here?

**Mr. Ryan:** To some extent this is already covered in the Criminal Code, as I understand from Mr. Scollin.

**The Chairman:** Mr. Scollin remarked on the last day, when he was here, that you can make it an offence for a director to assist or join in the commission of an offence under this act.

**Senator Connolly (Ottawa West):** Is it not our purpose in this section to ignore the corporation, on the basis that the minister suggested last week, and to say we are not going to worry about the corporation. What we want to get at is the offending person, and he may very well be a director, officer or agent of the corporation; he is the man who administers it. It is this fly-by-night fellow that we need to cover in some kind of wording similar to that. He is the man we want to get at. Why clutter it up by talking about the corporation? I think Senator Molson may not have the exact wording here, but his idea is a sound one.

Would Mr. Ryan like to have a look at that, and come back and tell us. I think we are helping the minister here to accomplish the purpose that he described when he said he wanted to get at the man who was responsible for having the offence committed, whether the corporation is proved guilty or not.

**The Chairman:** Yes. Is there any other comment?

**Mr. J. B. Seaborn, Assistant Deputy Minister, Department of Consumer and Corporate Affairs:** Perhaps I should not be speaking, as I am not a lawyer, but I think I remember Mr. Scollin saying that there is an advantage—you mentioned this this morning, Mr. Chairman—in using existing wording, wording which has been tested before, in order to assist the court cases and the jurisprudence on it. I think he had some concern about that.

**Senator Connolly (Ottawa West):** Also if there is no jurisprudence.



**The Chairman:** As a matter of fact, I can tell you there are only two cases. One is under section 134 of the Income Tax Act and the other is under the Excise Tax Act. In both cases the corporation had been convicted first, and then the director was proceeded against. What these cases really laid down was the manner of proof that the corporation was guilty. So to the extent that anything more might have been said, it would just be obiter.

**Senator Connolly (Ottawa West):** There is no decision on the point.

**Mr. Seaborn:** It is not an exact parallel.

**Senator Connolly (Ottawa West):** It might be helpful if Mr. Ryan considered the use of words like "whether the corporation has been found guilty of an offence under the act or not", followed by Senator Molson's suggestion.

**Senator Flynn:** I doubt if that would change anything. I am wondering if we were to delete the paragraph altogether whether we would change the provision of section 20 at all?

**The Chairman:** If you take out subsection (3) completely, there would still be an offence under the Criminal Code?

**Senator Flynn:** That is so. That is why I am not so sure that subsection (3) adds or subtracts anything.

**The Chairman:** Senator Cook, have you any comment?

**Senator Cook:** No, I rather agree with Senator Flynn. It seems to me that if you are guilty, then this is only stating what the law is.

**Senator Connolly (Ottawa West):** There is virtue in legislation of this kind. Even if it is in the Criminal Code in exactly this form, I think it adds strength if you have it in this act.

**Senator Flynn:** The phrase, "Every person who contravenes any provision of this Act" would include the corporation, or any person.

**Senator Connolly (Ottawa West):** If you had a section like that...

**Senator Flynn:** It is here. Subsection (2) commences with those words.

**The Chairman:** Senator Cook, your point is that the offence is covered in the Criminal Code, although not in this language exactly. Therefore, if this provision were not in the bill a basis could still be found for proceeding on proper evidence.

**Senator Connolly (Ottawa West):** Yes, against directors.

**The Chairman:** Perhaps in those circumstances there is some value, since the situation would not be made worse for a person by inserting it specifically in the bill.

**Mr. Ryan:** The point made that the Criminal Code to some extent covers the same offence is accurate so far as parties to an offence, attempts, and other matters are concerned. One could proceed against the officers, direc-

tors and agents of the corporation as parties to the offence. However, I do not think that would apply so much to the acquiescing, assenting or participating. That is the only difference between being a party to an offence and committing an offence under clause 20(3).

However, I would suggest for your consideration, sir, that you should not alter this so that we cannot depend upon, not the jurisprudence, of which there is very little, but the practice and the use of this by the courts in the past. I understand from Mr. Scollin that there has been provision for this in the past. It might be better to rely on the Criminal Code rather than another provision which would differ essentially from that upon which we are modelling ourselves.

**Senator Connolly (Ottawa West):** You are suggesting from a practical point of view that we eliminate clause 20(3).

**Mr. Ryan:** Rather than altering it in the manner suggested.

**Senator Cook:** Perhaps we could leave it as it is pending a revision of the provision in all acts.

**The Chairman:** On occasion, for some reason or other, you do not care for certain wording in a bill, but are persuaded to approve it. Later the bill returns and the first thing of which you are reminded is that this has been done before and should be done again. At some stage we must dig our feet in and say no.

**Senator Molson:** We are told the provision is contained in other legislation such as the Income Tax Act, and therefore it is fine here.

**The Chairman:** That is right and Mr. Ryan says that rather than make changes in clause 20(3), it would be clearer to delete it and simply leave the provisions of the Criminal Code applicable.

**Senator Flynn:** I would support that move, Mr. Chairman. I do not like the suggestion in the subclause to the officers in charge of the enforcement of the act to use it as a tool to force payment of a fine. A director is liable to jail whereas a corporation is not. There is certainly a very powerful suggestion in the clause to the enforcement officers to proceed against the directors in order to exact the fine that they are unable to collect from the corporation. It could probably be done otherwise, but I suggest that by leaving the text there it is an invitation.

**The Chairman:** That deterrent exists at the present time under the Criminal Code.

**Senator Flynn:** I know, but if it is there it may be suggestive.

**The Chairman:** The question would appear to be, and it is up to the committee to decide: Do we observe the comment which Mr. Ryan has made, and rather than amend clause 20(3), strike it out?

**Senator Burchill:** If we delete the subclause and depend on the Criminal Code, would it be necessary to prove the corporation guilty?



**The Chairman:** No.

**Senator Burchill:** You can proceed against an officer or director without that?

**The Chairman:** That is right.

**Senator Connolly (Ottawa West):** If we remove it and rely on the Criminal Code, would there be a problem for a charged person, because the provision of the Code is overlooked?

**The Chairman:** The provision has been there ever since the Code came into being; it has been used very, very often. There is no doubt about that.

**Mr. Ryan:** There may be a point of consideration as to whether it is more onerous to be charged under the Criminal Code as a party to the commission of an offence or an attempt to commit an offence. Would it be less onerous in the long run, with respect to reputation or otherwise, to have been charged under the Consumer Packaging and Labelling Act?

**The Chairman:** Whether it is under the Criminal Code or not, this is a criminal offence.

**Mr. Ryan:** Yes.

**The Chairman:** What is the penalty under the Criminal Code?

**Mr. Ryan:** I am looking that up now, sir. It would relate to the offence, and it would be the offences already set out here.

**The Chairman:** I take it from what Mr. Ryan has said that the penalty provided in clause 20(2) on summary conviction or on indictment would be the same whether proceeding under the Code or under this subclause.

**Senator Flynn:** Subclause (2)?

**The Chairman:** Yes.

**Senator Flynn:** Perhaps under the Code or under subclause (2) a charge could not be laid against a director who merely acquiesced in, because the acquiescence may be just having known, without having participated. However, I think it would be an improvement.

**The Chairman:** In acquiescing in an offence, yes.

**Mr. Seaborn:** I have a little uneasiness with respect to this point. I do not know how relevant it is to the deliberations of the committee today. A clause identical to this was very recently approved in the Weights and Measures Act, which is an act parallel with this. They fit well together as a pair. The public or, indeed, the courts may ask why a distinction is made in the writing of the two acts between the inclusion of this subclause in one and its omission from the other. It might be asked whether there was a quite different intent in the minds of those who passed the legislation, whereas, I believe we are agreed that the intent is not different at all.

**The Chairman:** I am not sure we are agreed on that.

**Mr. Seaborn:** As between the Weights and Measures Act and the Consumer Packaging and Labelling Act?

**The Chairman:** Yes.

**Mr. Seaborn:** I thought that was so.

**The Chairman:** I am not sure that the quality of the offence is the same.

**Mr. Ryan:** One other difference is that the time limit on page 16 of the bill is 12 months after the time when the subject matter of the proceedings arose. Generally, under the Criminal Code the time limit with respect to a criminal offence is six months.

**The Chairman:** Do you mean that under this bill more time could be taken before laying a charge?

**Mr. Ryan:** Twelve months is proposed in the bill; it is six months under the Criminal Code.

**Senator Flynn:** Why?

**The Chairman:** Because it is in the bill.

**Mr. Ryan:** It is a matter of policy, Mr. Chairman.

**The Chairman:** Mr. Seaborn, have you something more to say?

**Mr. Seaborn:** No.

**The Chairman:** The only thing that occurs to me is that if we are going to make a change, possibly we should give the minister a chance to say whatever he may have to say in respect of it.

**Senator Burchill:** I agree.

**The Chairman:** Let me find out first what the view of the committee is. Senator Flynn, I think your suggestion is that we strike out subsection (3) and let the provisions of the Criminal Code apply. Would those who would favour that please indicate? Would those to the contrary please indicate? That suggestion is not accepted.

The view of the committee, therefore, is that subsection (3) in some form should remain in the bill. The next question is whether it is to remain in the form it which it is, or should we follow Senator Molson's suggestion?

**Senator Flynn:** I doubt if we could improve the provisions of the subsection very much by changing it in that way.

**Senator Cook:** I agree with Senator Flynn. I am not persuaded of the merits of the subsection as it is now, but neither am I persuaded of the merits of the amendment; that it will make it any better. I should just leave it.

**The Chairman:** As I understand Senator Molson's suggestion, it is that we create in subsection (3) simply an offence in relation to any director or officer, whether the corporation was proceeded against or not.

**Senator Flynn:** That is what is in the wording now.

**Senator Connolly (Ottawa West):** No.

**Senator Molson:** No, Mr. Chairman, with respect, may I disagree. In our earlier meetings there was a great deal of discussion on the opening phrase, "Where a corporation is guilty", and how this applied in any hearing. We heard a great deal about this, and I gathered it presented difficulties. This was my understanding.

**Senator Flynn:** I know that was the first reaction but, come to think of it, even if you do not mention that the corporation is guilty, the director will have to be guilty.

**Senator Cook:** We are still talking about an offence of the corporation.

**Senator Flynn:** There would have to be guilt somewhere.

**Senator Connolly (Ottawa West):** As I understand it, what was complained about was whether you would have to have a trial within a trial of the officer, director or agent to establish the guilt of the corporation.

**Senator Flynn:** No, you would have a set of facts which would prove an offence has been committed.

**Senator Cook:** The starting point is that there must be an offence.

**Senator Connolly (Ottawa West):** By the corporation.

**Senator Cook:** By the corporation. In subsection (3) that is right.

**Senator Connolly (Ottawa West):** It has to be proved.

**Senator Flynn:** The question would be whether you can prosecute a director when the corporation has not committed an offence. Is that possible? Can you imagine this?

**Senator Cook:** There has been an offence.

**Senator Connolly (Ottawa West):** He has already been found guilty.

**Senator Flynn:** I cannot imagine a case where the offence could not be attributed to the corporation.

**Senator Connolly (Ottawa West):** I can see the difficulty. I think this was the original problem, in spite of what Senator Flynn says, and it still bothers me, and perhaps it may still bother Senator Molson.

**Senator Cook:** Without an offence by the corporation there is no point in it at all.

**The Chairman:** Another suggestion has now been made to me. Would it be acceptable to the committee if the opening words were changed to: "Where a corporation has committed an offence"? I know the words are different, but to say "Where a corporation is guilty of an offence" involves adducing evidence from which the judge trying the director can decide that the corporation has committed the offence. We are using different words, but I think the procedures to prove it would be just the same.

**Senator Flynn:** If that is the only point we are going to make, I do not think it is worth making an amendment.

**The Chairman:** I do not think so either. The merit in Senator Molson's suggestion lies in the fact that you could proceed against a director without bringing in the corporation at all.

**Senator Molson:** That is right.

**Senator Flynn:** When the corporation is guilty you have to prove it. The only point is whether evidence adduced against the director would create, let us say, a presumption that the corporation has been found guilty at the same time. What we were worried about was prosecuting someone who is not a party to the proceeding. I think it is a good point but, legally speaking, I doubt that once a director has been found guilty that verdict could be used against the corporation. They would have to start all over again, and the corporation could certainly offer a defence.

**The Chairman:** That is right, and vice versa—if the corporation has been found guilty and you then proceed against the director. One of the cases we referred to is in point. You had to adduce evidence to show that the corporation was guilty, and you could not simply file a certificate of guilt of the corporation; it had to be proved.

Well, we have run the whole way around the mulberry bush on this, and we seem to be coming back to where we started. Senator Molson, have you anything more you want to add?

**Senator Molson:** Mr. Chairman, I made the suggestion, and I did so realizing that my legal training was not perhaps of the highest order. I am very happy to leave it to the legal brains of our committee to sort out.

**Senator Connolly (Ottawa West):** If you could get them to agree.

**Senator Molson:** Yes, if we could get them to agree. I should have said that.

**The Chairman:** I thought by the process of elimination we were getting very close to it. Are we now in agreement that subsection (3) of clause 20 should stand; in other words, we approve specifically of subsection (3) of clause 20?

**Hon. Senators:** Agreed.

**The Chairman:** There is one clause about which we talked last week, to which I would like to call your attention. It is clause 18, dealing with regulations. The opening words are: "The Governor in Council may make regulations".

When I go over to page 14 and refer to paragraph (h), I frankly have trouble in figuring out exactly what is intended in this regulating-making power. Mr. Seaborn or Mr. Ryan, are you ready to give an explanation?

**Mr. Seaborn:** I can attempt one. Mr. Ryan can perhaps be more precise.



**Mr. Ryan:** Mr. Beseau had more to do with the discussion than I did. Do you have a specific question, Mr. Chairman?

**The Chairman:** I would like you to give an illustration of how it would apply.

**Mr. Seaborn:** I think I could give an illustration of that. The main thrust of the bill, of course, has to do with prepackaged consumer products. It seemed to us, as we were preparing instructions for drafting, that we should take into account the fact that there are other consumer products that are not prepackaged. I am thinking of such things as rugs, carpets and pieces of furniture sold for use in the home which are not prepackaged and therefore do not come under a number of the clauses of the bill, but which none the less tend to be sold with some sort of tag giving information about them. The purpose of clause 18(i)(h) was to make it possible to require on the labels that went with this kind of product the inclusion of certain information that seemed relevant to a consumer purchase. I am thinking particularly of the enumerations in clause 10 as to the nature, quality, size and material content and so on, of the item. To give an example, the tag on a piece of furniture should be required to specify what type of wood was used in its construction, or alternatively a tag on a carpet might specify whether it is hand-made or machine-made. We felt that to leave completely outside the ambit of this bill any consumer product that was not prepackaged really did leave a gap in the field of consumer protection.

**Senator Flynn:** When you say "subject to any other act of the Parliament of Canada", do you mean that if it is already covered by another act you would not use this power?

**Mr. Seaborn:** In this particular case this is so, senator. For example, there may be requirements passed under the Motor Vehicles Act unless they start to sell cars in cellophane.

**The Chairman:** They start off by dealing with prepackaged products. They make one sweep with the back of their hand and take the power to make regulations with respect to every kind of consumer product. The only limitation on it is that if it is dealt with in another act they are then of course, restricted from doing this.

**Senator Flynn:** We have already section 3, Mr. Chairman, which says:

(1) Subject to subsection (2) and any regulations made under section 18, the provisions of this Act that by the terms of this Act or the regulations are applicable to any product apply notwithstanding any other Act of the Parliament of Canada.

**The Chairman:** There are some words we have taken out of that subsection. You read the section as it appears in the bill. We have amended section 3 by taking out certain words.

**Senator Flynn:** You passed the amendment before I came in?

**The Chairman:** I am sorry.

**Senator Flynn:** That is all right, but my argument is still valid as far as the bill was drafted originally.

**Mr. Seaborn:** It is primarily for prepackaged goods but this is a packaging and labelling bill, of which I am sure you are aware.

**The Chairman:** I wonder what you call, for instance, a typewriter which is a consumer product. How would you say that is packaged?

**Mr. Seaborn:** I do not think it is packaged. Regulations as to giving relevant information about a typewriter, would have to be made under Section 18(1)(h), and that would be in the form of a label.

**The Chairman:** My purpose in raising this for discussion is to make the committee fully aware that under this regulation section we move into the area of consumer products other than prepackaged products, with only one restriction on the power of the minister. If there are other existing acts then this power to regulate does not apply.

**Senator Connolly (Ottawa West):** I think probably there is something to be said for the manufacturer who is required under this act to state what is put into a package, and who then complains that another manufacturer who does not put his product into a package but who still labels it is not subject to the act. Just taking Mr. Seaborn's example, I think there should be a labelling requirement with respect to a piece of furniture. If you are getting birch when you should in fact be getting oak then you should have a protection—

**The Chairman:** You are talking about honesty in labelling. Of course, the Criminal Code has a provision which would deal with labelling of the kind you are talking about. It would be a fraudulent transaction.

**Senator Connolly (Ottawa West):** As a matter of fact, now that you raise it, you wonder sometimes why you need a specific act when you have in the Criminal Code so many provisions about this very kind of thing—misleading, confusing and deceptive advertising.

**The Chairman:** I think the answer to that, Senator Connolly, is that when you have these remedies in a particular act the administration seems to become easier. Many of the charges under the Criminal Code are generated by the police investigation.

**Senator Connolly (Ottawa West):** It is done by administrative means rather than by means of a police investigation. It also multiplies the number of administrators.

**The Chairman:** Having called attention to this, are there any comments from the committee? These are the points that have been raised. We have amended this morning subsection (1) of section 3, and subsection (2) of section 11. No other amendments have been proposed.



**Senator Molson:** Mr. Chairman, in regard to section 18, there is nobody to consult in regard to making these regulations, is there?

**The Chairman:** Under section 19 the proposed regulations must be advertised in the *Canada Gazette*. The purpose of that is to give persons an opportunity to make submissions.

Are you ready for the question? Shall I report the bill as amended? This means that we are approving all sec-

tions other than subsection (1) of section 3 and subsection (2) of section 11.

**Hon. Senators:** Agreed.

**Senator Flynn:** With some reluctance.

The Committee then proceeded to the next order of business.

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Copyright  
1971



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 27

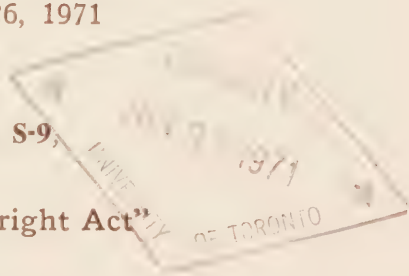
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WEDNESDAY, MAY 26, 1971

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Third Proceedings on Bill S-9,  
intituled:

"An Act to amend the Copyright Act"



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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Isnor
Burchill	Kinley
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Sullivan
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(28).
Giguère	
Grosart	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

«Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Urquhart, seconded by the Honourable Senator Cook, for the second reading of the Bill S-9, intituled: "An Act to amend the Copyright Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, May 26, 1971.

(30)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10.30 a.m. to further consider the following bill:

Bill S-9, "An Act to amend the Copyright Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Haig, Hays, Isnor, Lang, Molson, Welch and White. (16)

*Present but not of the Committee:* The Honourable Senators Lafond and Méthot. (2)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

## WITNESSES:

*International Federation of the Phonograph Industry:*

Mr. Stephen Stewart, Director General,  
London, England.

Mr. J. A. L. Sterling, Deputy Director General,  
London, England.

At 12.00 noon the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
Clerk of the Committee.

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, May 26, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-9, to amend the Copyright Act, met this day at 10.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman** We have with us, this morning in connection with Bill S-9 some representatives of the International Federation of the Phonographic Industry. Mr. Stephen Stewart, the Director General, and Mr. J. A. L. Sterling, the Deputy Director General are here from London, England. I suggest that Mr. Stewart start off by telling us what the industry is, what it does, and what relevance it has to this bill.

**Mr. Stephen Stewart, Director General, International Federation of the Phonographic Industry:** Thank you, Mr. Chairman.

Honourable senators, first of all, may I thank you for the courtesy of hearing me, a non-Canadian and member of the English Bar, and my friend, Mr. Sterling, who is an Australian, from the English Bar. The International Federation, of which I am Director General, is an organization of record companies the world over, located in practically all countries where there is a record industry, and it deals predominantly with legal matters, such as copyrights and rights for records.

If I understand correctly, Mr. Chairman and honourable senators, you have so kindly asked me to come here to deal with the position outside Canada, rather than that in Canada. I have read the record of the previous hearings with some care. I find that you asked many questions about what happens in other countries. You have the brief which has been presented and, if I may, Mr. Chairman, I think I can best repay your courtesy in calling me by sticking to what you, Mr. Chairman, called the main stream—the main stream being, whether there should or should not be a performing right given to the record producer.

There are several points I would like to make with regard to the history of this right. The first one is this. Although in some countries this right had an early origin—in Canada in 1921, yours being one of the first countries to grant that right—most of the legislation is much more recent and, in fact, most of it has been enacted over the last 15 years.

Clearly, the reason for that is that when the first body of copyright legislation was passed, in Europe, the United

States and other countries, the so-called mass media were either not known or were in their infancy, before and immediately after the first world war; whereas when copyright legislation got under way after the second world war, broadcasting, television, records and films came to play the important role they play today. There has been an accelerating tempo of legislation over the last 15 years. If I may give you just a few examples: in the United Kingdom in 1956, in Mexico, India, Norway and Pakistan, in the same year, 1956; in the Scandinavian countries—Finland, Norway, Sweden, Denmark—in 1960 and 1961; then, New Zealand in 1962; Ireland in 1963; Germany in 1965; Czechoslovakia in 1966; Australia in 1968 and Japan in 1970.

So you will see that it is over the last 10 to 15 years that these pieces of legislation have been enacted. All those I have named, in the last 15 years, have given this right that you are debating here, the performing right in the record, to the record producer. Some of them also give it to the performer, or they say that the record producer has to pay some of the money he gets to the performer.

May I make a point here again, Mr. Chairman, taking into account what was said before the committee? The word “performer” has a strict meaning. It is defined in the various acts of Parliament and in the international convention which is known as the Rome Convention. It is defined as “a person who performs literary or artistic works”; that is to say, an actor or a singer or a musician. So you were not really accurately informed when there was talk at one of the hearings about, I believe it was a telephone operator or sound technician in the studio having a right. That is not so. A performer is an artist, an actor, a singer, and so on.

**Senator Connolly:** Is the assumption behind that restriction that a technician in the studio is paid for his services, and that should cover it; that he has no property right in the production?

**Mr. Stewart:** I think that is so.

**Senator Connolly (Ottawa West):** He has the right to his wage for the work he does, but he has no copyright?

**Mr. Stewart:** I think that is the sort of thing. This is why you will find that the unions which have appeared before you are artists' unions, musicians' unions, and so on.

**Senator Connolly (Ottawa West):** I am not sure, but perhaps you can help us on that. It seemed to me that the



union people who were here one afternoon some weeks ago were also speaking on behalf of the technician.

**Senator Flynn:** Do you mean, Mr. Dodge?

**Senator Connolly (Ottawa West):** Mr. Dodge.

**Senator Flynn:** He was speaking only on behalf of the musicians, the artists, the singers.

**Senator Haig:** Mr. Wood.

**Senator Connolly (Ottawa West):** It seems there was a discussion. Mr. Stewart has already referred to the telephone operator.

**Senator Cook:** They said "We are appearing on behalf of the Canadian Council of Performing Arts Unions".

**Senator Connolly (Ottawa West):** But that did not include technicians?

**The Chairman:** No.

**Mr. Stewart:** That is exactly the point I had in mind.

There is one other point I would like to make. It is that this tendency to give the artist a share in this right was started by the record industry. It was in an agreement, which has been filed before you, with the International Federation of Musicians, in 1954. The agreement, which is purely contractual, simply states that where the record industry receives a remuneration for the performance of its records, it will pay a quarter, 25 per cent, to the musicians, to the artists, usually in the form of payment to the unions, but not necessarily so. I say that because, again, reading the transcript, I see that some of the witnesses have doubted the sincerity of the Canadian industry in saying that they will do just that, if they receive payments.

I think you will have the industry before you, and they will repeat this. All I am saying is that, if they say they will do it, they will do it because it is in line with the tradition of the industry in other countries, in fact, in most other countries.

There is one other trend to which I would like to draw your attention. Recent legislation very often appoints a tribunal to adjudicate between the right owner, in this case the record producer, and the user, the consumer. In other words, the idea is that if the right owner and the consumer cannot agree on the tariff, let a judicial body, usually presided over by a senior judge, adjudicate on how much it should be.

This, Mr. Chairman, was invented in Canada, in 1936, in the form of the Copyright Appeal Board, which existed long before anybody else had thought of it. If I may respectfully say so, it struck me as an eminently sensible idea. It has been adopted by others. You have not claimed the copyright, but you have been copied in the United Kingdom, Germany, Ireland, Australia and, last year, Japan. That has been done in different forms but with the same idea: Let an independent tribunal adjudicate between the right owner, in this case the record producer, and the radio station, the juke box owner, the

cafe owner, whoever they are—the people who use the right.

The tribunal—in Canada's case, the Copyright Appeal Board—however, becomes the watchdog of the consumer; and this is the idea in all the legislation. And it works. Judging by the award a few weeks ago, honourable senators may agree that it works.

Mr. Chairman, next I should like to deal with the exceptions, the countries which have not yet given this right. It has been said before you, and wrongly—and I want to say that without any disrespect, but wrongly, factually wrongly—that it is in only a few countries that this right has been granted. Let me state the exceptions, the countries where it is not granted. First of all, in Western Europe there are France, Belgium and Holland. In each of those three countries the matter is under consideration by an interdepartmental committee. However, legislation takes a long time in this matter simply, I believe, because to the general public it is not a burning issue. It usually starts in the upper chamber—this again may interest you—such as the Senate in the United States, the House of Lords in the United Kingdom. This is perhaps because it is thought that more mature deliberation would be given in the upper chamber. Perhaps it is because the cynics say that it offers no votes for the lower, elected chamber.

**The Chairman:** Mr. Stewart, I would like to call to the attention of the committee that last week, when Mr. Goodman appeared representing Baton Broadcasting Limited, he stated in the course of his submission, and the statement appears in their brief, that—the United States does not recognize a copyright in the making of a record, nor does most of the rest of the world. It is fortunate that we have some knowledgeable people appearing also. Mr. Richard gave evidence on the first day that in most of the countries of the world this right is not recognized. I think someone was drawing a distinction between the developed and underdeveloped countries.

**Senator Cook:** I am glad you stopped after the word "record".

**Mr. Stewart:** I am grateful to you, Mr. Chairman, because I may now seek to defend a colleague at the Bar. I would point out that if numbers are counted his statement was justified. I suppose there are 120 members of the United Nations, and these rights are recognized in 25 or 30 countries. Therefore I suppose it can be said, counting heads, that the large majority does not recognize them.

With the exceptions I am about to give you, all the developed countries, those in a position, if I may say so, similar to Canada, having a culture...

**Senator Connolly (Ottawa West):** OECD countries generally?

**Mr. Stewart:** Yes, and some that are not; India, for instance. With respect to the exceptions, France, Belgium and Holland, there are interdepartmental committees, but no legislation yet.

In those countries in Western Europe, such as France, Belgium and Holland, where the performing right to the record producer is not recognized in the law, the broadcasters do pay, if you wish to term it so, voluntarily. Why do they pay? I think they pay—in fact, some of them have gone on record as saying so—because they recognize that this is a right that exists, if not in law then morally. They feel that obligation, and in France, for instance, pay quite substantial sums.

One other point made before you which, with great respect, is not quite right, is that all the countries where this right exists and where the broadcasters pay remuneration are countries where the broadcasting is state-owned. I think the British or Australian Broadcasting Corporations would be rather cross if termed "state-owned." However, they are non-profitmaking corporations, public corporations, which I think is what the witness meant. It is not right either, because in Australia, New Zealand and Japan, the last three countries which have granted this right, only in the last three or four years, broadcasting is rather similar to that in Canada. It is in the hands of private, commercial companies. So it is not correct to say that only the non-commercial public corporations pay.

However, with regard to the public corporation, I would like to suggest to you that perhaps there is a moral here. What does "public corporation broadcasting" mean abroad? It means that the money for the broadcasting comes from the taxpayer, from the public, either by way of licences, because everyone with a television set or radio set pays an annual licence fee, or by way of Government subsidiary, if the licence fee does not cover it. In other words, the remuneration paid for this right comes out of the purse of the public. Now, would it not be right to say that if in many countries where the money for the broadcasters comes out of the purse of the public it is fair, right and proper to say, as we lawyers say, *a fortiori*, even more so it would be right if the broadcasting were done for profit—in other words, if the broadcasters use their records and make a profit in so using them by selling advertising?

Having dealt with the European exception, let me say at once that I would like to deal separately with the most often quoted exception, the United States of America. Why is this right not in the law of the United States of America? The answer is very simple: because the Copyright Act at present in force in the United States dates from 1911. Records in those times were few; broadcasting and television did not exist; the film was in its infancy. Therefore, all those rights were not necessary.

When the great upsurge of legislation started for the second world war, the United States had a difficulty in this field. It is not an unusual difficulty. It is because of the fact that they have a Constitution which gives a copyright that says that it is in writing. The question which the lawyers debated right through the length and breadth of the United States was whether a record could be a "writing". That was the legal problem. It was not until 1965 that a governmental commission pronounced for the first time, officially, that they considered a record to be a "writing" in the constitutional sense of the United

States and, therefore, federal legislation could deal with copyrights in records.

May I make the point quite clear? There was a difficulty in giving a right, not only a performing right such as you are considering, but they could not even give, until this constitutional point was cleared up, an ordinary right against copy. In other words, if some one just pinched, if I may use the word, some one else's recording, and pressed it, they could only be proceeded against under state legislation. There was, and still is, no federal legislation.

**Senator Connolly (Ottawa West):** Was that a decision of the Supreme Court, or a declaration by Congress?

**Mr. Stewart:** It was neither, really; it was the prevalent opinion of most lawyers, but was never tested. In other words, they said that Congress could not do it until certain cases were decided in other spheres. One case related to migratory birds which fly from one state to another. There the Supreme Court held that there could be legislation. That was one precedent.

There is in your brief the statement of the Registrar of the United States in 1965 which is, I think, the first authoritative pronouncement on the matter. I would like to draw your attention to it, because here is an official speaking who is not in any way a partisan. He says, on page 8 of the brief:

Let me say plainly, there is no doubt in my mind that recorded performances represent the 'writings' of an author in the Constitutional sense and are as fully creative and worthy of copyright protection as translations, arrangements or any other class of derivative works. I also believe that the contributions of the record producer to a great many sound recordings also represent true 'authorship' and are just as entitled to protection as motion pictures and photographs... It is hardly surprising that you have heard testimony from performers and record companies urging recognition of a performing right in sound recordings. There is much to be said for this point of view, and it is possible that this right will eventually be recognized in the copyright laws of the United States as it is now in other countries.

That was the first breakthrough.

Last year, five years later, the bill which was presented to the United States Senate included the performing right to the record producer and the performer. I do not want to weary you with the details. If you want to have detail, the copy of this relevant extract is in the brief, among the appendices. The gist of it is that every time a record is publicly performed or broadcast a performing right is given to the record producer and to the performing artists or performers. Then certain things are said about rates, and there is a separate clause dealing with the rate for juke boxes, and so on.

This, incidentally, is a matter on which legislation varies, but in some legislation there is a rate. However, they are very few; most pieces of legislation have accepted your principle of a tribunal, like a copyright appeal board.



I think the right to say about the United States is that they are late, that they still have a copyright law from 1911, which is 60 years out of date. I am reminded by Mr. Sterling that it was 1909, so it is 62 years out of date. It is miles out of date, and they are having great difficulty in getting through a bill which is at present before the Senate and the House of Representatives because of time difficulties, and controversial matters in the bill, nothing to do with the performing right in records, but things like CATV, for instance, which is an enormous problem in the United States, where interestingly enough the broadcasters are the ones who are asking for a right against the community antennae television on the ground that CATV could use their product.

**Senator Desruisseaux:** Could not the same thing happen here too?

**Mr. Stewart:** You are in a better position, sir, than I am to say that. I should have thought, quite possibly. You will then have the broadcasters before you in the position in which I believe I now am.

**Senator Connolly (Ottawa West):** What you are saying, Mr. Stewart, is that the broadcasters, in the example you gave, say they have a property right in the production of their program, and the CATV people who just pick them up and distribute them for profit are exploiting that property?

**Mr. Stewart:** That is so. I am grateful to you, because there is something I should have mentioned which I did not.

When I spoke about national legislation I should also have told you that there was in 1961 an international convention on the matter, known as the Rome Convention. Perhaps this acceleration of national legislation is something to do with the passing of the Rome Convention in 1961, because 40 countries signed that convention. Each one still has to ratify it, but they signed it. That, of course, gives an impetus to national legislation to conform.

This convention is for the protection of record producers, performers and broadcasters. Again, this is an aspect that I think has been put before you. In many contexts it is the broadcasters who are asking, quite rightly if I may say so, for some kind of copyright in the broadcasts. Satellite broadcasting, for instance, not today but in the next five or seven years, I am told will be a burning problem. When you broadcast by satellite, apparently anybody with a powerful transmitter can fish your broadcast out of the air and then transmit it. The broadcasters say, "You must protect us against that, because the broadcast is ours; it is a product which is worthy of copyright protection." Two months ago there was a meeting, which I had the honour to address, of governmental experts in Lausanne to consider this very matter, on the basis of an international convention. It was presided over, if I may say so, with great distinction by a Canadian, Mr. Finlay Simons, the Deputy Registrar of Patents of Canada. You will therefore see that there are problems, wherein the broadcasters, who so strongly oppose this right in Canada, are in a not too dissimilar position,

asking for rights which, in my submission at any rate, are very similar, and, if I may say so, rightly asking for them.

**The Chairman:** With regard to the Rome Convention, you stated that the representatives of 39 or 40 countries appeared and adopted a convention for the protection of performers, producers of phonograms and broadcasting organizations. Is there a further step that would make that effective and binding on the countries who were present and adopted this convention?

**Mr. Stewart:** I am grateful to you, Mr. Chairman. This is so. In an international convention the first step is the negotiation of text and debate as to whether these rights should exist or not. When this is done and the convention is drafted, it is then signed by the representatives of states. That is only the first step, because every sovereign state having a legislature then has to ratify it. That means Parliament has to be consulted; in some cases the law has to be changed because it does not fit the framework, and then the country ratifies it. The Rome Convention has so far been ratified by 12 countries, which, as international conventions go, in ten years is not too bad a record.

For the reasons I have just given, in most countries it needs legislation, sometimes because the broadcast right is not in the law, sometimes because the record producers' protection is not in the law, and in a democracy that takes time.

**The Chairman:** Could you tell me what Canada has done?

**Mr. Stewart:** Canada participated, but has not yet, of course, ratified. Canada could ratify, as the law stands.

**Senator Connolly (Ottawa West):** Canada is a signatory?

**Mr. Stewart:** Yes.

**Senator Connolly (Ottawa West):** Mr. Chairman, this was the very question I was going to ask the witness, because the other day great play was made of the fact that Canada had not ratified. In the witness's opinion, does that make a material difference in the discussion that we are having here?

**Mr. Stewart:** Mr. Chairman, there is something I would like looked up, because I would not like to be guilty of telling you something that is not correct. I am not absolutely certain that Canada did sign, but I am having it looked up. They were there, there was a Canadian representative but whether or not he signed, I cannot tell you. I will tell you in a moment.

**Senator Cook:** I think he signed, with reservations, because of the fact that we were a federal state. Is that not so?

**The Chairman:** What is that?

**Senator Cook:** Were we not told that he signed, with reservations, but would have difficulty in ratifying



because of the fact we were a federal state and some of the rights might lie in the hands of the provinces and not in the hands of the federal Government?

**Mr. Stewart:** I did not know that. The United States, for instance, signed.

**Senator Connolly:** Has it been ratified by the United States?

**Mr. Stewart:** No, they cannot. They have to change the law, because, as I say, there is no copyright protection for the record producer at all on the federal level, only on the state level.

The other point I would like to make, if I may—again, because something was said before you on other occasions—is regarding the assertion that one can ratify the Rome Convention only if this right you are debating here, the performing right of the record producer, is given to both the record producer and the performer. Not so; not so. The Rome Convention gives each ratifying or member country the option to do either or both. In other words, the state ratifying the convention can give the performing right in records only to the record producer; it can give it only to the performing artist; or it can give it to both. The solution favoured by nearly all countries is to give it to the record producer and, in many cases, to put the record producer under a duty to share with the others.

**Senator Carter:** Who is “the record producer”? Is it the man who makes a master tape, or the one who presses the record after the master tape is made?

**Mr. Stewart:** The right originates in the man who makes the master.

**Senator Carter:** The master tape?

**Mr. Stewart:** That is right. He can, of course, assign his right, just as you can assign any other right, just as for instance the author of a book usually assigns his right to the publisher. It originates with the man who makes the recording, just as it originates with the man who composes a tune. I wanted to make this point because, as I say, it was said you must protect both, you must give the performing right to both, if you want to ratify that. This is not so.

May I say one word again about what you, Mr. Chairman, called the main stream of the argument, that is: Is this right justified; is it right and proper to give it? This is really the main argument, as I understand it, which has been presented to you.

I think the most succinct way of putting it is this. You can talk about this all day because it is a matter which borders on the philosophical. I think the realistic and the practical way of approaching it is the way in which Chief Justice Wendell Holmes in the United States approached it in the so-called “Sweetheart” case; and Mr. Justice Maugham in the United Kingdom approached it in the so-called Carradine case. It runs something like this. The record producer produces the record for playing in the home—that is, to a group of people, his family, a dozen people, perhaps. It is not a problem.

If, instead of being played to half a dozen people, this record, this product, is played to a million people over there, or to 500 people in a hall, then that is something beyond what the record was intended for, and, if it is done for profit—that is to say, the user makes money out of using the record for what it was not originally intended—then he ought to pay.

This is really the guts of the argument. There are many arguments of a moral and philosophical nature, but I think the purely materialistic and practical one is that. Look at other realms of the law, such as patents or copyrights or trade marks, or whatever it is: if somebody does something which is of value, and somebody else takes it and makes money out of it, he ought to pay. It is as simple as that.

**Senator Connolly (Ottawa West):** You set your argument on a property right?

**Mr. Stewart:** Yes.

**The Chairman:** That was the essence of Mr. Justice Holmes’ judgment in the “Sweetheart” case.

**Senator Connolly:** In what case?

**The Chairman:** In the “Sweetheart” case.

**Senator Connolly:** I would not know about that.

**The Chairman:** Victor Herbert.

**Senator Cook:** There he was addressing himself to the composer. Victor Herbert was the composer.

**The Chairman:** But at the time he was the composer he did not have the right and he had to go to the Supreme Court of the United States in order to have the right recognized.

**Senator Cook:** The point was that the composition was something which would lend itself to copyright. The question is whether the mechanical act of a number of people lends itself to copyright.

**The Chairman:** This is the essential question here. Is a performing right something that is capable of being a copyright? This is what we are addressing ourselves to. Certainly, one element is that for the people who make use of it, they make money. That would appear to be an element in Mr. Justice Holmes’ decision.

**Senator Connolly (Ottawa West):** It is an improper observation to make here, Mr. Chairman, but most people establish copyright in a sweetheart by marriage!

**The Chairman:** Well, so early in the morning, senator?

**Senator Lang:** I have a question for the witness. Throughout your remarks you use the term “record producer.” Is there such a thing as a “record maker,” as distinct from a record producer?

**Mr. Stewart:** In some legislation—for example, the United Kingdom—that is what he is called, a record maker. But I do not think it makes much difference. I think that what the honourable senator has in mind is the distinction between the man who makes the first

recording—and this is where the artistic concept lies—and the subsequent processes which may be completely mechanical; in other words, the man who makes the 10,000 copies by a machine going up and down. There is a very clear distinction between those two.

**Senator Lang:** Or, even further, I can see a distinction between a recording that is produced, made by a record maker, to which there has been no creative input at all, and recording made by a record maker in which there is a productive or creative element.

**Mr. Stewart:** Mr. Chairman, sooner or later, if you have the patience, you ought to be shown how a record is made, either by a film, which exists I believe, or in a studio, or something of the kind. I am only a lawyer, I am not a record man, but I am very interested in this and have been at many recording sessions. I would have thought that most recordings, and particularly the contemporary music recordings, have a great deal of creative element, because very often—may I say a word about pop music?—the work, that is to say the composition, does not exist when the musicians arrive at the studio. They go there to play; and they just play. Then there is the producer, who says “That was good. Take!” just as a film producer does. Then they spread back and he says, “The trombone does not sound very good; can you play it a little differently, fast, twiddle it around a bit. Take!” The record is produced in a similar way to a film, because the snippets of the tape are put together just as a cutter puts a film together. The end product, which takes hours and days to record, but only a few minutes to play, is the sum total of a great deal of artistic input.

This also applies in the classical field, because if it did not, why would it be that there are some recordings which are first-class and others that are not so good and, therefore, that are not bought or played by so many?

My submission, therefore, would be that the recording process has been much maligned in these hearings; that the artistic input has been very much underplayed; that and I wish you would find the time to go and have a look. I think the invitation would be extended to you, Mr. Chairman.

**Senator Connolly (Ottawa West):** It would be wonderful to see one of these.

**The Chairman:** We can decide on that later; we are not closing our hearings today.

**Senator Flynn:** It is interesting to hear of this difference between the producer and the maker, when the bill before us relates strictly to copyright in records, to sell the rights to reproduce any such contrivance. Therefore it gives the right to the producer to prohibit others making records by copying. The distinction is that if the record maker is acting with a licence or under a contract from the producer, he is in the same position as the producer. There would be no such thing as a record maker who would not have a right from the producer, because the act protects the right of the producer to prevent copying.

**The Chairman:** I wonder what the principle was in providing protection but not going further?

**Senator Flynn:** I think it is interesting.

**The Chairman:** A tailor may make a custom suit, but suppose I may take it somewhere else and have it copied and the tailor would have no right to prosecute.

**Senator Flynn:** But here the producer would have a claim.

**The Chairman:** What provides protection for the producer against reproduction?

**Senator Flynn:** It implies recognition of the creativity of the producer of the record.

**The Chairman:** Have you any comment on that statement, Mr. Stewart?

**Mr. Stewart:** It should be accepted that they are both copyrights and rights of the record producer, maker, or whatever term you wish to apply. One right is to allow or forbid anyone else to copy his record. This is known as piracy, which incidentally is a great problem today in the United States. Industry spokesmen there say they lose \$1 million a year by people doing just that, taking a record, copying it and selling it at half price. The reason they can do it is that there is no federal law; they have to be chased from state to state. It is now called thieving, because when intellectual property is recognized as property and taken by some one who does not own it, it is thieving.

The other right, the conglomerate, is the one you are considering, the performing right. If a record is performed in public, the producer and/or the performer have a right to be paid.

**Senator Connolly (Ottawa West):** Earlier, Mr. Stewart, you referred to the artists's right to share in the proceeds of the sale of the record with the producer of the record, or the maker. However, now you have given an example of another element, the situation in which studio artists perform on musical instruments or sing, as the case may be. This involves a process of recording what they do.

You say another artistic element is then introduced, in that a producer will say to the performing artists: “We want this; we want that; we don't want this; we have too much trombone here, too much drum here, too much piano there”. You would liken him to the artist.

Are these people in your conception inventors, originators and artists? Do they share in the royalties from the record, and should they?

**The Chairman:** The test would be: Is it an artistic work?

**Senator Cook:** Every eye sees its own beauty. That is so, whether we discuss an artistic work or not.

**The Chairman:** You may not appreciate this musical quality either. That is why I used the expression: Is it an artistic work?



**Mr. Stewart:** "Beauty," Shakespeare said," is in the eye of the beholder." In this case it is in the ear of the listener. There are three inputs in the making of a recording: obviously, there is the work of the composer and/or the textwriter; there is the work of the performer, who shapes it and gives it life; and there is the work of the record producer, who gives it existence in the form of a record, who handles it, who also shapes and forms it.

This really comes from the statement of the Registrar of Copyrights in the United States with respect to translators and arrangers. No one has ever denied that a translator has a copyright and a performing right. What does he do? In the case of a French play to be performed in English, he will take the play as it is, a pre-existing work, and translate it into his own language. Sometimes, of course, he makes a considerable contribution because of his mastery of the language. It could not be said that it is a completely original work. However, I know of no legislature which has denied the translator the copyright.

Arrangement is a well-known process, as you know, in music. Suppose the Triumphal March from *Aida* or the Toreador Song from *Carmen* were rearranged for the 375th time, this time for a jazz band or a small band of five. There is some originality in doing it, obviously, because otherwise those who perform it would not use the adaptation. However, it is not to be compared to the strokes of genius of Verdi or Bizet when they wrote the music. I cannot think of a copyright law that denies the adapter of the copyright, although it has been said that if you want to weigh it in terms of quality or originality, his influence is less original, sometimes considerably less original, than that of the original composer.

The point I am trying to make, and I think it is worth thinking about, is that not all copyrights have the same degree of originality. Therefore, there is nothing derogatory in saying, of the right of a performer or a record producer, that his originality may not be, and in many cases is not, as high in degree of originality as that of the composer. All I am saying is that the weighing of originality is a matter for the Copyright Appeal Board, or those who negotiate these rights. In other words, as a lawyer would say: it is a matter of quantum, how much.

What should not be questioned is that there is sufficient artistic input, originality, in a record producer to amply justify the copyright. Incidentally, the Economic Council, which as you know was not very favourable to the record producer, did acknowledge this. They did speak of the artistic input.

**The Chairman:** I think they used the term "creative input."

**Mr. Stewart:** If I may draw these points together before I am asked questions, may I say there has been a great deal of copyright legislation in recent years. It has all been one way, apart from Africa and other developing countries. There is a very special reason for this. They have claimed, and in many instances rightly, special treatment. I do not think that is a point that I have to meet here.

Apart from Africa, it has all been one way. Either the right was confirmed in the legislation or it was granted for the first time where it did not previously exist, such as in Scandinavia or in Japan last year.

In Canada you have a situation which is different. You were one of the first to introduce the right fifty years ago. You have, as I said, invented the Copyright Appeal Board, a tribunal, which many countries have copied. You are now being asked to strike it out by way of a one-paragraph bill.

There are two points here, the first being that I cannot think of another example—I do not think there is one—where this has been treated by way of a one-paragraph bill. This has always been treated as part of a copyright revision where many rights are dealt with, rights of broadcasters among others. A big problem in modern copyright legislation is Xerox machines. How do you preserve the right of the author when anybody can take a book and stamp out a Xerox copy?

There are many complicated and important problems which have to be considered, and which, if I am right in my understanding, are being considered in Canada at the moment. Quite obviously the Copyright Act of 1921 or one that was revised in 1936 is due for revision.

What is singular, and what strikes me as odd, is this one-paragraph bill, which I think is unique. I ask myself the question: Why should a country, which has in many ways pioneered this, strike it out by a one-paragraph bill? I hope this is not unfair. I have asked myself this question seriously and I can give only one answer. It is because broadcasters do not want to pay what now appears to be something like \$100,000. I honestly cannot think of another answer.

**Senator Connolly (Ottawa West):** Is that an informed figure?

**Mr. Stewart:** It is about that.

**The Chairman:** Applying the tariff rates fixed by the Copyright Appeal Board, that would be the amount in dollars.

**Senator Connolly (Ottawa West):** Per annum?

**Senator Flynn:** Yes.

**Mr. Stewart:** I should point out that the award was for six months. It is approximately \$200,000 per annum. The award was \$100,000, but it was a six months' award.

**The Chairman:** If you recall, the minister left a letter the last time he appeared before us in which he translated into dollars the effect of the application of the tariff proposed by the Copyright Appeal Board. His letter says that television stations are to pay only a nominal fee of \$1 for 1971. Radio stations have been cut from a requested tariff of 2.6 per cent of gross revenue to 0.15 of gross revenue, and this is applicable only to stations whose gross revenue is more than \$100,000. In effect, this means that radio stations will pay approximately \$90,000 in 1971, instead of the \$3 million or more which would have been received, if SRL's claim for 2.6 per cent of gross



revenue had been approved for the entire year. When they say \$90,000 for 1971, since there is only half a year being considered, for a full year it would be \$180,000.

The CBC will pay only \$15,000 for the next six months, rather than the SRL request which would have amounted to almost \$900,000 for the entire year. On this basis, for a full year the CBC would pay \$30,000 under the tariff.

Is this a summary of what you have been saying in relation to this one-paragraph bill, that the field in which this industry operates is a progressive one that really has an unlimited horizon, and who knows in what areas it will push forward tomorrow?

**Mr. Stewart:** The Economic Council, in the parting shot of the paragraph devoted to this matter, said: Away with the performing right in records—and that the same should apply to video recordings. This is one of the things, Mr. Chairman that you probably have in mind, that in three years from now, or perhaps sooner, we will have on the market recordings which we will not only be able to hear but will also be able to see on our television screens, known as videograms videorecordings, audiovision material, or whatever you wish to call it. This is interesting, because if you do what the Economic Council suggested, in other words, you eliminate this right, and you eliminate it also for videorecordings or videograms, I would think that you would have within a very short time the broadcasters before you howling for protection, because it will be their products, because they will be making and are already making videograms that will be the subject of protection.

The proposition that a radio and television station should make a videogram or tape one of their performances over there, which should be taken by somebody else and produced, either in public, in a cinema or over the air by a competitor, would be hideous to them, and they would be quite right. In other words, you would have the broadcasters before you, as I sit before you today, asking for the right which at present, as I understand it, is a right in a record, and if you wipe that out and follow what the Economic Council seems to suggest—with respect, I do not think they have thought it out—you would wipe out the performing right in the videogram as well.

That is the only aspect of the future we can foresee, because it has been worked upon. As you, Mr. Chairman, said, in seven or ten years from now there may be many other things arising from this, which would come into the same category, and which you would have wiped out without even considering the consequences.

**The Chairman:** Are you ready for questions?

**Mr. Stewart:** Yes, Mr. Chairman.

**Senator Connolly (Ottawa West):** May I ask you one, Mr. Chairman?

**The Chairman:** Did you say "one", senator?

**Senator Connolly (Ottawa West):** Yes, just one. I know I ask a lot of you. As I understand it, this bill, while it was introduced in the name of the Leader of the Govern-

ment in the Senate (Hon. Mr. Martin), is a bill that comes from the Department of Consumer and Corporate Affairs.

**The Chairman:** That is right.

**Senator Connolly (Ottawa West):** The minister was here a week ago. Am I wrong when I say that a letter he left with us would seem to indicate, or at least partially indicate, in a practical way the purpose of this bill? Am I right about that?

**The Chairman:** Let me put it this way. The main thrust by all those who have appeared so far in their first argument, and the thread running through their whole presentation, was the cost and the exporting of this substantial amount of money to the United States each year, in view of their other commitments and payments. Secondly, they said there was no artistic effort in pressing out a record. It makes me pause a bit in trying to analyze that in the light of what Mr. Stewart has said, and makes me, for one—whether the committee wants to do it as a body or not, I do not know—want to see how these things are done. The dollars were really the basis of the presentation. Even at our last meeting, when the Baton Broadcasting people were here, they raised that question. They say that more than \$17 million is paid annually in respect of these records to foreign parent companies, and should a tariff be approved for the broadcasting of these records, 50 per cent of the money received by Canadian subsidiaries of foreign parent companies will be paid out to the foreign parent companies. They were talking on the basis that if you calculate what it will cost the industry in Canada, under the tariff which the SRL people had requested it would be \$4.5 million or \$5 million more, some figure of that kind. We are now talking in terms of something which might be \$250,000 or \$350,000.

**Senator Flynn:** It was the main theme of the speech made by the sponsor of the bill.

**The Chairman:** I suppose it is difficult to analyze intention, in legislation, except that in the background that we have here it would appear that dollars are a very important consideration. Canada participated in the principle of performing right protection in records even in the Rome Convention, and we would be getting out of line with a very substantial number of developing countries, and out of the trend that appears to be developing in the United States, so I think maybe the conclusion on your question, Senator Connolly, is that we have to use our own judgment on what the minister had in mind, but we could draw some conclusions from the evidence we have had before us.

**Senator Connolly (Ottawa West):** Along the lines I have suggested?

**The Chairman:** Yes.

**Senator Cook:** The minister was not asked.

**The Chairman:** The minister has not been invited yet. He will be.

**Senator Cook:** He is not acting off the top of his head. He is acting following the Ilsley Report and that of the Economic Council.

**The Chairman:** I would say that basically you would have to conclude he was acting on the basis of the Ilsley Commission Report, and also on that of the Economic Council.

**Senator Flynn:** Not the Economic Council, because their report had not been brought down when the bill was introduced. At a guess, he would have had advance information.

**Senator Cook:** That is because of the arrangement though; he was acting on the Economic Council report.

**Senator Flynn:** The Ilsley Commission Report.

**Senator Cook:** It was supposed to remain in a state of abeyance until the Economic Council report came, and then as one moved the other moved.

**Senator Flynn:** But the minister had moved even before the Economic Council started drafting its report, because we had a bill two years ago.

**The Chairman:** That is right. When there was an indication that SRL was going to apply for a tariff the minister sent a bill which was introduced in the Senate.

**Senator Haig:** Mr. Chairman, perhaps I might help the committee. Mr. Basford wrote on October 29, 1968, to the president of Sound Recording Licences Limited and said:

I wish to express my serious concern about this application, and to inform you that I consider it not to be in the public interest...

I must therefore inform you that it is my intention immediately to recommend to the government the introduction of legislation to prevent the levy of fees, charges, and royalties pursuant to your application and any other application of this nature in respect of fees, charges and royalties claimed for the year 1969 and thereafter.

**Senator Burchill:** In spite of the letter he read to us, he said he was still back of this bill, did he not?

**The Chairman:** Yes.

**Senator Flynn:** There was another question I wanted to put to Mr. Stewart. You mentioned the Rome Convention and said that the signatories can provide for performing rights for the artists or for the record producers, or for both. I was wondering if any legislation exists that lumps these two rights together; in other words, the performing right of the artist and the record producers would be the same, and it would be a matter for all the interested parties to arrange for the split.

**Mr. Stewart:** May I ask Mr. Sterling to deal with this?

**Mr. J. A. L. Sterling, Deputy Director General, International Federation of Phonographic Industry, London, England:** Mr. Chairman, first may I say what a great privilege it is for me, as well as my colleague Mr. Stewart, to address your committee. The honourable sena-

tor's question underlines that this complex field admits of several solutions as to the way performing rights can be granted in respect of records. I do not think anybody could be blamed for finding the field somewhat confusing when it is first entered, because we have under the copyright acts of various countries two musical works in one record, and we have two Rome Conventions—the Rome Convention of 1928, to which Canada is a party, and the Rome Convention of 1961, that deals with performing rights. What we are trying to do is isolate these various problems as best we can for your committee.

Senator Flynn's question has helped us because, as I said, it underlines that if you accept the concept, as many countries have, that there should be a performing right in a record, as distinct from the composition, this principle is recognized now in international law in the Rome Convention, 1961. But countries have adopted various ways of putting this principle into practice.

There is legislation of the type similar to the United Kingdom, which is the legislation of Australia, New Zealand, Canada, India and various other countries which recognize the right to the record producer. There is legislation of other countries such as the Scandinavian—Sweden, Denmark and Finland—which approached it from another angle and recognized two rights in the record, apart from the composer's rights. So they recognize, in effect, three rights: the right of the composer to a royalty when making the record or when his work is played, the right of the record producer and the right performer to get separate royalties.

The legislation of the type that we find in the Commonwealth countries tends more towards granting the right to the record producer and leaving it to him to share, under voluntary arrangements, with the performers. This has been done in the United Kingdom for many years and it is also the subject of an international agreement.

**Senator Connolly (Ottawa West):** Does it work?

**Mr. Sterling:** It works, sir. It has worked, I think we can say without exaggeration, extremely well. We have had it working in England for over 20 years, where the record producers, the English SRL, as it were, receives the royalties from the broadcasting corporation, and it pays 20 per cent of that royalty to the individual performer under contract with the record company, the man who has come into the studio and performed on his instrument.

**Senator Connolly (Ottawa West):** Who negotiates that agreement?

**Mr. Sterling:** That agreement is negotiated between the British record industry and the musicians' union. I have only told of half the arrangement. There is, first of all, I think 20 per cent to the individual performer under contract with the record company, so he gets his share because, after all, it is his performance; and 12½ per cent to the British musicians' union, which they use for benevolent purposes, mainly, for training young musicians, and that kind of thing. So the United Kingdom system is that about 32½ per cent, goes to the performer.



The Government of the United Kingdom was well aware of this arrangement when they passed the United Kingdom Copyright Act in 1956. In fact, I think they would have required it of the industry, in any case.

**Senator Connolly (Ottawa West):** May I interrupt again?—and I apologize. Going back to Mr. Stewart's illustration in the case of this agreement about sharing of royalties, the producer does not participate?

**Mr. Sterling:** Yes. The royalties are due in respect of the playing, the performing in public, or the broadcasting of the record.

**Senator Connolly (Ottawa West):** Yes.

**Mr. Sterling:** The law says—I am speaking of the United Kingdom now and am limiting it to that—that it is the maker of the record—that is to say, the record producer, the company, the firm or person that has gathered the artists together—who has the right. When he has the royalty, he voluntarily gives this 32½ per cent to the performers and to the unions. So, in the United Kingdom example, he retains about 67½ per cent.

**Senator Connolly (Ottawa West):** But the producer in the studio is not sharing?

**Mr. Sterling:** The actual producer in the studio—that raises a very interesting point, which has given copyright lawyers all over the world many problems in the field of literary work. Where you get a person writing, for instance, an article in the course of his employment with a newspaper, it is the same type of legal problem. You get two types of situation. First of all, the record producer, as the honourable senator has rightly called him, may come to the record company with the tape already made. He has made it outside the company's premises. In that case, he is the copyright owner, under the U.K. law, and he makes his contract with the record company.

**Senator Connolly:** That is another classification.

**Mr. Sterling:** He may say, "When this record is played on the radio, I want that whole 67½ per cent myself, because I am the copyrighter." Some record producers—as we call them, freelance record producers—do say that.

On the other hand, the record company may make a contract according to which it shares these royalties. But the actual employee—which is the question the honourable senator has raised—as far as I know, is in the same position as the writer who works for a newspaper. It is up to him to make his contract with the company.

After all, you get the same problem, as you said, Mr. Chairman, in the vast field that this opens up. You get the same problem with the person working in a scientific laboratory. He makes an invention. He could not have made the invention without the research facilities which the company has put at his disposal. So there is quite a large field for contract there.

To answer your question, I would say that in most cases in the United Kingdom the copyright belongs to the record company which has issued the record, which has either acquired the copyright from the producer or has

made its contract with its employees. So you have simplicity in the United Kingdom system. I am not saying that this is the best system, but it is one system.

Now I am coming, if I may, to the honourable senator's question. The honourable Senator Cook said—and if I may respectfully say, rightly—that there are constitutional questions involved in the ratification of the Rome Convention. As a member of the Australian as well as the English Bar, I am very conscious of the constitutional questions perhaps that our English friends are not always aware of, that a system built on a federal structure confronts, in many cases, a seemingly simple piece of legislation. In Australia they are very seriously considering ratifying the Rome Convention. Constitutionally, they have no problem with regard to the broadcasting organization which must be given the right under the convention or with the record producer or record maker who must be given a right under the convention. The problem they have constitutionally is with the performer, and that we find in several countries because the performer must be granted specific rights under the convention, to stop people copying his live performance. This does raise constitutional questions.

The Federal Republic of Germany has the same problem under its constitution, but if felt that this came under the contract power.

In the United Kingdom, although they have not the same kind of constitution, they did have a problem but they solved it by giving the performer a penal right. In other words, they stated that the unauthorized copying of his record went to the criminal law.

Finally—and I apologize for taking so long in getting to the other system—there is a system where the individual record producer has the right, either under the contract or under what he does himself, that he shares voluntarily.

In the Scandinavian-type legislation, which is also influential, you get this approach to where the right is a different type of right. The honourable senator mentioned a property right. I think this is the concept of the common law approach, that this right is a property right. But the Scandinavian legislation, I would say, has a more sociological aspect than a purely property aspect. It says that the performer has contributed and he should have a share, and it provides that in the law. The law does not provide the shares. This is subject to the tribunal's decision, because following the Canadian pattern there are tribunals.

The main countries that follow the system of giving the right to the performer and the record producer are the Federal Republic of Germany, Sweden, Denmark, Finland and, most recently, Japan.

If you would permit me, I would mention one thing here. Perhaps, in the ultimate, this is a very fine, indeed a noble solution to the problem, this second way of dealing with it, but it does have problems because you are dealing with individual performers who may come from many different countries. So you do have to grapple with the problem of how you are going to make a foreign performer. For instance, he may be in a performance of



Aida and you have to decide how you are going to allow them to participate. But that is by the way. The official report of the Rome Convention, in which I have been attempting to check Canada's signature, contains a rather cryptic phrase. It states that the convention at the Rome Conference was signed by almost all the countries present. We believe that Canada signed on the basis referred to by the honourable senator, under reserve of the constitutional points. This is clarified by article 24 of the Convention. Canada's position is quite clear; it either signed the convention in Rome, in which event it has the right to ratify it if it so desires...

**The Chairman:** It has the right to ratify or not to ratify.

**Mr. Sterling:** That is correct. Under article 24 of the Convention a nonsignatory can ratify, provided it is a member of one of the universal copyright Conventions or the Berne Convention. Canada, of course, is a member of both, so Canada's position is the option, as you say, Mr. Chairman.

With respect to the very interesting suggestion of the honourable senator with respect to the necessity of seeing what happens when a sound recording is made, I respectfully suggest it is one of the magic things of our time when the sound comes out of instruments and a few minutes later from a material object. It is always a wonder to me.

I would conclude by saying that this wonder can be put to the test very easily. Consider a performance by the finest symphony orchestra in your wonderful National Arts Centre, which I have visited, in which a microphone is set up and the finest performers play a recording. It will sound awful because the art and technique necessary to translate it on to the tape, for translation on to the record which will recreate it, takes, with respect, Mr. Chairman, some doing and some skill.

**Senator Connolly (Ottawa West):** Would you say the same thing with respect to our speeches in the Senate?

**Mr. Sterling:** They have a copyright.

**Senator Connolly (Ottawa West):** I was thinking of the quality of reproduction.

**The Chairman:** There is no tariff, though, applicable to the speeches in the Senate.

**Senator Connolly (Ottawa West):** One point, which was pushed very strongly, arose at one of our earlier sittings. It is that the record makers, and this was stated by one of them, really make their profit by the sale of records, not on the performance of the records over the radio or television station, as the case may be. They offer their records to these outlets free; at times they actually pay them to use them. The purpose is advertisement, so that the sale of individual records will increase. In fact, I think it is fair to say that this is the great value to the record maker, not the right to a royalty which he might receive, but the sale of his records to the general public. Would you comment on that, Mr. Stewart?

**Mr. Stewart:** Again, I am very grateful to the senator, because I did not deal with this problem; I tried to deal with what you, Mr. Chairman, termed the mainstream of the argument: Should there or should there not be a right?

**Senator Connolly (Ottawa West):** You are quite right in saying that, because that is the basic proposition. However, this other question was raised and pushed very strongly.

**Mr. Stewart:** I would very much like to deal with it, Mr. Chairman, if I may. It was my fault for not doing so before. It is not the first time, I assure you, Mr. Chairman, that I have heard this argument. It is advanced in every country where legislation is under consideration. It simply says, in a nutshell: "We are advertising your records by playing them on the air. We are doing you a good turn; one good turn deserves another. Therefore, you should not charge for them". It is an argument of quantity and I would not be surprised to hear, if ever we do hear the reasoning of the Copyright Appeal Board, that that argument had something to do with the reduction of the tariff.

What is the argument worth? First of all, let me say that everywhere in the world record producers have acknowledged that in certain circumstances broadcasting is beneficial and does help sales. No one has ever denied that. However, two of the witnesses who appeared before your committee are quoted in the transcript as stating that if there were not broadcasting of records, the record producers would go bankrupt. In other words, they could not sell their records if there were no broadcasting. I do not think that is right; in fact, I am sure it is not. The record industry as a whole—this is speculative, and I will tell you in a moment what little proof there is of it—thinks that if all broadcasting of records ceased tomorrow, it would sell as many records, if not more.

**Senator Connolly (Ottawa West):** Really?

**Mr. Stewart:** Yes, the industry does.

**Senator Connolly (Ottawa West):** I find that difficult to understand.

**Mr. Stewart:** May I illustrate my meaning, because I see that you are not with me? I was speaking of the industry as a whole; in fact, there is of course no such thing. It is a highly competitive industry, probably one of the most competitive. No single record producer would tell you that he could compete if his competitor's records were broadcast and his not. That is the trick. If the industry as a whole were not broadcast, they think that not only would they sell as many but then might sell more. I will tell you why.

I am now completely leaving the field of classical music, because it does not apply there. It applies to pop which, after all, accounts for the bulk of sales. A pop record has a very short life. It is thought that broadcasting has a great deal to do with this. The opinion is logical, because if the latest hit is broadcast on the radio twenty times a day, those listening may not be so willing to buy a copy. Furthermore, I do not know whether your

children are the same as mine, but teen-agers have little machines which copy the record from the radio and then plays back something which is not quite as good as the record but is something, and which may be used. The argument that in that case the industry would go bankrupt is not true. An individual might encounter great difficulty if his competitors were constantly broadcast and he were not.

The little proof that there is has emerged in one or two countries where broadcasting of records was, for a variety of reasons, drastically reduced. Five or six years ago in Germany the record content of musical programs was reduced to one-tenth. This continued for three and a half months, during which time record sales increased. It is not conclusive proof, of course, but there is some evidence that there is a saturation point.

I think it was one of the artists who made this statement before you, who said that he—or I think it was a she—feels that the artist's working life or the life of her performance is shortened by broadcasting.

**The Chairman:** I think it is shortened by over-exposure.

**Mr. Stewart:** What I say is that when you have this argument before you, you have to weigh two things: the admitted fact that the record producer as an individual, as one producer, wants his records broadcast—evidence, he sends them, as you say, the records he wants them to play; but against that you have to weigh the fact that most broadcasting stations—and I note there are a few in Canada that might be an exception, but the bulk of them just could not survive one day without records. They just could not master the live music content. Why not? This is just not in Canada, because you have a dearth of talent. This is so everywhere. Why is this so? Because the live performance in the studio is far too costly, it is just economically not possible, whereas record playing is cheap.

**Senator Connolly (Ottawa West):** You can run a program all day and all night on records, but you cannot expect an artist to be there all the time.

**The Chairman:** With all due respect to the point you are making, Mr. Stewart, the real issue is not whether the record companies or the broadcasting companies would survive if the records were not played the way they are, or whether record producers would make or lose money, or whether broadcasting companies, if they did not buy records, would survive. I do not think that is

the main issue, although I did get a statement from the Standard Radio people, I think, when they were appearing here with CAB, that they are, in one of their companies, making records. I asked them why they were interested in this bill. Well, they could not make enough records. Although they did not develop it, I take it that regarding the records they do make, they have some kind of arrangement where by they hand out to other broadcasting stations. I would be very interested in knowing—and I hope we will find out before we are finished—what is the basis on which other broadcasting companies pay one broadcasting company that is in the business of producing records as well. I would suspect that is not entirely gratuitous.

**Mr. Stewart:** Mr. Chairman, your suspicion is well founded, but I would like a Canadian to deal with it. I think I know the answer, and it is what you suggest.

**The Chairman:** Are there any other questions?

Thank you very much, Mr. Stewart and Mr. Sterling. This has been very informative.

Today we had the agenda organized so that SRL would appear. I have read their brief, it is quite lengthy, and we would not really do more than get going between now and the time we have to adjourn. While I tried to get permission from the Government Leader to sit this afternoon while the Senate is sitting, he did not see fit to agree to introduce that motion.

Therefore, next Wednesday we have Mr. Estey appearing as counsel for the Musical Protective Society and for the Canadian Cable Television Association. Perhaps this would be the time, since SRL is really in the position of being the respondent, when they should have an opportunity to defend their position, after everything has been said on the other side.

I have consulted Mr. Fortier, and he said that he will not complain if we do not hear him today. So, having cleared that, I think this is the way we should deal with it. I was going to suggest too that perhaps the meeting next Wednesday should start at 10 o'clock because the Chairman is obliged to attend quite an event the day before that is entirely personal.

**Senator Connolly (Ottawa West):** Many happy returns!

**Senator Haig:** We will agree.

**The Chairman:** Thank you very much.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 28

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WEDNESDAY, JUNE 2, 1971

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Fourth Proceedings on Bill S-9,  
intituled:

“An Act to amend the Copyright Act”

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(Witnesses:—See Minutes of Proceedings)

A diamond-shaped library stamp from the University of Toronto, dated JUN 10 1971, is located in the bottom right corner of the page.



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Haig
Beaubien	Hayden
Benidickson	Hays
Blois	Isnor
Burchill	Kinley
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Sullivan
Croll	Walker
Desruisseaux	Welch
Everett	White
Gélinas	Willis—(28)
Giguère	
Grosart	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate,  
March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the Motion of the Honourable Senator Urquhart, seconded by the Honourable Senator Cook, for the second reading of the Bill S-9, intituled: "An Act to amend the Copyright Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, June 2, 1971.

(31)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10.00 a.m. to *further* consider the following Bill:

Bill S-9, "An Act to amend the Copyright Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Blois, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Grosart, Haig, Isnor, Molson, Welch and White. (13)

*Present but not of the Committee:* The Honourable Senators Lafond, McGrand and Methot. (3)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

*WITNESSES:*

*(Musical Protective Society:*

*Canadian Cable Television Association:*

Mr. W. Z. Estey, Q.C., Counsel;

Mr. C. David Macdonald, Counsel;

Mr. Stanley G. Simpson, Managing Secretary (M.P.S.);

Mr. Robert Short, President (C.C.T.A.);

Mr. J. Lyman Potts, President, Standard Broadcast Productions Ltd.

*Radio-Québec:*

Mr. Yves Labonté, President.

At 12.25 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, June 2, 1971.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-9, to amend the Copyright Act, met this day at 10 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order.

We continue our consideration of Bill S-9. Our first appearance this morning is the Musical Protective Society and the Canadian Cable Television Association. Mr. W.Z. Estey, Q.C., is appearing as counsel, and Mr. C. David Macdonald is with him. I take it that you, Mr. Estey, will introduce the other panel members. You may start as soon as you wish, and I take it that you are going to make an opening statement rather than read the brief. You can assume we have read the brief, but you can be copious in your references or anything else; you are the general.

**Mr. W.Z. Estey, Q.C., Counsel, Musical Protective Society; Canadian Cable Television Association:** Thank you very much, Mr. Chairman.

Mr. Chairman and honourable members of the Senate committee, I have with me this morning Mr. Robert C. Short, President of the Canadian Cable Television Association, the second from the right; Mr. Stanley G. Simpson, Executive Director and Secretary of the Musical Protective Society of Canada; and Mr. J. Lyman Potts, President of Standard Broadcast Productions Limited—all of whom appear with me on behalf of the Canadian Cable Television Association and the Musical Protective Society of Canada.

I should now say a word, Mr. Chairman, as to what those two organizations are and as to what they comprise. The Canadian Cable Television Association may be known to some of you as the National Community Antenna Television Association. It changed to CCTA, and it represents almost all the cable and televisual systems operating today in Canada and serving many hundreds of thousands of Canadian homes. Of course, the number of people served by and dependent upon cable television increases virtually hourly.

The Musical Protective Society of Canada is a federal incorporation without share capital. It was incorporated in 1927. It embraces all of the music-using components of the Canadian scene, including the Canadian Fair Association, the Ontario and National Arenas Association, the so-called wire music or background music services such as Muzak, the Canadian Association of Broadcasters, the CTV television network, the motel associations, the two large theatre chains, the four independent theatre associations across Canada, and smaller but no less important users of music throughout Canada.

MPS has appeared in all the significant copyright hearings held in this country since 1927, including the 1935 royal commission presided over by His Honour Judge Parker, which resulted in the

establishment of the Copyright Appeal Board and the passage of those parts of the act with which we are primarily concerned today.

MPS also participated in the Massey Commission hearings when they went into the use of music in Canada by our many state- and private-owned institutions; and also in the Ilsley Commission proceedings starting in 1954, and throughout that period until the report came down in 1957.

The interest of the people we are speaking for this morning, honourable senators, is vital in the application of the Copyright Act in this country, for this reason: the broadcasting components of the people we represent comprise a rather brittle industry in our spectrum of commercial activity in Canada. That goes without debate by reason of the fact that the Government of this country is now, and has since 1932, been spending a very large proportion of the Gross National Product, collected by the Government, in the maintenance of a national broadcasting service. In this year, 1971, this industry is subsidized by the federal Government in the amount of one-quarter of a billion dollars. Therefore, we submit to this honourable committee that any measure which is introduced in the legislatures of Canada which is going to be a burden on the economic well-being and health of the broadcasting industry, should be very carefully scrutinized.

The Canadian Broadcasting Corporation, of course, can speak for itself, and has spoken; and we support everything they have said with reference to this bill.

The private broadcasting organization has spoken. Again, we support them in that regard, and will add something to that as we proceed this morning.

As the Chairman has said, I do not propose to follow the brief. I am appreciative of the fact that this committee does its homework and has read the brief.

Turning to cable television—and then I am going to deal with theatres and then SRL—cable television is not at the moment in the line of fire. SRL did file a tariff which was published in the *Canada Gazette*. The Cable Association did respond to that by filing objections in the Copyright Appeal Board, and then a letter was received from SRL withdrawing, for the moment, their demand for the payment of licence fees by the Cable Television Association membership.

We do not believe in living on the edge of a Munich-like situation. If this organization, which I will come to in a moment, has aimed the gun at us only briefly, we are realists enough to assume the gun will again be pointed at us. Therefore, let me tell you in a brief word or two what cable television is and why we bitterly oppose the introduction of any burdensome right for the use of phonograph recordings.

First of all, cable antenna services are simply an improvement on the rooftop or rabbit ears antenna attached to your television sets.

The cable service is now not a luxury but a necessity in many areas, for a multitude of reasons, the two most important of which are: firstly, natural topographic interferences such as electronic shadows cast by hills, mountains and created in valleys; and secondly, man-made shadows created by highrise buildings and by what the engineers refer to as radio noise.

To overcome those two difficulties and to give high-quality television reception in the home, over one million Canadian homes are dependent on cable television for that signal. Cable television is not a method of originating broadcasting and competing with the broadcast industry: it is first and foremost an antenna service for the improvement of the operation of television and FM sets, particularly in the age of colour TV with the high demand for accurate reproduction in the colour set.

The Canadian Radio Television Commission, when it assumed jurisdiction over cable television on April 1, 1968, took a somewhat different stance, at least in the opening phase of its history, than did the prior administration under the Department of Transport; and CRTC have said, for reasons I need not burden this committee with, that on occasion and in some areas and for some purposes, cable television should serve the neighbourhood by originating a specific type of television service—I do not use the word “program”—and that that should be relayed to the areas served by this antenna system. That kind of local production is not the Ed Sullivan type of performance, but is the weather eye, time, local news, local organizations, local music groups and that sort of thing, where on an unoccupied channel of the receiver you can tune in and receive this local service.

It varies widely in parts of Canada as to who does this. In the larger cities, where the licences for the antenna systems divide the city geographically, you get area services. For example, in the City of Montreal you have National Cablevision serving one area of the city, giving one type of program, you have Cable TV Limited serving another part of the city giving its own type of domestic programming, and so on across the country.

In the City of Winnipeg it is divided down the Red River and the programming on one side of the river by Metro Videon carries a local program designed to meet the communication and information needs of the people on that side of the river, and there is Selkirk Broadcasting and a local system on the other side of the river.

In conjunction with those services, the systems do on occasion and now frequently provide either a background music service or use recordings in connection with some programming. It varies. It will vary on one system from week to week, and you may go a month or two with no recordings. It is not of primary importance, but it would be a loss of service to the community if those systems were unable to use those recordings except by payment of a fee. We know where that fee would come from. It would come from the people who pay to get this antenna signal connected to their antenna and their FM sets.

**The Chairman:** There is nothing new in people paying.

**Mr. Estey:** No, and it will not end with this committee either. I suppose there is nothing new in people dying, but we should try to avoid it.

**The Chairman:** You are talking about this cable system. Did I understand you to say they originate some programs?

**Mr. Estey:** Yes, sir.

**The Chairman:** How would that interfere with my reception of a program that I wanted to get on a particular station?

**Mr. Estey:** I should explain that. Let us take Ottawa Cablevision or Skyline Cablevision, the two systems here. One is for the east and the other is for the west, and the Laurentians and Hull. Those systems carry a variety of signals. For example, Skyline carries the two CBC transmitters CBO on channel 4 and CBOF-TV on channel 8. They carry CJOH-TV, the CTV affiliate on channel 13, and CFTM in Montreal, the independent. They transferred that to another channel, I think.

**Senator Connolly (Ottawa West):** Where do you live?

**Mr. Estey:** In Toronto.

**Senator Connolly (Ottawa-West):** How do you know about all this in Ottawa?

**Mr. Estey:** I have the fortune or misfortune to come down here once a week; and I incorporated the Skyline Cablevision system, and unhappily sold the idea to Ottawa Cablevision.

When they started out they also carried Plattsburg, New York, and Burlington, Vermont, two Syracuse stations, and WWNH, which is a CBS affiliate on channel 7.

Due to electronic difficulties, distance, phase and local noise, some of those US signals have been dropped and they do not have that full complement. On each system they have one dark, vacant channel, and it is on that channel that they carry the local signal. The way it works is very simple. At the antenna head where they receive the signals, at the bottom of the mast, there is a little house that amplifies the signal and puts it on the coaxial cable, that eventually splits into the distribution cables and connects to the house. At that little house they also feed in a synthesized television program which will come out on that vacant channel and look as though it came down the antenna as an antenna signal.

The antenna service has a studio, which has in it the equipment of a television station. It has a camera, a microphone, an announcer, a producer and a recording turntable, and they build up a program of local interest. They do not set out to compete with “This Week Has Seven Days” or some Hollywood spectacular, but they carry the local church groups, council meetings, where the municipality permits it, travelogues from people in the community who have been away, and travel promotions of the community, as they do in the city of Montreal; also local sporting events. There is a system serving a piece of southern Ontario that carries organized baseball in summer and junior hockey in winter, and they do it just like a television station.

That is an alternative to the three major US networks, the three major Canadian networks, and the educational TV stations which are carried in the southern parts of Canada, which does not quite include Ottawa. There is no US educational TV here.

**Senator Molson:** What are the three Canadian networks?

**Mr. Estey:** CBC English, CBC French and CTV.

**Senator Molson:** What about Canadian French?

**Mr. Estey:** That is not a network. It is CFT in Montreal which is a single station. Now they are starting to formulate a combination of CFT in Montreal, CFT in Quebec City, one in Jonquiere and one



other. They are being tied into what will be the equivalent in the French language areas of the CTV English language service.

There is a fourth network in Canada that is claimed to be operated by the Government of Ontario, although that is a bad word in the politics of this country at the moment. They operate channel 10. The station is owned physically by the Government of Canada and operated by the Province of Ontario on channel 19. That is becoming the flag station of an educational group. They shy away from the word "network". Cable television carries that in Toronto on channel 13. They do that by taking off the redundant CTV coverage on channel 13. They also carry other educational signals, but at the moment they are all coming from the United States.

That is cable TV. All of us appearing today take the view that this alleged rate does not exist in law; that if it does it should not; and that it does not exist in the country which substantially sends into our country this recorded music.

Let me turn from the passive side of broadcasting, which is cable TV, to the active side of broadcasting, which is the transmission side. It divides itself into three categories. There is radio AM, which we are all accustomed to, there is radio FM, which is short-range and high quality broadcasting on the high frequency spectrum, and there is television broadcasting. I have named them in the order in which they were discussed in Ontario's recent famous Copyright Appeal Board hearing. AM radio was the target of most of the evidence as to what they did with recordings—not so much with FM radio and in television hardly at all.

I have already hinted at the view expressed by saying that this industry in Canada is one that has been the subject of more royal commissions than any other single phase of our Canadian activity, including the railways. The broadcasters are now ahead on royal commissions by one over the railways and they are much newer. Ever since the Aird Commission of 1929, broadcasting in Canada has been found to be, first, a national necessity if we are going to keep the country together and develop its own cultural community, and secondly, that broadcasting, because of our geography, has to be assisted. It would not naturally survive against the vast American area of broadcasting.

When you consider broadcasting in this country there are some factors that are essentially carried foremost in one's mind. The first is that in AM broadcasting we are up against 3,700 United States stations. They have clear channels on three times as many frequencies as we have in Canada. It means that their 50-kilowatt transmitters come rolling in here by day and by night. I say that neither with alarm nor fear, nor dislike. It is a fact of life. 70 per cent of our population can receive United States AM radio in the day time and 100 per cent at night.

**Senator Isnor:** Does that apply to all parts of Canada?

**Mr. Estey:** Yes, clear up to Inuvik. It is much easier to get American signals than Canadian in the day time because of the nature of the radio navigational waves. For example, in the city of Saskatoon you can hear WGN Chicago much easier at night than you can hear Regina 150 miles away. In the city of Toronto we can hear WCBS New York in the winter time throughout the day. You have high level broadcasting which our people have come to like for one purpose.

In FM broadcasting the penetration is very great, but not as great because of the nature of the wave jump. Edmonton, for example, one of Canada's leading cities, cannot get United States FM. Calgary cannot get American FM, but in Winnipeg you can and certainly all across southern Quebec, southern Ontario, the maritimes, and southern British Columbia, where most of the population of B.C. receive the high-power output of the American radio industry. There is an historical reason for that. One reason, unfortunately, is that—for reasons that I need not go into here—for a long time government policy was to hold the power of our broadcasting stations down to the power they held in 1940. It was a so-called power freeze. The Americans have no such philosophy. They treat radio frequencies like mineral resources; they are no good unless you develop them. So everybody gets the maximum power in the United States. You have Buffalo, for example, compared to Toronto. I was going to say that Buffalo is a second-rate city, which might start up the war of 1812 again. It is certainly a long way down from the metropolitan level of Toronto, but it has eleven FM stations. Eleven! They all roll into Toronto. We have in Toronto three or four commercial stations, one Province-of-Ontario-operated station and a CBC station on the Beethoven-kind of wave length, battling against 11 good United States FM stations.

Now we come to television. Over half the country is within roof-top range of American television broadcasting stations. All that means is that you can put up an antenna on your roof-top without needing any cable system. Rabbit ears would not get a U.S. station in many areas, but with normal roof-top antenna which you see in southern Canada, and really south of this city, you can bring in, without reference to sunlight or darkness, from up to 120 direct miles, a good American station signal.

I do not say this with any animosity or ulterior motive at all, but the United States government and citizenry are dedicated to the view that if you are going to use a frequency then really use it. So they put up 1,000-foot and 2,000-foot masts—heights which are unheard of in Canada. We think the airplanes may hit them so we do not allow them, but height is the thing in propagation for television. They also go to the maximum power—100 kilowatts below channel 6 and 300 kilowatts below channel 8—and they almost always operate at that peak. So they roll into our big population centres.

**Senator Connolly (Ottawa West):** You are not suggesting, Mr. Estey, that these are being especially beamed towards Canada? Perhaps in some cases they are, because of the market, but it just happens that they do, I take it, use these frequencies and they can, in fact, reach Canadians. But surely their prime target is the American market.

**Mr. Estey:** That is correct, Senator Connolly, with four major exceptions. The four exceptions, from west to east, are KVLS, Bellingham, Washington, built for and advertising in the Vancouver market. In fact, it does not even bother to say it has a Vancouver telephone number when they announce it or show it on the screen. Then there is the Pembina-Minnesota-Manitoba station on channel 13, a big 300-kilowatt transmitter, whose masts and guywires are 50 feet from the Canadian boundary. Of course, they serve only gophers in that immediate area; there is nothing there. I hate to say that about the Prairies, but there is nothing around Pembina. They go into Winnipeg and they have a sales office in Winnipeg; that is the Winnipeg station. Then there is the Burlington, Vermont, area,



carrying Montreal advertising in a big way. It does not roll in with the impact that the Winnipeg one does, because of the prairie characteristics for disseminating those signals, but it is big in Montreal. Then there is WWNY in Watertown, New York. That cannot be justified on its level of operation by what is in Watertown. They reach Kingston and up into Ottawa and, of course, on occasion you will hear Canada's national anthem when they sign off. Quite frequently they play the Canadian national anthem at the end of the day.

**Senator Molson:** That is very courteous of them.

**Mr. Estey:** You can imagine what would happen if we reciprocated. There would be pickets.

**The Chairman:** I do not like to interrupt, Mr. Estey, but I was just wondering, when we are hearing about all these intrusions, deliberate or otherwise, into our air space by American stations, how does that touch on this bill?

**Mr. Estey:** I was just going to come to that when I answer Senator Connolly's (Ottawa West) last question, sir. In our respectful submission, it is a vital connection and it is the second key connection. The last area which is of some importance is that the three major Buffalo stations are all maximum-power, maximum-height stations, and at least one of them has located its antenna up to the edge of what they call the Niagara frontier, with a view to getting to the metropolitan Toronto market, and they advertise in their station rate-card, which is what they send out to the advertisers, that they reach 824,000 Canadian homes. That is a lot of homes. That exceeds what any Canadian television station reaches, including channel 9. That is WGR-TV, an NBC affiliate in Buffalo. It exceeds the reach because it is on the highest propagation channel there is in the television dial. As the numbers go up, the reach goes down. They are on a very strong base.

Now, Mr. Chairman, the point of my submission with respect to broadcasting is simply that on those Burlington, Bellingham and Buffalo turntables are spun the records broadcast into the Canadian communities. Those records, of course, come from two major sources. They come from their own talent sources, RCA, Columbia, Warner Brothers, MCA, Capital; and they come from Deutsche Gramofon by way of Polydor, or from Decca, U.K.—the London record group. Those records are turning on those turntables, the signals are broadcast into Canada, and the big radio stations of the United States do, indeed, make music hits in Canada. We have many examples where those U.S. radio stations' disc jockeys are talking about Canada and requests from Canada. They are big in southern Ontario through WKVW. With 50,000 kilowatts in Buffalo they are broadcasting to the youth of Ontario with these records. I do not want to take time to point out that Detroit has a dozen AM transmitters within four or five miles of southern Ontario, but at the same time that they are competing for the audience you have the Canadian stations in Windsor, Montreal, Vancouver and Winnipeg playing exactly the same records and competing for that audience. Oddly enough, on those Canadian turntables are spinning the Columbia records, the RCA records, the MCA records, the Decca-U.K. records and the Polydor Deutsche Gramofon records. They are precisely the same records. I will come back to the superficial distinction of "Made in Canada," but let me say that they are precisely the same records.

It is an anomaly beyond human understanding that a little country like Canada, with one-tenth of the population and

one-twentieth the entertainment budget of the U.S., should say to the Montreal radio station, "You pay that foreign recording company 50 cents to play that record, but the American station, playing the same record, does not have to pay the American recording company." That is an anomaly which is really difficult to understand in a country of this size.

If there were something immoral about it then that would be another thing; that is if Canada could not afford nationally to be a big trading nation, as we are, and at the same time defeat other countries' legitimate rights. But that is not what is happening. In the United States, which is clearly the greatest entertainment market known on the face of the earth, there is no such right in a gramophone record. It has been well litigated. Mr. Paul Whiteman went all through the courts against RCA trying to get such a right in the recordings, but the United States courts have always said that there is no such right, and the reason they give for that is that they go back into English history where copyright originates, back to Edward the Confessor's day, and tracing it down it is apparent that what you are doing in copyright is protecting an intellectual function. You are not protecting a tangible commodity. You are protecting an intellectual property or works, and it has to be a musical work, an artistic work or a dramatic work.

When you make that work into a piece of sheet music, for example, you have not created anything intellectual at all; you have just created a device by which the intellectual process can be repeated for some one else's benefit. When you make a trombone with the slide device all you have done is created a mechanical device which will reproduce the intellectual property for the experience of the listener. Or you do it by a recording where you have a pianist sit down in front of a microphone and the vibrations are translated onto the surface of the disc or the record. But that can be used like the trombone and like the sheet music and like the pianola to reproduce by acoustic representation that intellectual work.

**Senator Connolly (Ottawa West):** Do you restrict the intellectual work to the work of the originator—for example, the author of the piece of music?

**Mr. Estey:** Yes.

**Senator Connolly (Ottawa West):** Is that the rationale for the American decision?

**Mr. Estey:** The same rationale.

**Senator Connolly (Ottawa West):** In the Whiteman case and in others, did they argue in the courts that their contribution to that original intellectual work was another intellectual effort on their part, namely in the way they interpreted the work and the kind of results they got from it?

**Mr. Estey:** Yes, that argument has been made and made repeatedly, and some day that argument may find itself in a statute in the United States. The performer by the way he plays it or by the way he performs it undoubtedly adds something, because I am sure that if you or I were to render a piece of music and then Mr. Whiteman were to render it, there would be a noticeable difference although the work would be the same. The Americans have argued that and have done so very aggressively. But before Paul Whiteman's time, another great orchestral leader, Fred Waring, launched litigation to stop somebody from playing his Pennsylvania records.

He made that argument, but he was faced with the fact that that argument is unknown under copyright law. That is not to say that is not a good law, but it is unknown to that philosophy.

**The Chairman:** You mean copyright generally or in the United States?

**Mr. Estey:** Generally. The Waring and Whiteman discussions are not in the United States statutes because the parties admitted at the outset that the Copyright Act could not help them, but they argued the English common law of copyright. Now the United States statute still does not help the recording companies and the RCA company have no rights in the United States.

**The Chairman:** I am just wondering about the relevance of your reference to common law in this regard because in England now they do have a statute. So if another country is looking for some persuasion or leadership, they might make use of common law decisions in another country, but actually those common law decisions do not reflect the state of the law in England.

**Mr. Estey:** I suppose the last thing the Americans would do would be to follow an English statute, but they were arguing the philosophy was against that recognition, so it would have to be pure statute if you wanted to create a performer's right.

I think this creates a very important right. The performer here is sort of riding jockey-like on the back of SRL to get something out of the broadcasting industry. Mr. Wood who appeared before you was first to say that. They would like to get something from people who play their artists' records, and it is a convenience to them to get the money now from SRL if that is the best they can do, but really what we are deciding and talking about in this legislative arena is whether section 4.(3) of our act should protect not a performer's right, but a recording company's right, not just to prevent piracy of the record but to prevent the use of that record in broadcasting. For example, I have a Polydor record, a 45 rpm record which is the kind the radio stations play, and the evidence is that this is the kind of thing that the radio stations sell in a big way to the youth of this country by the playing of that record on the air. Now this record represents and focuses the anomaly of the situation with which you gentlemen are faced. This record is thrust into the hands of the broadcaster by the recording company with the request to play it, so much so that CFRB, which is a large broadcasting station in Toronto with a vast audience, has a chair reserved in their music director's office for the representative of Mr. Wilmot's company, Columbia Records (Canada) Limited, because he is there almost every day to push these records. Yet on the face of this Polydor record it says "Unauthorized copying, public performance, broadcasting of this record are prohibited."

Copying the record is treated in a strange way in various countries. There is a great conference going on now in Europe—and it will resume in November—at which Canada is represented, trying to ascertain the extent to which pure copying is going on and how it should be stopped. Piracy of the record, is, of course, prohibited by our statute. You cannot copy this record. Now ironically enough in the United States there is no prohibition against straight copying of a record and "piracy" is not the word to use there because it is not unlawful. Piracy is a big industry in the United States. Some states have acted to stop it but we do not have it here. Then broadcasting is prohibited, but broadcasting is not prohibited by Polydor; in fact they go a long way out of their way to make sure it is broadcast. So that is an anomalous duality of position which has been assumed by the recording industry.

**Senator Connolly (Ottawa West):** Where is that company located?

**Mr. Estey:** Polydor Limited is located in Hamburg, Germany, and I think it is a truly international company because it is in Holland to start with, I think. It is partly owned by Philips and partly by Deutsche Gramofon of Hamburg, and I think Deutsche Gramofon is owned by Siemens A.G., the large German company.

**Senator Connolly (Ottawa West):** Would you assume that that prohibition is put on the record to suit the legal situation in various countries in the world? I assume from what you say that they operate in various countries.

**Mr. Estey:** It might be possible that that is the case, senator, except that this one says "Made in Canada," and that printing is put on in Canada.

Let me now deal with the point as to how the industry operates here and as to what SRL is.

**Senator Cook:** Do I gather that if there is any extension of the copyright at all, as you see it, you would rather an extension in favour of the artist rather than the extension in favour of the manufacturer of the record?

**Mr. Estey:** You are putting me to an evil choice as I speak for people who have a thin time of it in using these records. We would not believe that either one should have a right to any payment for the use of this record. If I had to put them in scale of order, I would give it to the performer because he brings something to the record. The recording company brings nothing to it except tangible hardware just as though they manufactured the keys on an organ.

**Senator Grosart:** I take it, Mr. Estey, you are making a case for limitation of the performing right to the original composer and author?

**Mr. Estey:** Yes, sir.

**Senator Grosart:** Would it be correct to suggest that perhaps you are thinking of the possible effects of the proliferation of the performing right to the record manufacturer, the performer, the producer, the artistic director, the sound man—all of whom can contribute greatly to the success or failure?

I am suggesting that in speaking of the dangers of that proliferation you are looking for a point of cut-off—the point at which the performing right should subsist in only one legal person, that is, the original composer. Is what is in your mind is that all the rest are users of the other man's property?

**Mr. Estey:** That is right, sir.

**Senator Grosart:** That is the cut-off point. Everybody else is taking somebody else's property, voluntarily obtaining permission, which you must, to license the use of somebody else's property, and knowing that under present circumstances, and as they have existed up until this point and still exist, to make money using that man's property. Is that it?

**Mr. Estey:** That is precisely the position, and I would not like to change one word of it.

You can document that as you, sir, may well know. First of all, the Gregory Committee in the United Kingdom said that this proliferation of right gives rise to great difficulties. The Ilsley Commission in Canada, the late Chief Justice Ilsley said, "We do not



want to import that into Canada, but if it is in the act it should be out." You find many examples. For example, it has been discussed in other forums what would happen at a football game of the Ottawa Rough Riders if we had this proliferation of rights. Could the public ever hear or see that game by electronic means if we proliferate the rights?

First of all, in order to get the thing on the air, if the performers had a right, because of the dramatic performance alleged by the football players, I suppose, you get the fellow who owns the team to give the right to put that representation on the air, video.

If you play any kind of music at all, live or recorded, you get the rights licensed by the owner of the works. If you use recorded music you get another licence from the recording company. Then, if you wish to use it in a bar-room or any place where there is public access to the set, you have to get a licence from the broadcasting station, and maybe the station would have to get a special licence from the network, as sometimes has been argued in the United States. So you would have five rights before the public could ever enjoy an Ottawa Roughrider football game.

**Senator Grosart:** And the quarterback might assert a performing right in his signals, which are an essential contribution to the success of broadcasts.

**The Chairman:** That may be creative too.

**Senator Grosart:** Yes.

**Mr. Estey:** Yes. As Joe Capp said, that is worth half a million dollars.

**Senator Grosart:** And the fullback might claim that he had an educated toe and, therefore, it was an intellectual contribution.

**Senator Carter:** Why not take hockey? Then you have all kinds of performers.

**The Chairman:** Mr. Estey, could I summarize? Is the point—it seems to me it is—that you are putting forward at this moment, that to maintain this performing right in records would add a cost to the users who make use of the records, and they have a thin operation? I think that was the expression you used.

**Mr. Estey:** That is right, sir.

**The Chairman:** So, is this the measure that we should look at, the dollars?

**Mr. Estey:** I think that national self-interest is always a strong emotion, and I think that it is an enlightened self-interest in Canada because the community needs the broadcast industry. I do not need to argue that; the Government of Canada has argued that for 40 years for me. Sometimes I have argued against it. Also we should not do anything which is intellectually dishonest which impedes the growth of that industry and allows it to serve the community of this country.

**The Chairman:** Which industry are you talking about?

**Mr. Estey:** Broadcasting. And, of course, it employs many Canadians. It is the open door to the construction of a Canadian cultural community, according to the CRTC, the Massey Commission, the Fowler Commission, and any number of others.

**Mr. Chairman,** I know the committee has heard a great deal of this before, but I would like to deal with it briefly.

**The Chairman:** Just before you jump to that, you are talking about national self-interest. I just wonder if you could develop that. I do not quite understand it; I do not follow you.

**Mr. Estey:** It has been the history of our broadcasting industry, and now our press industry, as the Davey committee has indicated, that we exist in face of enormous intellectual pressure from the United States. It is a good pressure, in that it excites our demand for progress and brings us know-how which otherwise we would have laboriously to put together, but it has its disadvantage—or its price, which is perhaps a better way to put it.

One of the prices is that to find spectrum space for our industry we have to have an economic base for that industry, to buy the transmitters and to buy the talent, and to combine the two and put signals on the air and into the living rooms of this country.

We cannot operate a network economically. The Canadian Broadcasting Corporation loses \$45 million a year running its radio operation because it runs a network. We cannot economically run a television network in Canada. The microwave circuit is 4,300 miles long. The United States network is 2,400 miles long. We have 21½ million people supporting it. They have 215 million people supporting it. They have a vast advertising industry. We are a very small advertising industry.

We have to maintain some kind of east-west communications in this country; that is Government policy. Political parties to the contrary, it is always Government policy.

Here we are asking ourselves to impose upon this great and vital industry a tariff which some day will rise, as all tariffs do, to a tariff of considerable importance. I am asking you what are the value priorities? Is there something here which we are robbing from foreign owners for which we should compensate them; or are we inflicting on one of our main industries a burden which the competing United States industries do not have? I say it is not in our national interest to do it.

I can go on at great length on variations of that theme, but that is the bedrock proposition, and it is as true on Vancouver Island as it is in the City of Montreal or in Bonavista-Twillingate.

**Senator Cook:** They are two different towns.

**Mr. Estey:** I put them together.

**The Chairman:** Senator Cook, I do not know how you came to be named. Is Twillingate your territory?

**Mr. Estey:** I thought that if I put them together they would equal Montreal, but I guess that is not right.

**Senator Connolly (Ottawa West):** Perhaps if you went to Bonavista-Twillingate, you would see how important it was.

**Senator Flynn:** It was in the days of Mr. Pickersgill!

**Senator Cook:** Then we heard all about it.

**Mr. Estey:** The recording industry itself deserves close attention in these deliberations because it is our respectful view that this legislative body, before it considers its statute, should be very keenly and completely aware of the industry that is being affected.

The industry we are talking about is the recording industry of Canada. The evidence before the Copyright Appeal Board is that more than 90 per cent, and I think 95 per cent, of all records are



imported, one way or another, into Canada, and 5 per cent are produced, in the sense that the recording session is here, in Canada.

90 per cent of all records sold in the stores of this country are like this little fellow that I am holding up, the Polydor record. They are produced by eight main enterprises, which includes five from the United States, Polydor from Europe, London or Decca (UK) from England, Capitol which is EMI, split US and UK, Quality, which is MGM, Selkirk Broadcasting, and some others. I understand the casting vote for control is MGM Records.

Those companies produce very few original recordings in Canada. I say that as being neither good nor bad, but factual. They import into Canada a tape of which I have a copy here. It is a master tape or mother tape which is the result of a recording session with some organization, pianist, organist, Paul Whiteman, or somebody else, and this very valuable creation is then duplicated.

Let us take one made in West Germany. They make a basic tape which they put in their vault. They make copies or replicas of that tape of the kind I have here, and they send one to each of their affiliates around the world. It could come from RCA in the United States.

The Canadian company or subsidiary, under its licence agreement with the parent, brings this type across the boundary. It pays very little duty on it. Actually it is 20 per cent of \$15, which is \$3 to bring this in.

You do not need an orchestra in Canada once you have this in your possession, because this is an orchestra. They play this through their machinery and they produce a stamper, which is what I am holding up now. They lock this thing into a press, as though you had type in your press, and it jumps up and down and punches out these little records. They then stick on the label which indicates that it is made in Canada. The record is made in Canada, but the vital part, the performance right, is not made here. We do not use Canadian musicians or Canadian engineers. That is not made here at all.

In an emergency, where it was a big hit in the United States, they would bring in this little record. Then by a slightly different procedure they would make a master from that and stamp it out; but in the main it is through this tape.

Those records so made are distributed across Canada through wholesalers and other people, sometimes know as rack jobbers. They are like pocketbook distributors. They are the fellows who put these out on the shelves in the music stores. The evidence was that some of the rack jobbers are owned by the recording companies, and some of the retail outlets are also owned by the recording companies. That is a fact of life.

Those recording companies then banded together—they are all non-Canadian, except Quality, which is half Canadian—and they formed SRL. SRL is a private company owned by eight stockholders. They have no definitive arrangement as to what they do with the money they get, if any. They say they are going to give it to Canadian talent, musicians and so on. But I ask the committee to remember one very illuminating fact, which is that when the Canadian radio and television Commission held extensive hearings “on how” we get Canadians on to the air in Canada, how to build a recording industry, and how to nurture this entertainment group so that they are nationally capable and internationally known, and so on, no recording company came to those hearings. There was not any great gesture that “we are going to put this or that into it.”

There are some Canadian recordings made. I am not saying there is none, but these people did not do it. We have broadcasting stations making them. For eight years the Standard Broadcasting group have been making recordings in Canada. They spent over \$1 million on Canadian talent.

**Senator Connolly (Ottawa West):** Over what period?

**Mr. Estey:** Since 1963. They have a service which they first introduced for radio stations and they sell them to the public. That is a charitable operation. That loses money. The group, I understand, make records in the sense that they pay for recording sessions, they make the tape and the master, and they give it to CTL, Canadian Talent Library, the standard organization.

I understand the royalties would not fill the petty cash fund. It costs \$12,000 to make that LP and they would not get \$100 back. I am not damning the record companies for not doing this. I am pointing out that the economic facts of life in our country make it very difficult to nurture a Canadian original recording industry, and they make it very difficult for the broadcasting industry in Canada to do likewise. But they are required to do it by the Canadian Radio and Television Commission and they should be because they are part of the Canadian radio and television industry.

To say that SRL needs the money for this is to say that they need it more than broadcasters need it. Let us examine the next stage of SRL. What rights do they get in this process? Let us go back to the beginning. The first thing that happens is, they press this record from a tape they did not produce. So they have the profit from the sale of the record, whether they sell the LP for \$5, \$4, or \$6, or they sell the little 45 for \$1 or \$2. There is a profit in the operation. According to the 1970 statistics, Canada they sold 45 million records. So the industry is not bad, and Mr. Chislett of MCA told the Copyright Appeal Board that it is a \$100 million a year industry.

**Senator Connolly (Ottawa West):** In Canada?

**Mr. Estey:** In Canada. That is a pressing and distribution industry really. In addition to that profit—

**Senator Cook:** What do you mean exactly by profit?

**Mr. Estey:** Profit on that operation.

**Senator Cook:** Turnover.

**Mr. Estey:** But they do not do it at a loss. I am not saying profit. I am saying that Canada Statistics say 45 million records, and Mr. Chislett said it is a \$100 million business. It is a big business.

**Senator Flynn:** CBC is a big business, but it is losing money.

**Mr. Estey:** Well, let us not get into that.

**Senator Connolly (Ottawa West):** We can assume that this is a profit-making industry.

**The Chairman:** We can assume that it was intended to be. The \$100 million is the volume of business.

**Mr. Estey:** Gross volume. These recording companies, in addition to that stage of operations, are getting more and more into what is called the publishing business. You see on the face of these records the name of the publisher. The evidence before the board was that almost all of the recording companies have two publishing houses, one of which is a member of CAPAC, the Composers, Authors and

Publishers Association of Canada, or one is a member of BMI (Canada) Limited. That means that when they first make their contract with a composer he assigns his rights to them and they assign the performing rights to one of these societies. The record company will now get a royalty from the tariff approved by our Copyright Appeal Board for the use of that music on the air in Canada, whether it is by recording or sheet music or whether somebody whistles it. It does not matter. So you get that second return—the performing right of the work itself. That is significant.

**Senator Grosart:** Your brief seems to suggest that this is 50 percent of the original performing right now being collected on behalf of the original author and composer. That 50 per cent would go to the recording company which was the publisher of the composition involved.

**Mr. Estey:** That is the CAPAC maximum. CAPAC has a by-law which assures that its composer must get half of the performing right, and the record company gets half. I do not know if BMI has a by-law like that which would protect the composers.

**Senator Grosart:** Or protect the publishers.

**Mr. Estey:** The publisher would otherwise get it all.

**Senator Grosart:** Surely, the composer as a member of his own society.

**Mr. Estey:** I was thinking in terms of his assignment of his rights. If he assigned them all to the publisher, then the CAPAC by-law would cause the 50-50 split to occur. It could be by contract, of course.

**Senator Grosart:** Surely, his first assignment as a member of that society is his assignment of the performing right to his own society.

**Mr. Estey:** If he does it that way, then, of course, he is protected.

**Senator Grosart:** I am told that that is a condition of membership.

**Mr. Estey:** In any event, the recording company gets part, up to half, of the performing right with respect to that music, whether it is by the record company or not. That is its second return.

The recording company has a third source of return. Under section 19 of the Copyright Act anyone who wishes to make a record of a copyrighted work may do so by paying the publisher of that work or the owner of the work, whoever he is, two cents per side which is, in fact, two cents per selection. So the publisher, which is the recording company where it owns that right, gets that third return.

The fourth return would come under the recently-approved SRL tariff by the Copyright Appeal Board so that when a person buys a record, pays the \$5 for the record, that is just the beginning. Somebody then pays the performing right, the recording right, and then a performing right to SRL. What is really before this house, the Senate of Canada, is whether or not these record stamping companies are entitled, either intellectually or economically, to those additional augmented earnings over and above what they are getting from their conduct of their normal business, which they have done for years and which they do in the United States without any such tariff. If the answer to that is in the affirmative, is it still in the interests of this country, knowing that the impact is going to fall

substantially upon the broadcasting industry, to allow the act to be interpreted in that fashion to cause that drain?

I know that for the first half of this year there is no fee, and it is \$1 a year for the small stations in the last half. But those figures I find very illusory because of my fortunate, or unfortunate, experience of participating in every Copyright Appeal Board hearing since 1948. During the last few years we have seen some remarkable changes in the compensation paid to performing rights societies. In the case of BMI, since 1952, when they started, they received \$76,808 that first year. They filed a tariff of only one item, broadcasting. By 1969 BMI had risen from \$76,000 to \$1,415,898, which is a 1,700 per cent increase over a period of 17 years.

**The Chairman:** But, surely, the volume went up.

**Mr. Estey:** Everything went up. There has been inflation and communities have become more prosperous. Everything has contributed to that rise, but the tariff has been increased, Mr. Chairman, by percentages—

**The Chairman:** Well, what would be the increase in percentage of the tariff?

**Mr. Estey:** First, it changed its base. It went from a yardstick tariff to a percentage tariff. The broadcasting tariff went up about seven or eight times and then the CBC tariff went up as well.

**The Chairman:** Mr. Estey, when you give us these figures of \$76,000 for BMI for the first year and \$1,415,000 for 1969, surely you must have a purpose in doing so. The particular purpose that would appear to me to be pertinent so far as I am concerned, considering this, is what part of that is represented by the increase in the tariff?

**Senator Flynn:** And we have had the volume of business of the broadcasting corporation increasing.

**The Chairman:** And, of course, all costs have gone up.

**Mr. Estey:** I would be glad to file a documented, authoritative analysis of that rather than guess at it, Mr. Chairman.

Just continuing with these figures, the total performing right fees under the Copyright Appeal Board authorized tariffs in 1952 were \$589,307. The figure for 1969 is \$5,640,280.

**Senator Connolly (Ottawa-West):** It went up ten times. By whom is that paid?

**Mr. Estey:** That is paid by the music-using industry of Canada to BMI and CAPAC.

**The Chairman:** That is for a licence?

**Mr. Estey:** For a licence to use on the air, in theatres, everything, all the repertoire.

**The Chairman:** The whole portfolio of music or musical works that they have.

**Mr. Estey:** I do not mean to speak in a derogatory way about the performing right societies. In the case of CAPAC we are talking of the repertoire of over three-and-a-half million works. BMI's repertoire is much smaller, but it is still very substantial and it is very useful, apparently.

**Senator Grosart:** Would those great increases also be a reflection of the very greatly increased use and value of music?



**Mr. Estey:** I think that is a factor, sir.

**The Chairman:** And the increase in volume in the production of music; the increase in the number of writers.

**Senator Grosart:** Yes, the increase in population. Would it also be that part of that would be the fact that in the earlier tariffs of some of these performing right societies they did not ask for a tariff over the whole spectrum of use?

**Mr. Estey:** BMI was one tariff in 1952 and 12 tariffs in 1969-70.

To get back to the use, sir, the number of composers would not affect it because you can only use so much music. You can only have so much water through a pipeline and that is the same with the broadcasting industry. The number of transmitters since 1952 has not increased particularly or anything like the royalties have. The number of hours of broadcasting, which is the yardstick, has really not increased substantially since 1952.

**Senator Grosart:** Has the revenue of the broadcasters increased substantially?

**Mr. Estey:** The revenue of some broadcasters has increased substantially. You have new broadcasters such as CFTO TV, which were not on the air in 1952. You have some broadcasters whose revenue has gone down, but the industry has gone up.

**Senator Flynn:** You have much wider coverage now than in 1952.

**Mr. Estey:** Not in radio, sir, where the big use of music is. There is no wider coverage than radio now. The number of watts going on the air, the horsepower, since 1952 is not substantially greater.

**Senator Flynn:** I am not interested in the strength of a particular station.

**Mr. Estey:** Well, the watts give you the reach.

**Senator Flynn:** The coverage of the whole territory of Canada is much improved since 1952, surely. It must have improved in those 17 years.

**Mr. Estey:** With regret, sir, I must say that that is not so in the case of radio. It has not improved the slightest bit. The coverage of Canada, the population reach since 1952, has not substantially increased.

**Senator Flynn:** But there have been new stations since then?

**Mr. Estey:** Not in radio, sir.

**Senator Flynn:** I know of at least two in Quebec City.

**Mr. Estey:** Yes, and I can tell you of one in Melford, Saskatchewan, one in Rosetown, Saskatchewan, and one in Weyburn, Saskatchewan, but those are 100-watt stations. There are two in Toronto. But the population percentage reached by radio in 1952 would be 97 or 98 per cent. That has not changed.

**The Chairman:** Is not the real test the increase in the use of broadcasting?

**Mr. Estey:** Yes, that is right.

**Senator Grosart:** Yes, Mr. Chairman, that is right. But is not the real test the decision of the Copyright Appeal Board which is a

Government body, a quasi-official body set up to determine the fairness of these rights. Is not that the real test of the validity?

**Mr. Estey:** I do not think so, senator. I was going to come to that, so I might as well deal with it now.

**Senator Haig:** Mr. Chairman, it might help the committee if I put on record a summary of the payments made by music users in Canada to BMI and CAPAC. In the year 1969 the BMI total from radio and TV was \$1,175,898 while the CAPAC total from radio and TV in the same year was \$3,382,382. Now in connection with CBC, they paid BMI \$240,000 and in CAPAC radio and TV \$842,000. That is also for the year 1969.

**Senator Grosart:** What I was suggesting, Mr. Estey, is that these increases were the result of the publication of a suggested tariff on behalf of the composer and author, an opportunity for all users, that is all those who would pay, and you appear year after year to object, and as I understand the rates have decreased.

**Mr. Estey:** They have.

**Senator Grosart:** And the decisions over the years were the judgment of the Copyright Appeal Board as to what was a fair rate of compensation to the composer and author. Is that a fair statement?

**Mr. Estey:** Yes, sir.

**The Chairman:** Senator Grosart, I do not understand that Mr. Estey is contesting the rates paid to the authors and composers.

**Senator Grosart:** Mr. Chairman, he has referred to the very great increase and there have been a number of questions on it. I have already indicated before the committee that I have a long-standing interest in the position of the composer and author, not a fiduciary interest, but it is an interest I have had over the years.

**The Chairman:** All I am saying is that they are not challenging that amount. What you are seeking to establish here gratuitously is that the rate is a fair rate.

**Senator Grosart:** Gratuitously perhaps, but I am not aware, Mr. Chairman, that there is a definition that would regard certain questions asked in committee as being gratuitous.

**The Chairman:** I mean gratuitous in the sense that it does not go to the core of the problem in this bill.

**Senator Grosart:** In my opinion, it does, but in yours, it does not. But I am just a member of the committee.

**The Chairman:** That is right.

**Mr. Estey:** There is another subject I would like to touch on here, and I will be brief. You have heard all this before, I think. If this were other than a legislative tribunal, Mr. Chairman, it would be necessary to talk at length and *ad nauseam* about what is the legal basis for all this. All I would like to say is that Mr. Justice Thurlow and his colleagues on the Copyright Appeal Board made it very clear when they resumed their hearings in April that they were not indicating that the Board had reached any decision as to whether the people who opposed this tariff were right or wrong in saying that the Act created a right in these records. I have the transcript in front of me of what Mr. Justice Thurlow said on that occasion so that we are not coming here by way of appeal from the Copyright Appeal Board in a kind of a sour-grapes approach that if we cannot



get it through one avenue, we will try through another avenue. What we are doing here is asking the legislative fountainhead of Canada to look at section 4 (3) and at the Ilsley Report, and to consider the impact of this argument on the Copyright Appeal Board and then decide whether or not section 4 (3) should be clarified—and I put it no higher than that—by doing that which Chief Justice Ilsley thought should be done.

**Senator Cook:** I am glad you came back to the legal argument because I want to ask a question. I understand your argument to be this; that the proposed subsection (4) in the bill merely sets out the true and correct definition of the copyright which does in fact exist and which is created by subsection (3) in records.

**Mr. Estey:** Yes.

**Senator Cook:** Even if this act were not passed, you would still maintain that subsection (4) is the correct and true definition?

**Mr. Estey:** Yes, sir.

**Senator Cook:** And all the financial and economic consequences are just by the way to substantiate that that should be the true situation?

**Mr. Estey:** Yes, sir.

**Senator Flynn:** You suggest that the Copyright Appeal Board had no competence to deal with this particular problem and to interpret the act as you think it should have been?

**Mr. Estey:** No, sir. I am not saying that at all. I am saying that the Board took the view and historically, senator, the Board has always taken the view, even in Mr. Justice Thorson's era, that they were not a court. Let me give you a precise example which has happened. Several years ago one of the societies brought in a tariff applicable to the CTV Television Network only, and the Network appealed before Mr. Justice Thorson and the other two members of the Board then said that that tariff could not be approved because the act does not recognize the right of the Performing Rights Society to license a network since they do not broadcast. Mr. Justice Thorson listened to the argument and reserved his decision, and then he decided that he could not determine and did not have the position to determine whether or not it was a good or bad argument, and he said, "I am going to approve the tariff, and if you do not like it or if you think I am wrong, don't pay it, and then they will take you to the Exchequer Court and I will sit and I will tell you whether you are right or wrong." That is what we did.

**Senator Flynn:** What was the outcome?

**Mr. Estey:** Unfortunately, Justice Thorson did not sit and we won.

**Senator Flynn:** You mean you won in what was a conclusion.

**Mr. Estey:** It went to the Supreme Court of Canada finally, and the Supreme Court said that the Copyright Act did not authorize the performing rights society to licence a network because they did not broadcast.

**Senator Flynn:** But what you are suggesting now is that if we did not have this bill you probably could go to the Exchequer Court or the Supreme Court if necessary to determine that what we are doing now is simply clarifying the proper interpretation of this section of the Copyright Act.

**Mr. Estey:** That is correct.

**Senator Flynn:** Why do you not do that?

**Mr. Estey:** Well, my clients say that money does not grow on trees and they would rather have it settled this way than take a very expensive and long route through the courts.

**Senator Flynn:** That does not sound too convincing to me, when one considers all the counsel who have been hired and whom we have heard here.

**The Chairman:** If you look at the explanatory note to see what the Government thinks it is doing in presenting this bill, it says, "The purpose of this amendment is to combine copyright . . ."

**Senator Flynn:** I know what you are going to say. We have to take for granted that the right exists since the bill wants to take it out.

**The Chairman:** The bill says it is for the purpose of taking that right away.

**Senator Flynn:** I agree with that, but that is why I wanted to question the witness as to why he did not go to the court to have the interpretation confirmed, and I have grave doubts that he was confident that he could succeed.

**Mr. Estey:** Well, may I answer the question this way, senator? I acted for the CTV network. I was not foolhardy enough to write a letter to them saying, "Don't worry, we will win this hands down!" And I am not foolhardy enough now to say, "You will win this hands down," but I can say this, that in the whole array of copyright decisions around the world, on statutes which are similar, if not identical, to ours, there is no case against me, and I have one squarely for me. There is an Australian case on it squarely for me, a judgment of Mr. Justice Low.

**Senator Cook:** Is that in the brief?

**Mr. Estey:** I do not think so. It is *Australasian Performing Rights Society*.

**Senator Flynn:** I was merely following the argument of Senator Cook.

**Mr. Estey:** I must say that Senator Cook, with great respect, was correct, in my opinion, but I may be all wet. Obviously, it makes more sense, Senator Flynn, for this great country to have the thing clarified for all parts of the community at once than to have the several industries mark time while some pioneer litigates this thing out.

**Senator Flynn:** Indeed, but if you really want to cure the situation entirely you should not do it piecemeal that way, but you should consider the whole spectrum. When I see that you are paying \$5½ million to CAPAC and BMI, and you are worried about paying \$200,000 to SRL . . .

**Mr. Estey:** I am not really worried about paying \$200,000. I introduced those figures to show—and I have experienced this personally—what happens to a board that is fixing rates, and it is always that way, whether it is a public utility board or anything else.

**Senator Flynn:** But this has not been established, whether the increase is the result of the increase in your own business volume or

in the tariff. The way the bill was presented to us was simply on the basis of the financial burden that was to result to CBC and CTV from the tariff filed by SRL. That was the basis, plus the additional argument which you put forward that the greater proportion of this money would go outside the country. But this problem is the same with BMI and CAPAC, and it is even worse now that we know what is the decision of the Appeal Board. You say here you do not complain about what you are paying CAPAC and BMI, so there is really a problem there of sending money outside the country. Why are we dealing with only \$200,000 when we have a problem of close to \$6 million involved?

**Mr. Estey:** I have four reasons for that. One of them is the intellectual property of the composer and author has been recognized by our community since the days of Edward the Confessor, and we do not challenge that right. The composer, the author has created something without which none of us would be here.

**Senator Flynn:** The performing rights of the musician.

**Mr. Estey:** The brains of the musician have brought into being the recording companies and all of us.

**Senator Grosart:** The brains of the composer and author.

**Mr. Estey:** Yes, the composer and author. What did I say?

**Senator Grosart:** "The brains of the musician".

**Mr. Estey:** No, the composer and author. That is one reason.

The second reason is that we have to look after ourselves in this international, competitive world. I do not think we should try to outrun the United States, and we would be outrunning the United States if we did not clarify our legal position here.

My third reason is that the broadcasting industry is a dam which we have built up laboriously like beavers up here, to hold back a little of that American wave so that we can build our own.

The fourth reason is that I do not think it is in our interests to turn over this large sum of money to companies which have no track record.

**Senator Flynn:** When you say "large sum," do you mean the new tariff approved by the Appeal Board?

**Mr. Estey:** The new tariff, and the tariffs which will march behind it like an army, year after year. This is an annual tariff.

**Senator Flynn:** That is it; that is my point: why do you not complain about what you are bound to pay to CAPAC and BMI? This is a large sum of money. All your arguments are more valid, I would say, as far as CAPAC and BMI are concerned. If the economic argument is valid, it is valid against the two others. That is my point.

**Mr. Estey:** Senator, may I tell you that the industries which we have represented through the years have spent in executive time, legal fees and studies by economists and statisticians, hundreds of thousands of dollars in the courts and in the Copyright Appeal Board, fighting those two tariffs—not challenging the basis for their compensation, because historically that has been recognized and honoured, but the quantum we have always challenged.

**Senator Flynn:** It is quite clear with regard to the composer, but when you come to the performing rights of the musician you come very close to the performing rights of the publisher of the record.

**Mr. Estey:** We oppose the musicians.

**Senator Flynn:** There is a joint venture there. Maybe there should be only one right for the musician, the performing right, and the record producer. I use "producer" in the sense that you understand. Maybe it should be only one, but if you really want to make an argument out of the exporting of funds from the country, I think you should go further than oppose only this right.

**Mr. Estey:** Senator, for one month I lived in Ottawa, during the Ilsey Commission hearings, and we opposed everything which you have catalogued now. We very nearly persuaded Chief Justice Ilsey to abolish performing rights, but we fell short. Since that time, on sober reflection, I do not think we should abolish them; but if you do, you threaten the origination of these intellectual works. England has recognized that since then. We have had lots of learning on this subject since then.

However, let me come back to something else which you have triggered off by your questions, and that is this. Apart from the fact I represent these people this morning, there is another funny little fact that bothers me as a citizen of the country. These copyright fees and the collection thereof is the only activity in this country, including the Boy Scouts of Canada, that makes no contribution under the Income Tax Act. They pay no income tax, and there is no withholding tax paid on the licence fees exported from the country.

**Senator Flynn:** Why?

**Mr. Estey:** I do not know. I asked Chief Justice Ilsey that and he said, "I do not know. Who passed it?" I said, "You did, sir; you were the Minister of Finance," and there has never been an explanation.

**Senator Grosart:** May the explanation not be the reciprocal obligation of Canada under the Berne and other international conventions?

**Mr. Estey:** Under the Tax Act, senator, I do not think so. There is probably an explanation on that, but I do not know what it is. It is in the treaty between Canada and the United States so you could not change it unilaterally.

**Senator Grosart:** I suggest to you that if you are looking for an explanation you might consider the fact, as I mention, that it is an obligation Canada undertook in order to have exactly the same reciprocal arrangement with the other countries of the Berne Convention. This is just a suggestion.

**Mr. Estey:** I think not—and this is also just a suggestion—because the United States is not a party to the Berne Convention.

**Senator Grosart:** I said "the Berne and other international conventions," and we are a party to the Universal Copyright convention.

**Mr. Estey:** But the treaty with respect to taxation is twenty years older than the UNESCO Treaty.

**Senator Grosart:** But is not the essence of this exemption from the withholding tax the fact that when this is given to foreign composers and others it becomes available in all other countries?

**Mr. Estey:** I think that may be right.

**Senator Flynn:** If the records were produced in Canada, would you take the same attitude, or could you use the same arguments?



**Mr. Estey:** Yes. This is like the afternoon speaker who goes another hour by saying, "I am glad you asked that question." The records produced in Canada, and may there be hundreds or thousands of them, because it is in our interests, in our broadcast music-using industry in this country, to see the record company here grow. If they were produced in Canada they would be sold in an economic way to our public only if they were performed by these broadcasting stations. I put it to you as a matter of grass root equity, why should the radio stations, who are begged by the recording companies to play these records, turn around and be hit with a licence fee for playing them? There is no demonstration of an economic need for that. The Economic Council of Canada stated that in the last two months.

**Senator Flynn:** Suppose you had very strict rules as to the Canadian content? You would need more Canadian records.

**Mr. Estey:** Yes. We do now.

**Senator Flynn:** You could not do without these records. They need to be played over the radio stations to become popular. That is obvious. But you are selling the music that you are using to your customers too.

**Mr. Estey:** Yes.

**Senator Flynn:** If you add more Canadian records, it would be much easier for you to produce programs with more Canadian content, and there would be less money going to the United States or elsewhere. The mainstream of your argument in favour of this bill could not stand if the records were 90 per cent produced in Canada. The fee would be paid to Canadian performers or producers and would remain in Canada.

**Mr. Estey:** Unhappily that is not so.

**Senator Flynn:** I know it is not so, but I am suggesting what would be your attitude.

**Mr. Estey:** Even your hypothesis would not be so, because, firstly, it is a blanket licence fee. If we play one MCA record we have to pay the whole fee. Secondly, you have to do more than just have all these records produced in Canada. You would have to make them popular in Canada, and after that you would have to sell that proposition.

**Mr. J. Lyman Potts, President, Standard Broadcast Productions Ltd.:** It would certainly help the sale of Canadian records. We cannot get Canadian records in the stores. I produced about 60 records, but you will not find one. You can go into the National Arts Centre and ask for an Anne Murray record and the clerk will tell you that she has never heard of Anne Murray.

**Senator Flynn:** Would you suggest that we should ban the importation of foreign records in Canada?

**Mr. Estey:** No.

**The Chairman:** Do you think we can come back to the central point of the bill?

**Senator Connolly (Ottawa West):** You seem to be complaining primarily about the fact that broadcasters should not have to pay a licence fee, a royalty fee, because the impact would be very great. It is beginning to be great now, and it will be greater in the future and will add to the cost of broadcasting.

What you say in the second place is that most of this money will go outside of Canada because the records are 95 per cent made outside of Canada and brought in. The master tapes are made outside of Canada and are brought in and records are pressed from them in Canada by foreign-owned companies, presumably. If a fee is payable to them, that money will go outside of Canada.

Suppose, for the sake of argument, that you prohibit the introduction of this foreign material in any way and confine the Canadian radio industry to the use of Canadian-made records. You would then presumably have to pay a fee. Is your argument not materially downgraded, because you will not have the point that the money is going outside of Canada? All you will be left with is the point that you are going to have to pay too much.

**The Chairman:** No, Senator Connolly. The point would be that this is not something that you can perpetuate in a performing right. But, by statute, in a country you can create any kind of a right within the power of Parliament. In discussing it on a philosophical basis, the question is, is the concept of a performing right on a record the kind of concept that you would normally think should exist?

**Senator Flynn:** Agreed, but the bill was not presented in that aspect.

**Mr. Estey:** I have three comments to make. My first is on the philosophic point made by the chairman. The second is, even in Senator Flynn's theoretical situation we have to remember that the Davey Report said 75 per cent of the country is within the umbrella of American television broadcasting and 100 per cent in radio. If we ban the importation of US records and confine the industry to Canadian records, we would just deliver our audiences to US stations, with disastrous results.

As far back as 1923 the Department of Canals and Railways was predicting that our country would fall apart because American radio station signals were coming into the country. I think that would just revive the situation 1,000 times.

I would like to make sure that I leave the impression on this subject that I am most anxious to leave, which is that exporting the money from Canada is an argument. It is of vital consideration from the point of view of our national well-being, but it is not the crowning argument. It is one of those things that we have to take into account when we are talking about any industry in Canada, the growing of wheat or anything else, how you are going to survive with that industry. The crowning argument is the one Senator Cook has made. The act seems to say that there is no such right and let us clarify it. The second point is, why do we race ahead of the United States? Australia does not and they are not even up against the problem of American signals. Australia says, "We will not give a right to a record which it does not enjoy at home." Immediately, all American records are without fee in Australia. My third point is, that when we are looking around the world we should not waste much time on saying what they do in Bulgaria or some other country. We should look at people who are like ourselves. We are, with the United States and to some extent with Australia, the only countries with this great commercial booming radio voice that seems so much a part of our community, and in those areas this record right is not known.

There was even an illustration in the British House of Commons in just the last few weeks where this very thing came up in debate. A



member of Parliament, who was very knowledgeable on broadcasting, pointed out that with the suppression of the United Kingdom pirate radio stations, they killed off the origination of British popular music, both in England and abroad. They lost their position in the United States. It is an odd thing that commercial broadcasting seems so closely tied to what we call community or native culture.

If we saddle our broadcasters with something that our great competitors—and that is what they are in the United States—do not do, then I put it to this legislative body that we are threatening one of our institutions which we think is vital—which the nation thinks is vital. I really introduced that taxation matter as a sort of national lunacy that we have that hole in our tax act.

**Senator Flynn:** I would feel much happier if we had a bill which would really try to achieve what you are suggesting, namely, clarifying the copyright of the composer, the performing rights of the musicians and, possibly, the performing rights of the producers. But this is not what this act is doing. It is simply plugging what you have considered to be a sort of loophole, through which you would have to pay a little more now. The minister says that because this would mean that CBC would pay \$840,000 a year more and because it would mean that CTV would pay about \$4 million a year more, therefore we are just doing this now instead of having them come to us to present arguments on the basis of the principle involved.

That is why it is so difficult. But really, you are not doing anything more than plugging this loophole.

**Mr. Estey:** We are putting a patch on the tyre, so to speak. I agree.

**Senator Flynn:** It is entirely unsatisfactory from our standpoint to have to deal with a bill like this, because it is only because of the application of SRL that the minister has introduced it. He withdrew the bill in the first place and then he brought it back again because SRL presented a new application to the Copyright Appeal Board.

Merely on the figures that I have just mentioned, the minister says to Parliament, "Pass this bill. We will deal with the rest later on." And I say, "Why not?"

**Mr. Estey:** May I direct myself to that, Senator Flynn? I cannot disagree with the words you have said, but I would like to convey to you in the short time that we have been involved in copyright, which is not very long when you consider copyright itself, we, in Canada, have had two royal commissions devote a great deal of energy to trying to get a new act; the Under Secretary of State drafted a new act in 1948; we had a new act drafted after the 1957 commission; and we had the honourable Judy LaMarsh draft an act. Moreover, we have seen that in the United States they have had an act in the legislative mill for at least seven years that I am aware of. I have that act here and it has so many revisions that you cannot read it.

To change the Copyright Act is a monumental task, involving changing treaties and re-negotiating with 57 communities in the Berne Convention, looking at the UNESCO obligations and looking at the bilateral deals we have with the United States and elsewhere. It is a very difficult thing to do and in the immediate foreground is the problem of the possible crescendo of tariffs for the recording companies, and that is why we take this position. Certainly, you are quite right in saying that we are merely patching the tire instead of renewing it. Nevertheless, in circumstances such as this, when the

boat is sinking, you swim to shore. You do not stand there and say, "Let us repair the boat." And that is what we are doing now, we are swimming to shore. It is too big a task to ask this house to rewrite the Copyright Act on this occasion.

**Senator Flynn:** On this occasion, I agree. We have nothing before us. But what you are suggesting comes to this: the efforts that have been made by royal commissions, successive governments and departments being followed by this bill amount to, to translate a French expression, a mountain of labour producing a molehill. If you are satisfied with that, then you have very limited objectives.

**Mr. Estey:** In this life we are lucky to obtain limited objectives, and that is what we have here.

**Senator Grosart:** Mr. Chairman, you have spoken of the "philosophy" of this and Senator Flynn spoke of the "principle" involved here. Just speaking to what Senator Flynn had to say, it seems to me that the normal way to deal with an emergency situation is to bring in legislation.

**The Chairman:** Senator Grosart, you used one word there which I do not think you will find unanimous support for—the word "emergency". That point has not been made yet.

**Senator Grosart:** The minister makes that point.

**The Chairman:** The minister has not been here yet.

**Senator Grosart:** The very fact that he has brought in a bill such as this indicates that, in his view at least, this is an emergency situation which must be dealt with in an extraordinary way.

**The Chairman:** He does not say that in the explanatory note, senator, and if it were an emergency situation I think he would say so right there.

**Senator Grosart:** Not necessarily, Mr. Chairman, and in any event the explanatory note is the draftsman's, not the minister's.

**The Chairman:** You cannot dismiss it that quickly, senator. The minister is responsible for all of this bill.

**Senator Grosart:** I am sure he is, Mr. Chairman, but, as a matter of fact, it is the draftsman's note and it would be so regarded in law, as I understand it. However, I will not argue that.

**Mr. Estey,** from the point of view of the composer and author only—the original owner is not one of the considerations here that the Copyright Act—the statute here and elsewhere in the world—has taken away his common law right in that property? I suggest that this is a very important aspect, because the Copyright Act is not something that grants composers, authors and others any great privilege. The Copyright Act limits their basic common law rights. If the composer and author, that is, the original owner, were in a position to exercise that right, he could immediately withdraw the performing right from the record manufacturer.

Now, the Copyright Act limits him in many ways. It takes him out of the ordinary, normal market right of price negotiation that anybody has for a product. The Copyright Act says that he cannot negotiate his fee. The Copyright Appeal Board says: "You may negotiate it, but you must come to us for approval". We will tell you what you can charge for your property." That is one limitation.

In the record field there is also the limitation of the compulsory licence. The composer-author does not even have the right to say

that he will limit his license to record manufacturer "A" to make the record. Once he does that a section of the act provides that he will be required by law to let anybody else make a record. So these are limitations, I suggest to you, of a basic common law right.

Therefore, I say that to the extent that this bill is dealing with a limitation, a possible limitation or a possible extension in the act, it is quite a proper way to do it, because the composer's right is entirely a statutory right, and the way to deal with it is by statute.

**The Chairman:** Nobody has argued that the subject matter cannot be dealt with by legislation.

**Senator Flynn:** Certainly not.

**Senator Grosart:** My friend Senator Flynn seemed to suggest that.

**Senator Flynn:** Not at all. I said that this is piecemeal legislation because Mr. Estey has explained that the problem is much wider than what is being attempted by this bill. This bill deals only with a very small problem and does not deal with the main problem.

**Senator Grosart:** If we turned down every bill that came before us on the basis that it was piecemeal legislation, we would not let many of them through this committee.

**Mr. Estey:** Senator Grosart, you raised one point which I did not but should have touched on. That is that the recording industry in Canada is not only based on 95 per cent importation of tapes and records, but it is 100 per cent, so far as that group is concerned, based on the invocation of the compulsory licence. Not only does the composer lose his right to say, "I don't want that record made", but he loses the right to prevent somebody recording his works in a way that he does not like. Let us take Gershwin music for example and having it played rock and roll. He cannot stop that. This is a very serious invasion.

This section is part of that creative or limitative, whichever way you wish to look at it, provision of the statute, so that it is not really piecemeal to clarify that bedrock piece of the statute because it is fundamental, and I do not wish to leave the impression that we do not regard this as an emergency. In the annals of broadcasting history through which many of you have lived, as have we, this is as earth-shaking as anything we have ever encountered. It is that vital.

**The Chairman:** You mean even at \$200,000?

**Mr. Estey:** Even at \$200,000.

**Senator Connolly (Ottawa West):** You feel that the figure is alarming because you think it is inevitable?

**Mr. Estey:** Yes.

**Senator Connolly (Ottawa West):** I find some difficulty in understanding why the Copyright Appeal Board should be setting tariffs for what I take to be the reproduction of contrivances and the use of contrivances to be produced when we are only legislating that now. There is some confusion in my mind, and that is why I ask the question.

**Mr. Estey:** We argued that, senator, and this is further confused by the strange coincidence that the day the Copyright Appeal Board's decision came down was the first day of the existence of the Federal Court to which we have an appeal to raise this very question. It seems odd in our community that we would have in the legislative process to raise this issue and we should have a

quasi-judicial body which does not have to report to the litigants—and have it reach a decision—but that is an anomaly which I suppose comes from the 1930s when section 48 was passed. In our respectful view, and we urged this on Mr. Justice Thurlow, they really should have sat back and waited and said, "Until the air clears, we don't believe we should fix a tariff." That is what SRL did with respect to CATV.

**Senator Connolly (Ottawa West):** Do you think the Copyright Appeal Board would have had something more to go on if this bill had been passed?

**The Chairman:** They would have had nothing.

**Senator Connolly (Ottawa West):** Nothing to go on?

**The Chairman:** That is right.

**Senator Grosart:** Nothing except law.

**Mr. Estey:** They would not have had any right to that.

**Senator Cook:** There would have been no application?

**The Chairman:** They would have had no authority to conduct a hearing.

**Senator Connolly (Ottawa West):** So if this passes, will the tariff they have set out have no foundation?

**Mr. Estey:** No foundation.

**Senator Flynn:** You probably heard that the Canadian Labour Congress came to us and they were worried about this because if this bill passes, it will eradicate any right for the record producers.

**The Chairman:** Where section 2 of the bill said that this is retroactive to January 1.

**Senator Flynn:** But the Canadian Labour Congress was worried because they considered that the performing rights of the artist are, to some extent, linked to the rights of the record producers—and again I say "producers"—and that is why I say to Senator Grosart that this bill is dealing with only one aspect of the whole problem. That is why it is not satisfactory, as far as I am concerned. We are not exploring the whole spectrum of the situation.

**Senator Grosart:** Since my name has been mentioned, could I suggest that probably the reason it does not deal with what Senator Flynn calls performers' rights—that is, the right of the creative people, the musicians, the singers and so on—is that those rights do not exist.

**Senator Flynn:** That is right, but they are recognized in fact.

**The Chairman:** You mean they do not exist as a matter of law.

**Senator Grosart:** That is the only way they can exist.

**The Chairman:** Oh, I do not think so.

**Senator Flynn:** There are contractual rights.

**The Chairman:** And there is custom.

**Mr. Estey:** I have thought a lot about that. There is an anomaly in the Canadian Labour Congress appearance here, and I think it comes more from fear or a hunch than it does from logic. In Europe the trade unions and the recording companies have sort of formed an interlocked alliance very critically commented upon by the



Gregory Report in Britain, and it is probably that which has led you to believe the words "somehow linked" in connection with those rights. Whereas in political and legal fact, the Labour Congress would be much stronger to pull away from the recording companies and come in on their own feet and say, "We should have a performer's right because there is an intellectual input in performance and there is no intellectual input in making a piano or making a record."

**Senator Flynn:** You mean by amending the act to provide for this right?

**Senator Connolly (Ottawa West):** They were here some weeks back and they voiced this view on behalf of the artists, the singers, the actors and the people who perform on musical instruments.

**Mr. Potts:** Senator Connolly, if they got that, 75 per cent of the money so collected would go out of the country to The Beatles and Frank Sinatra, and it would have to be distributed in much the same way. They would possibly only get 25 per cent.

**Senator Connolly (Ottawa West):** I was just telling Mr. Estey that the point has been raised.

**Mr. Estey:** I have read their brief and I say it is somewhat anomalous to me that they would allow themselves to be linked in their rights and equities to a recording right because they are as unlike as day and night.

**Senator Flynn:** But they feel that the record manufacturer constitutes a protective wall because they are located in between the composer and the record producer and if the wall falls on one side, they may be carried away.

**Mr. Estey:** That may be right too, but it does not strike me as being logical.

**The Chairman:** Do you have anything further to add, Mr. Estey?

**Mr. Estey:** No, Mr. Chairman, I have nothing further to say, but to thank your committee for the opportunity to come down and make our presentation.

**The Chairman:** Honourable senators, we now have Mr. Yves Labonté, Président of Radio-Québec, and perhaps we should hear him at this time.



MR. YVES LABONTÉ, PRESIDENT AND GENERAL DIRECTOR OF  
THE RADIO-TELEVISION BROADCASTING BOARD OF QUEBEC:

Mr. Chairman, honourable senators, gentlemen, I would like to introduce to you Mr. Bernard Benoit, who is with me today, and who is the legal adviser to the Radio and Television Broadcasting Board of Quebec, of which I am President. You were kind enough to postpone for several days my appearance before your committee, and I would like to thank you for this kind gesture. Besides, you will find this postponement to your benefit, also, as it has allowed me time to better structure my thought and to condense it so much the better for oral presentation!

The Radio-Television Broadcasting Board of Quebec is

particularly well placed to clearly consider the questions raised by Bill S-9, since it is both a production company as well as a broadcasting center, indirectly for the time being, but no doubt directly someday, and since it feels the effects of some of the difficulties presented by the different attitudes shown towards this project.

I dare hope, it would not be showing disrespect to our institutions to say, as so many others, that the Law on Royalties is out-of-date. There has been a complete evolution since 1911 in the method of intellectual creation, along with the equivalent right of ownership of works produced, that only a complete rewriting of the legislation concerning it can prevent the multiplicity of legal amendments similar to the project we are discussing today.

A better distinction could, therefore, be made between three aspects that are at this time covered by the same law, -- I'm on page 2, -- and I continue. A better distinction could be made between three aspects that are at this time covered by the same law, these are:

First, the creation: its continual protection is essential for sustaining intellectual life.

Secondly, the adaptation: in several countries including Great Britain, this is the subject of distinct and specific legislation.

Thirdly, the ownership of the material object often produced by combining the creation and the adaptation: this ownership usually belongs to the producer who put the work together.

Bill S-9, like its forerunner, Bill S-20, is meant to answer a specific problem,



the entry into the field of Sound Recording Licenses, on the parts of CAPAC and of MBI, in the request for copyrights to the Commission of Appeal for Royalties. At least, this is the interpretation given to it by the honourable senator, Earl W. Urquhart, who proposed the second reading.

I dare say that the business of Sound Recording Licenses provides a suitable juncture, but it is not the reason for the proposed bill. In this respect it could act as a catalyst bringing a revision of the Law of Royalties, giving the impetus for distinguishing the three aspects mentioned previously, - the creation, the adaptation and the ownership, - in the two situations in which they are met: the material reproduction and the public performance.

Only by taking things in their context and by considering the present project as part of a larger revision than that concerning Royalties, is it possible to take a stand on the recommendations of Bill S-9.

Let us consider first, the material reproduction. It is reasonable to expect the originator of an intellectual work to have some sort of right, called precisely, royalties, when this work is made public and reproduced many times, - books, records, cassettes, films. In the English fashion, it is the copyright on his work.

He can if he wishes, "sell" this right to the editor or to the producer, who publishes or broadcasts his work. However, this purchase, giving money to the author which is his due, does not, therefore make of the editor the originator.

Let's pass now to the public performance. The author, who has already obtained copyrights for the material reproduction of his work, can also claim royalties for its public performance.

But other people contribute also to the originality of the public performance, notably interpreters but also from its very nature, the stage director and the other creative craftsmen, can in their turn claim rights if the performance they produce is used later, either before a given audience, -- cinema, juke-box, -- or for a wide-spread audience, by radio and television.

One or another of the contributors has to give the management or even the ownership of his rights to the producer in some way, for he manages the business of providing the authors and interpreters with the tools necessary for a public performance; this does not give the producer the right to claim royalties, since:

first, his own talent as originator is not involved here;



secondly, his contribution to culture is not intellectual;

thirdly, his personal living is not provided for by the creation or the adaptation of intellectual works.

No doubt, the producer can administer the royalties for his authors and interpreters. He can even "buy" universal rights from all the contributors. But that does not give him an intellectual right over the works he produces. Therefore, it does not come directly under the Law of Royalties.

Please don't think I am scornful of the part played by the producer in the distribution of culture. But if you'll allow a classical comparison, I would identify him with the industrious ant before the innocent grasshopper who is the artist, the intellectual, the author.

A class of men are protected by royalties who, by the very nature of their work, are inclined often to a rash detachment from material goods, totally involved as they are with intellectual creativity. As to the ants, they have long since learnt how to manage their affairs.

Does this mean that producers do not risk being exploited themselves? Certainly not. I am mindful of the well-founded comments of Mr. Stephen Stewart, at the International Conference of the Music Industry:

If the radio ceased to broadcast records, tomorrow, record companies would still sell them in large quantities. Some claim that their sales would increase, others that they would diminish: but if records were withdrawn from transmission, there would be no question of increase or reduction of volume of radio broadcasting, for they would be obliged purely and simply to close down, since their programmes consist of records for 80 per cent of the time.

Producers, therefore, have to be protected. But that does not seem to me to be under the jurisdiction of Royalties, but rather covered by the civil code, -- right of ownership, -- since they create not an intellectual work but a material product, all of which is within provincial jurisdiction.

It appears to me that Sound Recording Licences could be a valuable instrument in the hands of producers. It's certainly necessary to considerably redraft contracts for sales and for the distribution of records and cassettes, and, probably, to prepare special impressions for public usage. However, it is premature to work out the details for accomplishing this: it is enough for the moment to emphasize that all this is outside of the scope of royalties.



Consequently, it remains for me only to signify my agreement with Bill S-9 in as much as it attempts an in-depth revision of the Law of Royalties, and in as much as it tries to distinguish royalty to the author from the material ownership.

These last two paragraphs that I have just read sum up in the main our idea. We, at Radio-Quebec, think that the right under discussion here, is not in the last analysis, a right to be protected by the Law of Royalties, precisely because it is not a question of royalties. Secondly, I agree with what the honourable Senator Flynn said before, that what we need, is evidently, a complete and total redrafting of The Law of Royalties.

SENATOR FLYNN: Mr. Chairman, may I ask the witness to clarify what he means on page 6 when he

says: "Producers, therefore, have to be protected". Producers have to be protected but, let's say, by means of the civil code, of a provincial law, since they create not an intellectual work but a material product. Would you say the same thing in respect to patents and trade marks, because, in fact, there is a question there, -- a material product is produced with a patent? Surely there is a kind of royalty for a patent.

MR. LABONTÉ: I believe the main reason for the rights of royalty and even trademarks being under federal jurisdiction, is evidently, that under the Constitution there are consequences outside of the country and international

agreements are involved here. In fact the patent that is granted and that could, if you wish, be compared to and considered as a royalty is for a plan, and not for the machine itself, not for the instrument. We are speaking here of records, this is a material object, and it's that that we want to protect.

SENATOR FLYNN: By reproduction, you are not referring to the actual manufacturing of the records, but rather to their being played in public; it is what the record represents that is to be protected. Yet, you seem to say that the interpreter has himself, a right to royalty. Is this the gist of your idea?

MR. LABONTÉ: I believe the interpreter brings a certain creativity to the work.

SENATOR FLYNN: As you define it, this is not really a royalty?



MR. LABONTÉ: There is a right to royalty because first and foremost it's a work of the intellect.

SENATOR FLYNN: Excuse me if I draw from your memorandum the conclusion that it seems to me to imply. Not only should every right not belonging to the author, the very originator, be removed from the Law of Royalties, but even all the rights of those who spread his work such as interpreters. I know that there is no law as such covering this at the moment, however, the rights of the so called author and of the producer are nevertheless upheld in practice. This is where I see a conclusion in your memorandum. While wishing to defend the interpreters you exclude them from the law and by so doing you remove them from the implicit protection that the law gives to them and

to the producers of records

MR. LABONTÉ: What I propose, in fact, what I would like to contribute here, is to make you aware, -- I am going to point out, if you'll allow, the gaps in the present law, and to try to make you grasp the necessity for a complete rewritting of the law which will take account of the three aspects of this right.

Concerning the second, that of the interpreter, perhaps in practice it is protected by that of the record producer. It's a hyperthetical case, but there are really two rights completely different.

SENATOR FLYNN: This is why I had some doubts when you said: I signify my agreement with Bill S-9 in as much as it attempts an in-depth revision of the Law of Royalties.

Do you really believe that it is the aim of Bill S-9, as it is drawn up, as it has been explained by its sponsor, Senator Urquhart, for example, whose address you have read out? Do you really believe that this is intended, or is it simple and purely to obstruct the request for Sound Recording Licences, which, as you said at the beginning, provides in truth simply a suitable juncture, and not the reason for the Bill?

MR. LABONTÉ: Perhaps it sounds a little "holy", senator, but I would like to bring the attention of the law maker to the fact that the whole question has to be considered and decided immediately,-- always supposing that there is some urgency to correct the law. I say that you should not limite yourselves to just one aspect, and then wait another 50 years, because one should have full knowledge before tampering with the law, it should not stop at that



for 50 years before the law is completely rewritten which really needs to be done now.

SENATOR FLYNN: Would you be really disappointed if Bill S-9 proved to be only the prelude which eventually was to absolutely limit the rights of interpreters?

MR. LABONTÉ: I would be really disappointed.

SENATOR CONNOLLY: (Ottawa-West): What is Radio-Quebec?

MR. LABONTÉ: Radio-Quebec is a, -- I think a more direct answer would be to say that it's the ETVO of Quebec, "Educational TV of Ontario". It's an organization in the province of Quebec whose job is also to produce educational documentaries.

SENATOR CONNOLLY (Ottawa-West): and the owner is the ---?

MR. LABONTÉ: It's a Crown agency, if you want.

SENATOR CONNOLLY (Ottawa-West): It's the Crown?

MR. LABONTÉ: The funds are supplied by the government of  
Quebec, if you must.

[English]

**The Chairman:** Are there any other questions? Thank you very much, Mr. Labonté. We have gone through the subject pretty thoroughly so far, and we will pay attention to what you have said.

Honourable senators, we have the following position to consider. SRL is here with a delegation, and we also have representatives of the Canadian Recording Manufacturers' Association. I expect that it will take some time to hear those gentlemen. If it is satisfactory to you, Mr. Fortier, I would suggest that we adjourn until 4 o'clock. The Senate is sitting at 2 o'clock. I have explored the possibility of obtaining permission for the Committee to sit while the Senate is sitting, but we find that it is not practicable. If the Senate has not completed its business by 4 o'clock we will be able to sit, starting at that time. My suggestion is that we adjourn and continue our hearing at 4 o'clock.

**Mr. Yves Fortier, Counsel, Sound Recording Licences (SRL) Limited; Canadian Recording Manufacturers' Association:** We are here at the convenience of the committee, Mr. Chairman.

**The Chairman:** Is that satisfactory? Does the committee agree with that?

**Senator Flynn:** I would agree, Mr. Chairman, but I am rather inclined to suggest that SRL might get a better hearing if they were to come back next Wednesday at 9.30.

**The Chairman:** It seems unfortunate since they are here now and were here last week.

**Senator Flynn:** It is only a short trip from Montreal.

**Mr. Fortier:** We are at the convenience of the committee, Mr. Chairman. Moreover, I am sure that, be it four o'clock this afternoon or 9.30 next Wednesday morning, we will at all times get a good hearing. But, if by "good hearing" Senator Flynn means a larger representation of senators of the committee being in attendance, then I would certainly rather have a full house than an empty one.

**The Chairman:** If you wish to go ahead this afternoon we will certainly have a quorum.

**Senator Flynn:** We do not know exactly what is going to happen in the house this afternoon. We have quite a heavy agenda today.

**Senator Carter:** The Finance Committee is also sitting at four o'clock.

**Mr. Fortier:** We leave it entirely to the committee, but I have noted Senator Flynn's comment.

**The Chairman:** The one advantage of starting on Wednesday morning next is that there would be no one ahead of you. So far as the attendance of the minister is concerned, he is out of the country and is not available.

**Senator Flynn:** Is that an advantage?

**The Chairman:** It might be. We have indicated June 23 to the minister, and he has accepted that date.

**Mr. Fortier:** I might say, Mr. Chairman, that we certainly do not think we have wasted our mornings, either last week or this week. Far from it: we have benefitted greatly from hearing the presentations.

**The Chairman:** If I might smile a little while I say this, I except, too, that you have learned the course and direction of the questioning and the thinking on different points and maybe we will not get too far afield.

**Mr. Fortier:** Since we represent the one party which this legislation aims at, another week's delay, in view of Mr. Estey's very eloquent presentation this morning, may give us a chance to further synthesize our presentation.

**The Chairman:** You mean that we might come out from underneath the influence of his eloquence this morning.

**Mr. Fortier:** In so far as Mr. Estey is concerned, I find that time has cured everything.

**The Chairman:** If it is satisfactory to your group, then, we will meet next Wednesday morning at 9.30.

**Mr. Fortier:** Thank you, Mr. Chairman.

**The Chairman:** There will be no interferences with your right to proceed.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

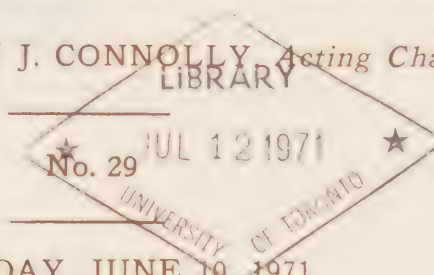
PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable JOHN J. CONNOLLY, *Acting Chairman*



THURSDAY, JUNE 10, 1971

## Complete Proceedings on the Following Bills:

- C-242, "An Act to amend the Senate and House of Commons Act, the Members of Parliament Retiring Allowances Act, and An Act to make provision for the retirement of members of the Senate".
- C-207, "An Act respecting the organization of the Government of Canada and matters related or incidental thereto".

## REPORTS OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Orders of Reference

Extracts from the Minutes of the Proceedings of the Senate, Wednesday, June 9th, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator McDonald, for the second reading of the Bill C-242, intituled: "An Act to amend the Senate and House of Commons Act, the Members of Parliament Retiring Allowances Act, and An Act to make provision for retirement of members of the Senate".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Lefrançois, for the second reading of the Bill C-207, intituled: "An Act respecting the organization of the Government of Canada and matters related or incidental thereto".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Lefrançois, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Thursday, June 10, 1971.

(32)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10:00 a.m.

*Present:* The Honourable Senators Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Flynn, Hays, Isnor, Macnaughton, Martin, Sullivan, Walker and White—(13).

*The following Senators, not Members of the Committee, were also present:* The Honourable Senators Forsey, McDonald, Michaud and Smith—(4).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel, Director of Committees.

On motion of the Honourable Senator Walker, the Honourable Senator Connolly (*Ottawa West*) was elected Acting Chairman.

The Committee proceeded to the consideration of Bill C-242 intituled:

"An Act to amend the Senate and House of Commons Act, the Members of Parliament Retiring Allowances Act, and An Act to make provision for the retirement of members of the Senate".

The following witnesses were heard in explanation of the Bill:

The Honourable Allan J. MacEachen,  
President of the Privy Council;

Mr. H.D. Clark, Director,  
Pensions and Insurance Division,  
Treasury Board.

The Committee then proceeded to the consideration of Bill C-207, intituled:

"An Act respecting the organization of the Government of Canada and matters related or incidental thereto".

The following witnesses were heard in explanation of the Bill:

The Honourable C. M. Drury,  
President, Treasury Board;

Mr. H. D. Clark, Director,  
Pensions and Insurance Division,  
Treasury Board.

Miss E. I. MacDonald of the Legislation Section of the Department of Justice was also present but was not heard.

The Honourable Senator Flynn moved that the said Bill be amended as follows:

*Page 6, Clause 18:* Strike out Subsection (1) and substitute therefor the following:

"18. (1) An Order in Council authorizing the issuance of a proclamation under section 14 or 16 shall not be made until the proposed text of the Order in Council has been laid before the Senate and the House of Commons by a member of the Queen's Privy Council for Canada and the making of the Order in Council has been approved by a resolution of both Houses."

The question being put, the Committee divided as follows:

Yeas—3      Nays—4

The Motion was declared *lost*.

It was Resolved to report the said Bill without amendment.

At 12:40 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Denis Bouffard,  
*Clerk of the Committee.*

# Reports of the Committee

Thursday, June 10, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-242, intituled: "An Act to amend the Senate and House of Commons Act, the Members of Parliament Retiring Allowances Act, and An Act to make provision for the retirement of members of the Senate", has in obedience to the order of reference of June 9, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

John J. Connolly,

*Acting Chairman.*

Thursday, June 10, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-207, intituled: "An Act respecting the organization of the Government of Canada and matters related or incidental thereto", has in obedience to the order of reference of June 9, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

John J. Connolly,

*Acting Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, June 10, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-242, to amend the Senate and House of Commons Act, the Members of Parliament Retiring Allowances Act, and An Act to make provision for the retirement of members of the Senate, met this day at 10 a.m. to give consideration to the bill.

**Hon. John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, to help us in our consideration of Bill C-242, we have with us the Honourable Allan J. MacEachen, President of the Privy Council and the House Leader on the other side; and Mr. H. D. Clark, Director, Pensions and Insurance Division, Treasury Board.

Is it your wish that we have Mr. MacEachen speak to the bill first?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Mr. Minister, it is customary when we have the privilege of having a member of the ministry with us, to ask him to make a general statement. Perhaps you would like to do that.

**Hon. Allan J. MacEachen, President of the Privy Council:** Thank you very much, Mr. Chairman.

This is a bill that was certainly well understood by members of the House of Commons when it was before that place. Probably it is also well understood by members of the Senate, so it may not be necessary for me to go into much detail.

We had opened the question of pay and allowances for Members of Parliament through the appointment of the Beaupré Committee some time ago. As you know, that committee made a valuable contribution to our understanding of the problems facing Members of Parliament. This included specific recommendations as to what ought to be done to improve the position of members of Parliament. We generally agreed with the analysis of the committee as to the role of the members of Parliament, their changing responsibilities, and increasing functions; but we did not implement all the recommendations of the committee, and differed from those recommendations in a number of critical respects.

**The Acting Chairman:** Particularly on the question of parity as between the houses.

**Hon. Mr. MacEachen:** Yes. As you know, the Beaupré Committee recommended that the members of the Senate be treated differently from members of the other place; that the parity which had existed up to the present be altered, and that the members of the Senate be compensated—if that is the right word—at a lower rate than members

of the other place. That is one recommendation that we did not accept. We recommended to the other place, and recommend in this bill, that the members of the Senate and the members of the other place be, so far as their pay or compensation is concerned, treated in exactly the same way as they have been in the past. That is one important departure from the recommendations of the Beaupré Committee.

Another departure is that we are proposing that the so-called expense account of members of Parliament be treated in the future in exactly the same way as it has been in the past. As you know, the Beaupré Committee recommended that the so-called non-accountable tax-free expense account of members of Parliament be abolished altogether, and that in its place a new system be developed by which members of Parliament would submit vouchers for certain specified expenses in certain categories, in most cases up to a definite maximum. This was a quite difficult problem for us, and ultimately we decided to retain the present system, and to propose an increase in the total amount of the present expense allowance. We did that because we thought the present system was more in keeping with the status of a member of Parliament than putting him on an itemized expense account system.

**The Acting Chairman:** I understand you had a good many discussions with members of the various parties on this very problem, and that this was generally the conclusion believed to be the appropriate one by a wide consensus of members. Is that so?

**Hon. Mr. MacEachen:** Yes.

**The Acting Chairman:** I should think it is primarily more a problem for members of the other place than it is for members of the Senate, although it does affect senators. Certainly, very heavy expenses are incurred by senators in coming to Ottawa as much as they do and living here, but perhaps the problem is greatly accentuated for the member of Parliament. Do you find that to be the fact?

**Hon. Mr. MacEachen:** Yes, I think it is a greater problem for members of Parliament. We did have consultations with all parties in the other place as we were developing the proposals. I do not claim that we, in any sense, got unanimous support for the proposals we made, as I think the votes in the other place indicate. We did have consultations, and I think there was relatively wide support for the concept of the present non-accountable tax-free system.

We had to balance the status of the member of Parliament against the argument, which has a certain amount of force, that members of Parliament should for tax purposes be treated in exactly the same way as other citizens. It is clear that members of Parliament are not treated as other citizens in some other important respects, because of their special responsibilities. It has certainly been a tradi-

tion to attempt to support the independence of members of Parliament, and for that reason they have certain immunities as members of Parliament that no other person has. That is not because of a desire to create privileges for individual members; it is because of a desire to maintain the independence of members so that they can speak in the other place and act there, and elsewhere, without fear or favour. That has been well embedded.

Whether you agree with our reasoning or not, that is why we maintained that system, because we thought it was rather invidious to have members of Parliament totally submissive for the reimbursement of expenses to the examination of their accounts by bureaucrats, which I believe is the term.

**The Acting Chairman:** That is the word.

**Senator Smith:** I do not want to interrupt unduly, but is it not also the same system that we have had and are now proposing to continue?

**Hon. Mr. MacEachen:** Right.

**Senator Smith:** And is it not in existence in every one of the other provincial jurisdictions?

**Hon. Mr. MacEachen:** Yes.

**Senator Smith:** Is there any exception to that? I do not know of any.

**Hon. Mr. MacEachen:** I do not know of any exception. I think what is important, too, is that it has worked rather well, and it has been endorsed by, I think, three preceding Parliaments. Anyway, that is an important way in which we differed from the Beaupré Committee, and it was the most difficult problem we had in our consultations within our own group, with other parties, and within the Government. Finally, we decided on the basis of principle that we would go in this direction, and probably it is the best system for Parliament itself.

**The Acting Chairman:** In the Income Tax Act there is an exemption for these allowances paid to members of provincial legislatures. I suppose there would be a certain amount of invidiousness about not having it for federal members of both houses, but having it in the Income Tax Act available to members of the provincial legislatures.

**Senator Flynn:** You also find that at the municipal level.

**The Acting Chairman:** At the municipal level too.

**Senator Macnaughton:** There is a long historical precedent for that. All you have to do is go through your parliamentary history and you can see that the reasons given by the minister are up to date.

**The Acting Chairman:** I can remember the former Senator Power talking so well about this matter, and not when a bill was before the house either. His view, which he inherited from parliamentarians who were much senior to him, was that the parliamentary indemnity was not income. We have changed our direction in thinking about this. Perhaps the reason is that we have not thought about preserving the independence of the members, as the minister points out, to the same extent that they used to in days long gone by. We have to move. It is income and is treated as such now, but there was a case, and a very strong one, made at that time.

**Hon. Mr. MacEachen:** I think that is a major point of difference. I do not know if you wish to spend any time on this, but I think it is worth pointing out that the Beaupré Committee, although it was asked, did not come up with a method of determining the changes in pay and allowances in future. They said, "Well, we have not been able to grapple with this at the moment. We suggest that there be another committee or commission appointed in the future to deal with this."

I tried valiantly to come up with an agreed solution, so that I could put an amendment on this question in the House of Commons. I failed because I could not get any wide consensus as to the appropriate method of future escalation in the pay, especially, and allowances of members of Parliament. So that is an unsolved problem, regrettably, for all of us, or for those of us who will be grappling with the problem in the future.

Mr. Chairman, the amount of the change in the salary or pay portion . . .

**The Acting Chairman:** The indemnity.

**Hon. Mr. MacEachen:** Yes, the indemnity. For simplicity, I refer to this bill as the "pay bill," but that is because of my working-class background.

The amount of the increase is less than was recommended by Beaupré, in comparison with movements in average weekly wages and salaries. It is well justified in comparison with movements in other professional groups, so I do not believe that a solid case can be made out that this is in any way excessive. It is a reasonable and justifiable increase at the present time. That is our view.

In fact, it is considerably less than the total recommendation of Beaupré.

In so far as the expense account portion is concerned, we have increased that from \$6,000 to \$8,000, and we have maintained the relative position of members of the House of Commons and senators. Why did we end up with \$8,000 instead of \$9,000 or \$10,000 or \$7,500? We did attempt to take a look at the increase of expenses that the Beaupré committee said ought to be reimbursable, in their scheme, by vouchers. We took these categories, put a figure opposite each of them and reached rough totals. So, taking the rough total, if a member were going to look at Beaupré and say, "Well, is my \$8,000 sufficient to do for me what Beaupré recommended for us?" then I think that he could say, "Yes." If he wants to operate under the Beaupré method or proposal, then he is getting about as much under the \$8,000 proposal as he would if we adopted the categories and the method proposed by Beaupré.

We think that this is more in accordance with the independence of a member, because he can take his \$8,000, in the case of a member of the House of Commons, and deploy it in the way that he thinks will best and most effectively serve his constituency. That is his responsibility: to determine the way in which he will use that money to carry out his duties as a member of Parliament.

He is not accountable, in the strict sense that he must submit vouchers to anybody, but he is accountable certainly in a wider sense, to his fellow members, to the press, to public opinion and ultimately to his constituents. That accountability seems to me to be very valid in the circumstances.

We have also proposed an amendment to a section of the bill that will widen the authority of the houses of Parlia-



ment to determine transportation expenses and telecommunication expenses for reimbursement. At present, the limitations are such that a member of Parliament, for example, could be reimbursed for taking a cab from his local airport to his home in his constituency, or vice versa, but not from Ottawa airport to his office here, or vice versa. One is possible and the other is not possible. It is because of the wording. We will be able, if it is desired, under this new wording, by both houses, to provide more adequately for the transportation of parliamentarians within their constituency, from their constituency to Ottawa, within any part of Canada; and the same will apply to telecommunication expenses.

You know that members of Parliament at the moment are allowed a free return air trip a week to their riding. Only the member himself is eligible, and he cannot go to any other part of the country. Beaupré suggested that these 52 units of travel be available in the future, but that a certain portion could be available, for example, to the member's wife, or that a certain number could be used for travel on public business to other parts of Canada. I think that was a sensible proposal and this amendment will enable the houses to make those changes, as they wish, to improve the ability of members of Parliament to serve their constituents and their country.

**The Acting Chairman:** The former one was much too restrictive.

**Hon. Mr. MacEachen:** It was much too restrictive. Anyway, the Commissioners of Internal Economy were prohibited from acting, because of the limitations of that section.

**The Acting Chairman:** What section is that?

**Senator Macnaughton:** Section 44, is it not?

**Hon. Mr. MacEachen:** Yes, section 44.

**The Acting Chairman:** It leaves it to the houses to prescribe the way in which this can be done.

**Hon. Mr. MacEachen:** Yes. If the houses so wish, they can implement a certain number of these recommendations which were made by Beaupré, to give greater flexibility.

**The Acting Chairman:** That would be the Internal Economy Committee of this house.

**Hon. Mr. MacEachen:** Honourable senators, I believe that is almost all I have to say about the bill. Members of Parliament will now contribute on the basis of their indemnity for pension purposes, rather than on the present basis of their indemnity and their expense allowance. You may recall that, when we established the present pension provisions, they were based upon recommendations of Professor Curtis who said or recommended, in order to develop a more adequate pension for members, that the contributions be based not only upon the indemnity but also the expense account. That was not a normal situation—at least, so it was pointed out frequently in the house and elsewhere. Now, by basing the pension solely on the salary or indemnity of \$18,000 it will be possible to remove that criticism and to maintain in the future the present contribution rate and the present eligibility for pension. Nothing changes there. There is a change with respect to the \$15,000, however.

**Senator Flynn:** So far as the members of the house are concerned it is more rational, but it does not change any

figure because they used to calculate the contribution on the \$18,000. It was \$12,000 plus \$6,000. Now they calculate it only on the indemnity, which is \$18,000. In other words, it is the same amount and the benefits are exactly the same as before.

**Mr. H. D. Clark, Director, Pensions and Insurance Division, Treasury Board:** Senator Flynn, senators have been contributing under the Members of Parliament Retiring Allowances Act, and have been contributing on the \$15,000—the combined \$12,000 and \$3,000. In order that there would be no change in the overall pension effect, this bill provides that they would contribute on five-sixths of the \$18,000, or the \$15,000 as before.

**Senator Smith:** Mr. Clark, has anything been changed with regard to those members of the Senate who were members in 1965, before the act was changed?

**Mr. Clark:** No, there is no change in so far as they are concerned either, senator. In their case the contributions and the benefits were related to the \$12,000 indemnity, and the amendment to the 1965 act which is contained in this bill simply continues that provision of contributions and benefits being based on the \$12,000.

**Senator Smith:** In other words, there is no change in this bill?

**Mr. Clark:** The only amendment is to continue things as they have been.

**The Acting Chairman:** Despite the increase of the indemnity?

**Mr. Clark:** That is right.

**Senator Smith:** For the record, what is the effect on those who were appointed before 1965 and who have not made the election to resign at the age of 75? The general complaint is that we pay quite a large premium but we get nothing back. Can you clarify that?

**Mr. Clark:** Last year the act made it possible for those senators who were then under the age of 75 to indicate that they would relinquish their seats on attaining the age of 75. If they so elected, there was an automatic protection for their widows in the event of death before the age of 75. A number of senators made such an election. For those who did not make such an election, there is no change in the situation.

**Senator Flynn:** I think there is one change, if I am not mistaken, Mr. Clark. Previously, there was no refund to the estate of the contributions, whereas now, for those who have not made the election to resign at the age of 75, their estates will be entitled to a refund of the contributions.

**Mr. Clark:** But that is not accomplished by this particular measure, Senator Flynn.

**Senator Flynn:** No, but I think that has to be pointed out, because it would make a difference between those who elected to resign at the age of 75 and those who did not so elect. Before that, if you died in office, no refund was made to your estate; nor was any payment made to your widow.

**Senator Smith:** That is what I had in mind and what I wanted to get on the record, Mr. Chairman.

**Senator Cook:** Those of us who have made the election pay on the total of \$15,000 now, do we not?

**Mr. Clark:** That is correct.

**Senator Flynn:** And we will continue to pay on the same basis.

**Mr. Clark:** Just to be clear, those who made the election in this last year, indicating that they intend to retire at the age of 75, will still be contributing and will be pensioned in relation to the \$12,000. There is no change on that. The \$15,000 only applies to those senators who have been summoned to the Senate since June 2, 1970.

**Senator Flynn:** No, that is not the case. We all pay on the \$15,000 now.

**Mr. Clark:** Well, not all of you should be.

**Senator Flynn:** This was the consideration paid for obtaining the possibility of a pension to a widow of a senator who died in office before attaining the age of 75.

**Senator Cook:** We are paying on the \$15,000.

**Mr. Clark:** I will have to have a word with your accounting people.

**Senator Cook:** Those who made the election, I mean.

**Senator Flynn:** Everybody is paying on the \$15,000, Senator Cook.

**The Acting Chairman:** We all pay the same thing.

**Senator Flynn:** We all pay 6 per cent on \$15,000. We all pay the same amount.

**Senator Blois:** Even those of us who are not eligible for pensions, as is the case with myself. I still pay, but my estate will get it back when I have left this world. I think that is the way it works. I will never get a pension, but I pay just the same.

**Senator Smith:** But you will get it back.

**Senator Blois:** My estate will. It will not be much good to me where I am going.

**The Acting Chairman:** You never can tell.

**Senator Walker:** It will be too hot to spend!

**The Acting Chairman:** They may change those rules, too.

**Senator Walker:** I do not mean the money will be too hot; I mean the place will be.

**The Acting Chairman:** I am glad that the Leader of the Opposition and Mr. Clark are both confused about this.

**Senator Flynn:** I am not confused at all. We have to remember, Mr. Chairman, that when the 1965 legislation was passed those senators appointed before June 2, 1965 then had the choice of going under the House of Commons pension scheme. However, only one senator elected to go under that system.

**The Acting Chairman:** Because he was young.

**Senator Flynn:** And because he had already gained a pension in the other place.

**The Acting Chairman:** That is right.

**Senator Flynn:** It was generally agreed that the choice was impracticable for those appointed before 1965. Subse-

quently, there was the amendment of last year. That amendment was made because we were paying in the order of \$600 a year and, if you happened to die in office, not even having had the chance of resigning at the age of 75 or resigning because of ill health, there was no refund to your estate of the contributions you had made, which would have amounted to something in the order of \$20,000. Nor was any payment or pension made to your widow in that event. The legislation of last year tried to correct that, but in compensation for the added benefit of a refund or a pension we have been paying that 6 per cent on the \$3,000 expense allowance.

**Mr. Clark:** I am sorry, but that cannot be.

**Hon. Mr. MacEachen:** It may be that you are in for a bonanza, senators. You may be getting a refund, if Mr. Clark is right.

**The Acting Chairman:** We will certainly hire Mr. Clark to be our spokesman, if that is going to be the result.

**Senator Smith:** Mr. Chairman, all I have seen Mr. Clark do so far is to shake his head and grin. What does he mean by that? Let us have something on the record.

**Senator Walker:** Let us have him on the record. What is the law of the Medes and the Persians?

**Mr. Clark:** I have before me the amendments of last year, and those amendments, while they made it possible to protect the widow in the case of death before attaining the age of 75, did not amend the definition of sessional indemnity. In fact there was no definition of sessional indemnity which meant that you looked at the terminology as it was in the Senate and the House of Commons Act, namely \$12,000, and while the definition of sessional indemnity for the separate act, that is the Members of Parliament Retiring Allowances Act, was changed last year to include the expense allowance, that amendment was not made in the act to make provision for the retirement of members of the Senate. The amendment in the bill now before us simply continues the present provision, as it is in the law, for the contributions and benefits being based on \$12,000, in keeping with the policy that these amendments should not change either the contribution basis or the benefit entitlement.

**The Acting Chairman:** What you are saying is that the contributions that have been paid by senators, or the contributions that have been deducted from the indemnity of senators, have been deducted on the wrong basis; it has been deducted from \$15,000 instead of \$12,000.

**Mr. Clark:** For those senators who are subject to the 1965 Act, yes. But for those who are contributing on the basis of the Members of Parliament Retiring Allowances Act, a separate act, it is a \$15,000 base which was applicable.

**The Acting Chairman:** Well, we have been making this contribution now for six years.

**Senator Cook:** No, on the \$12,000 for six years, but on the \$3,000 for only a short period.

**The Acting Chairman:** For how long?

**Mr. Clark:** Since April last year.

**The Acting Chairman:** I would not want us to go beyond this point without getting it clarified and without getting



an arrangement made whereby this situation will be rectified. Would you speak to Mr. Dean and clarify this position? We may have had a profitable morning for a few senators.

**Senator Flynn:** I was going to suggest a bargain to the Minister, that they change the provisions as far as pensions to the widows of senators appointed before 1965 are concerned. However, I wanted Mr. Clark to put on the record what is the proportion of the member's pension which goes to his widow under the Members of the House of Commons and Dependents Pension Act. I think it is 60 per cent.

**Mr. Clark:** Under that act it is 60 per cent, related, of course, to the amount of pension based on the length of his service.

**Senator Flynn:** Presently the pension payable to the widow of a senator appointed before 1965, in the case where it is payable, is \$2,667.

**Mr. Clark:** That is right.

**Senator Flynn:** The pension payable to the widow of a member of the judiciary of, let us say, a supreme or a superior court of a province?

**Mr. Clark:** I would not want to put a figure in dollars, but it is one-third of the judge's pension, which is the formula in the act to make provision for the retirement of members of the Senate. In both cases it is one-third.

**The Acting Chairman:** The percentage is the same?

**Senator Flynn:** I just wanted to put the figure in. The new act would provide for a salary of \$39,000, if I am not mistaken, to a judge of a supreme or superior court of a province.

**Mr. Clark:** Well, I cannot speak on that.

**Senator Flynn:** If it is so, then his pension will be two-thirds of that?

**Mr. Clark:** Yes, that would be so.

**Senator Flynn:** Then the pension payable to his widow would be one-third of his own, and that is about \$8,000.

**Mr. Clark:** Yes.

**Senator Flynn:** And if I am not mistaken, under the Members of the House of Commons Act, concerning their pensions, the maximum pension is \$13,500 to a former member.

**Mr. Clark:** The maximum after up to 25 years of service, yes.

**Senator Flynn:** And the pension to the widow would be 60 per cent of that?

**Mr. Clark:** That is correct.

**Senator Flynn:** That is also close to \$8,000.

**Mr. Clark:** Yes, at the maximum.

**Senator Flynn:** And in the case of members of the judiciary and members of the House of Commons there are provisions for the children?

**Mr. Clark:** Well, at the moment there is no provision for the children in the case of members of the judiciary.

**Senator Flynn:** But I understand there is some provision in the act presently before Parliament.

**Mr. Clark:** Yes, in the bill presently before the House of Commons there is an amendment to that effect.

**Senator Flynn:** So that by comparison the pension payable to a senator appointed before 1965, especially if he has been here over ten or fifteen years, is very much below that which is payable in the other case.

**Mr. Clark:** I would not want to say where the dividing line is, but certainly after 20 years there would be a difference in any case.

**The Acting Chairman:** The difference would be below the poverty line, almost—\$2,600.

**Senator Flynn:** I know of several widows of former senators who have only that pension to live on and they are in a very difficult situation.

**The Acting Chairman:** I think it is very valuable to have this information on the record.

**Senator Flynn:** I know it cannot be corrected at this time, but I wanted to put that on the record for future amendments.

**The Acting Chairman:** And for the edification of the minister.

**Senator Flynn:** Before the amendment of last year the situation was also very difficult. I know of a case of a widow of someone who had been in the department for half a century and who did not receive a cent in the way of pension.

**The Acting Chairman:** Are there any more questions?

**Senator Carter:** I do not understand your difficulty in putting in an escalator clause for future adjustments, because the main argument that has been advanced for this one is that the cost of living has gone up since the last increase in 1963, and that we are now compensating for that. In effect, the rationalization of this increase has been based on the rise in the cost of living. That is the main argument we used in connection with the former increase. If we can use that argument twice, why is it not good for the future?

**Hon. Mr. MacEachen:** When the increase was proposed in 1963, it was never suggested that the increase was to look after many future years. It concerned the past. This was a confusion that developed in the press and elsewhere, that it had been stated in 1963 that the size of the increase was large because we were looking after the future. That was never stated by anyone who was a member of Parliament. What the Prime Minister of the day said, I believe, was that it was looking after what had happened in the past, since the former increase. That is what we have done again. We are picking up the fact that there has been no increase since 1963.

I suppose it is not, strictly speaking, the best way of putting it, to talk about the cost of living. We are talking basically about movements in wages and professional compensation, to which I think members of Parliament can legitimately draw comparisons.

**Senator Carter:** Even taking that argument, why could you not base your formula on that?



**Hon. Mr. MacEachen:** Why not?

**Senator Carter:** I cannot understand the difficulty.

**Hon. Mr. MacEachen:** I produced what I thought was a very good formula. I thought it was splendid. However, it did not go with members of Parliament. There were objections on differing grounds. Nevertheless, I thought it was very good and I firmly believe that whoever does this job on the next occasion will appreciate what a mistake it is that we are not doing something now to provide for future escalation. However, we just could not get general agreement on what would be a good basis.

I had developed a formula whereby we would hook future escalation of the pay of members of Parliament to the mid-point of the executive category in the Public Service. The executive category of the Public Service is normally based upon an examination of the movements of the private sector. There would therefore be an objective examination leading to an adjustment in the executive category, and the pay of members of Parliament would be adjusted to that.

I thought that would be one feature of the formula and that the first pay increase would take place on the day of the election of the thirtieth Parliament, and thereafter on an annual basis.

It had some good features and, I suppose, some disadvantages. It had one feature, if accepted, that members of Parliament would be establishing a formula that would not necessarily benefit themselves because there would be the intrusion of two elections before it would come into play.

**The Acting Chairman:** Plus an outside forum of reference.

**Hon. Mr. MacEachen:** Yes. There would be a definite method and it would take place annually, on an objective basis. I still think it is pretty good. However, in this business many people have to think it is pretty good before it goes, and it did not go.

**Senator Walker:** I suppose that you have made provision for the contingency that if salaries for the top brass go down, the salaries of members of Parliament will also go down. Is that in the formula or is that one of the things that held up the adoption of it?

**Hon. Mr. MacEachen:** That did not hold up the adoption of it. It was not in there.

**Senator Hays:** If you relate these increases to those that the press get each year, rather than to senior public servants, that might be a better way of handling it. The press received increases totalling 58 per cent over the same period, and in some industries the figure has been 90 per cent. This might be politically more acceptable.

**The Acting Chairman:** That might take the cursing out of the editorials!

**Hon. Mr. MacEachen:** In saying that it did not go, I do not blame anyone. I am not critical, because it is a very difficult subject, politically and otherwise. People really do not like to deal with these matters. However, we did consider it, and I have that formula in my file for future generations of members who might wish to have it.

**The Acting Chairman:** We have it on the record here, and it might be a guide.

**Senator Flynn:** Is my understanding correct that occasionally there is an adjustment in pensions pair to retired civil servants or their widows to take into account the increased cost of living or the decrease in the dollar value?

**Hon. Mr. MacEachen:** Yes, senator. This applies to former members of the Senate and the House of Commons on pension, and their widows.

**Senator Flynn:** I think that before the last changes, the maximum pension payable to former members of the House was \$3,000 a year.

**Hon. Mr. MacEachen:** Yes.

**Senator Flynn:** Has it been adjusted?

**Mr. Clark:** Former members and their widows.

**Senator Flynn:** But there was no payment to the widow of a former member.

**Mr. Clark:** They obtained the benefit of this legislation which was passed last year, and have been receiving escalation in their pensions since April 1 last year.

**Senator Flynn:** That would not apply to the pension payable to a widow of a senator appointed before 1965.

**Mr. Clark:** It did not provide a pension where none was payable. However, where a pension was in pay it would provide escalation in her pension.

**Senator Flynn:** Even on this \$2,667?

**Mr. Clark:** Yes, that would be subject to the escalation.

**Senator Flynn:** I did not know this; this is probably good news for many widows.

**The Acting Chairman:** The amount is minimal.

**Senator Flynn:** Yes, but sometimes it is 10 or 15 per cent.

**Mr. Clark:** In the case of a senator who retired in 1965 it would have been a little more than a 10 per cent increase. Then there was another 2 per cent increase from January 1 this year, and potentially there will be another 2 per cent increase on January 1 next year. There is provision in last year's legislation.

**Senator Flynn:** What is this legislation?

**Mr. Clark:** The Supplementary Retirement Benefits Act. In Schedule A, item 3 of that act is included: "An Act to make provision for the retirement of members of the Senate".

**Senator Flynn:** Would it be under this act that we pay 6 per cent on the difference?

**Mr. Clark:** No, this is the occasion of the half of one per cent. You may remember that as of April last year there was an extra half of one per cent contributed.

**Senator Flynn:** Only one-half of one per cent?

**Mr. Clark:** Yes. This was to help provide for the cost of escalating these pensions in pay.

**Senator Carter:** I know that you cannot give actual figures for individuals, because there are different family sizes. However, what is the net value of this increase? How much of it will go to income tax and how much will be an

actual increase, on average? A person receives an indemnity. Let us take a member with a family of two children.

**The Acting Chairman:** Has he no other income?

**Senator Carter:** Yes, with no other income.

**The Acting Chairman:** I think, Senator Carter, it would be almost impossible for Mr. Clark to answer that. It is a matter of the Income Tax Act and regulations.

**Senator Carter:** The general impression is that this is \$6,000 spending money; it is not.

**The Acting Minister:** Of course it is subject to tax, but not in the isolated case of this amount of money being transferred. It will be subject to tax at the rate applicable to the individual taxpayer.

**Senator Carter:** That is right, but we know what the marginal rate is for \$18,000.

**The Acting Chairman:** Yes, but Mr. Clark does not, unfortunately. This is the point. It probably would reduce the increase by 25 per cent, or perhaps more. It is all taxable. It is a good point to raise, but unfortunately we do not have the figures.

Gentlemen, if there are no other questions, I know the minister has to be in the house for 11 o'clock. Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Mr. Minister, thank you for coming here this morning and not only discussing this particular bill but really dealing with the whole area. It has been very helpful and everyone is most gratified, first, with your presence and, secondly, the able manner in which you have conducted the discussions.

**Hon. Mr. MacEachen:** Thank you very much.

The committee then proceeded to the next order of business.

Ottawa, Thursday, June 10, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-207, an act respecting the organization of the Government of Canada and matters related or incidental thereto, met this day at 11 a.m. to give consideration to the bill.

**Hon. John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, we now have for consideration Bill C-207.

As you know, the burden of the criticism in the house was that included in an omnibus bill are a great many different types of food which you are asked to digest together. However, perhaps we can use the fact that this bill is segregated. While awaiting the minister's arrival, as we have Mr. Clark here, would it be your wish to have him deal with Part VII of the bill, which contains the superannuation provisions on which he is the expert? It is not a controversial section, but it is probably one with which the minister would prefer to have Mr. Clark deal.

**Hon. Senators:** Agreed.

**The Acting Chairman:** We will proceed with Part VII and then deal with the other parts of the bill with the minister.

Perhaps I could help the committee by telling Mr. Clark that in the explanation which I gave in the house I used seven examples or classes which were touched by the proposals in the bill in respect of the superannuation of public servants. I do not ask Mr. Clark to confine himself to those cases. However, perhaps he would explain in a general way the proposals of Part VII. Would you, Mr. Clark, in particular deal with the situation arising out of the Pension Benefits Standards Act, with reference to which Senator J. M. Macdonald asked me a question which I was reluctant to answer in the Senate? The implications of that act only arise in one of the areas covered by Part VII of the bill, but I would ask Mr. Clark to keep the application of that particular act in mind.

**Mr. H. D. Clark, Director, Pensions and Insurance Division, Treasury Board:** Mr. Chairman, honourable senators: I think I can confine my remarks to a very short space of time in view of the explanation given by Senator Connolly when the bill was debated earlier.

**The Acting Chairman:** Were there any mistakes made in the explanation?

**Mr. Clark:** There were none of which I am aware.

**The Acting Chairman:** So there was no misleading as far as I am concerned. You have to be sure, because when discussing superannuation it is very easy to stray.

**Mr. Clark:** These amendments reflect the results of a review we have been making for some time with the objective of improving benefits in the event of early retirement from the Public Service, whether at the initiative of the employer or the employee.

In brief, the amendments provide that if an employee retires, either at the initiative of his employer or voluntarily, after he has attained 55 years of age, and has 30 or more years of pensionable service to his credit, an immediate annuity shall be paid to him without actuarial reduction. At the moment, if a person goes out before 60 years of age, say at 55, his pension would be reduced by something like 30 per cent, because of the early retirement.

**The Acting Chairman:** His immediate pension.

**Mr. Clark:** His immediate pension, or he could have had a deferred annuity commencing at age 60. The effect of this is, if he has 30 years service to his credit at that time, to eliminate this reduction.

In the case of a person who goes out at the age of 50 and has 25 or more years of pensionable service to his credit, the immediate annuity, if he desires to have one, is related to the deferred annuity but is reduced by five per cent for each year that his age is less than 55 or the number of years his service is less than 30, whichever is the greater.

**The Acting Chairman:** If I might interrupt, perhaps I could welcome the minister who has now arrived.

**Honourable C. M. Drury, President of the Treasury Board:** I apologize for my late arrival.

**The Acting Chairman:** I think it is desirable to finish with the part we are on, as I think you will agree, Mr. Minister. What we are doing is going on with Part VII, which has to do with the Public Service Superannuation Act. Mr. Clark has indicated that he will not be very long, and perhaps we can get that out of the way.



**Mr. Clark:** That is the situation in the case of either voluntary or involuntary retirement for employees of 50 or more years of age with 25 or more years' service to their credit.

In the third area, we have a situation where a person cannot qualify under either of these two provisions to which I have just referred, but has attained the age of 55, has 10 years of service to his credit, and is retired involuntarily. In such a case the Treasury Board is given authority to waive the actuarial reduction that presently takes effect in those cases. Roughly speaking, the actuarial reduction is on the basis of 5 per cent for each year that the man is short of 60, so if he were aged 55 and with ten years of service, at 5 per cent a year, he would then receive a pension of at least 75 per cent of the full deferred annuity commencing at age 60, but the Treasury Board would have authority to waive this reduction, depending on the criteria the board adopted.

Those are the three features of the early retirement legislation, which Senator Connolly (Ottawa West) explained in the Senate chamber earlier.

**The Acting Chairman:** Would you put something on the record with reference to the Pension Benefits Standards Act and its application? That is subsection (E), I think.

**Mr. Clark:** That has to do with one of the options an employee has on retiring before the age of 60. He has the choice between a deferred annuity which is payable immediately, the amount of which can depend on the length of service and the conditions of retirement that I have just described, or a return of contributions, with the one proviso which Senator Connolly mentioned in respect of what we call the locking-in contributions. If he is over the age of 45, the Pension Benefits Standards Act sets forth the principle that a person who retires after 45, with 10 or more years of service, cannot receive a return of his contributions in relation to service performed after September 30, 1967. This locking-in provision, as we call it, is described on page 11. The closing lines of subsection (E), lines 9 to 16, merely continue the locking-in provisions of the Pension Benefits Standards Act.

**The Acting Chairman:** I understood there was some correlation here with the Pension Benefits Standards Act in its application to provincial public servants too. Is that so?

**Mr. Clark:** This is right. This is similar to provisions contained in the pension benefits acts of Ontario, Quebec, Alberta and Saskatchewan. Some of them have slightly different dates. The Ontario date went back to 1965. The effective date in the federal legislation was October 1, 1967. This is why we have reference here to the locking-in of contributions after September 30, 1967.

**Senator Isnor:** When you mention these provinces, you are referring to government retirement pensions, are you?

**Mr. Clark:** The provinces I just mentioned?

**Senator Isnor:** Yes.

**Mr. Clark:** Ontario, Quebec, Alberta and Saskatchewan are provinces that have legislation providing for the locking-in of the contributions of employees who leave employment after the age of 45 with 10 or more years of service.

**The Acting Chairman:** In the public service of those provinces?

**Mr. Clark:** Applying to private plans primarily. This is designed, of course, to ensure some retention of pension rights for older employees whose employment is terminated or who are transferred to another employer.

**Senator Isnor:** That is all right as far as the Government and the provinces are concerned. Was there ever a comparison made between private enterprise for commercial life pensions as compared to the governments?

**Mr. Clark:** We have made comparisons; and the Government pensions, those under the Public Service Superannuation Act, compare favourably with the better private pensions. There are some that are much better, but more that are not quite as favourable.

**Senator Isnor:** I would say that the majority were not as favourable.

**Mr. Clark:** The majority would not be as favourable. On the other hand, there are many plans of which we are aware that are better.

**Senator Burchill:** Do private pensions have that locking-in feature?

**Mr. Clark:** The provinces of Ontario, Quebec, Saskatchewan and Alberta which I mentioned.

**Senator Burchill:** They would all have it?

**Mr. Clark:** Yes. In Saskatchewan there is a little variation. In the case of married women, there was some pressure exerted in the passage of that bill, and there is an exempting provision in the case of women. But across the country, insofar as the men are concerned, in those provinces it is applicable.

**Senator Burchill:** Thank you.

**Senator Isnor:** I have one more question. It appears to me that the Government pension scheme is very generous in regard to age retirement, as compared to other schemes.

**Mr. Clark:** Well, yes and no. What we call the normal compulsory retirement age is 65, beyond which special authority for extension of employment has to be given. Under the present act and regulations, a person can go out at the age of 60 and receive a full pension based on his life category.

**Senator Isnor:** Are you speaking of the federal Government?

**Mr. Clark:** In the federal Government.

**Senator Isnor:** Not 60, but 55, is that right?

**Mr. Clark:** This bill would make it possible for a person to go out at the age of 55, provided he had the 30 years of service, and receive an immediate pension based on his length of service, without any other reduction. But this applies in a number of other plans of which we are aware, too. We are not unique in making this proposal.

**Senator Isnor:** But you say that you are very generous in regard to these people?

**Mr. Clark:** Certainly we are among the better plans; there is no doubt about that.

**Senator Isnor:** I think I have made my point as far as I want to go.



**Senator Flynn:** Mr. Chairman, my attention has been drawn to the case of former employees of the Canadian Arsenal in Valcartier, who were forced to retire before reaching the age of 60, some years ago, when the Government disposed of the plant. Some have not reached 60 for a deferred pension, but they have 30 years of service. My understanding is that the provisions of this act, or the amending provisions, do not apply to them, that they cannot start drawing a pension at 55, but they still have to wait until they reach the age of 60.

**Mr. Clark:** They have the option, as they have had from the time they retired, of requesting that what we call an actuarially adjusted pension be payable, at any time after the age of 50. That has always been their privilege.

**Senator Flynn:** But the provisions of this act would allow the option to be taken at 55?

**Mr. Clark:** That is so in relation to retirements after the effective date of this legislation.

**The Acting Chairman:** This legislation does not apply to past retirements, is that what you say?

**Mr. Clark:** It does not extend these early retirement provisions to people who retired, who ceased to be employed, before the beginning of the year.

**Senator Flynn:** They did not have that option, and it is not given to them by this act?

**Mr. Clark:** This act does not have retroactive effect to the Canadian Arsenal employees, or to any other group that retired.

**Senator Flynn:** This was forced retirement I am speaking of, in most cases.

**The Acting Chairman:** Are there any other questions on Part VII? If not, can we take it that Part VII is satisfactory to us?

**Senator Flynn:** Well, we understand what it means.

**The Acting Chairman:** There are no amendments? May I put the question? Are there any amendments to Part VII? Senator Flynn? If not, thank you, Mr. Clark, for your assistance.

**Mr. Drury:** would you like to make a general statement about the provisions of the bill?

**Hon. Mr. Drury:** Mr. Chairman, I have read the introductory speech you made in the Senate and nearly all of the other speeches made. I am not sure that there is much I can add to the outline you have given. Perhaps it would be a little presumptuous on my part to comment on other remarks made by senators during the debate. However, I would be glad to try to answer any questions, or even any challenges.

**Senator Flynn:** Mr. Minister, you are at a disadvantage, because the only one in the Senate who spoke in favour of the bill was the present chairman of the committee. All the other speeches were against, and no one came to the rescue of Senator Connolly.

**The Acting Chairman:** Nobody spoke about all parts of the bill.

**Senator Burchill:** If we had done that, it would never have gone through.

**Senator Flynn:** That is the only thing that worries the Leader of the Government; "Pass the bill!"

**Hon. Mr. Drury:** That is an occupational hazard for the Leader of the Government.

**Senator Walker:** I think the point that worried us most was the necessity for this bill. What is the necessity for the creation of these ministers of state? There must be some particular department you have in mind at the present time. Otherwise, this bill would not have been brought to our attention. Also, once it gets under way, having in mind the fact that these ministers seem to be called on to formulate and develop policy in connection with matters, once those policies are formulated, do you expect to bring to an end the ministry set up? In other words, are these ministries temporary matters? If you read the speeches you will realize that these are the questions we are interested in. It is not in any critical way that we are asking now for some explanation as to the necessity for the bill at the present time.

**Hon. Mr. Drury:** I think the question is related to the bill. I do not need to argue the necessity or desirability of having a Department of the Environment, nor the part of the bill, Part VII, to which Mr. Clark has been talking, the desirability of a greater degree of flexibility than we have had in the past in the matter of retirement.

In so far as the ministries of state and ministers of state are concerned, there has existed, as part of the prerogative, the right of the Crown to create ministers without portfolio in unlimited numbers with unspecified duties and responsibilities, subject only to the provision by Parliament of the necessary funds to pay the salary. This can be obtained either in advance or, as is most usual because the creation of ministers without portfolio is not foreseen enough in advance, by way of supplementary estimates.

One thing that has become quite apparent is that the pace of change of both social and economic conditions in all western countries has accelerated quite considerably. Most governments tend to be structured in relation to historic trends. Perhaps we are somewhat like the universities in that we have come into this post-war period with a series of departments which are related to ancient disciplines. As an example I might cite the Ministry of Agriculture, which is a traditional occupation in Canada. The ministry of Fisheries is perhaps another. If I may make reference to Senator Forsey, we have experienced the same kind of phenomenon that occurs in relation to the structure of a university, namely, that the old, narrow disciplines and the concentration on them does not fit the current circumstances, so that it has become necessary to create interdisciplinary, combining functions in order adequately to get at our fundamental problems.

This has led to the kind of proposal found in this bill, namely, the creation of a Department of the Environment which cuts across a whole lot of old, particular, departmental functions. When you are creating new departments, obviously, if you are going to avoid unnecessary expense and confusion—and the confusion is probably more deleterious than the expense—you should try to abolish some of the old, traditional departments or meld them into a new structure.

The ministry of state concept will allow this process to be carried on. It will perform two functions. In effect, it will be either a pilot project for a continuing full-fledged department, in which case the ministry of state will be

converted by an act of Parliament into a regular department of government, or it will allow the establishment of a coherent apparatus to focus on a particular problem and propound solutions. If these solutions are able to be carried out adequately by perhaps one or more existing departments, then the necessity for the ministry will disappear and so will the ministry. If not, then we will need a regular department of government—perhaps another one—and the ministry of state to provide an instrument for restructuring the Government in a less permanent but more rapid way than by the creation of a full-fledged department of government such as the Department of the Environment.

**Senator Connolly (Ottawa West):** It would also be less rigid.

**Hon. Mr. Drury:** We have had considerable experience over the past few years in that there has been a Government Organization Act each year doing just this. There has also been quite extensive use made of the Transfer of Duties Act to bring about this kind of restructuring or reorganization of the Government, as new problems develop or as existing problems change their relative priority and become important while other existing problems appear either to be solved or to recede in importance.

**Senator Walker:** Then the ministries of state are, initially in any event, temporary creations, unless it is indicated that they should be permanent, in which event the ministers will change from ministers of state to regular ministers of the cabinet.

**Hon. Mr. Drury:** I think one should look rather more at the ministry than at the minister. The ministry starts out as a secretariat. We are indicating quite clearly that there will be a ministry of state established for urban affairs. It is not quite clear at this point what the role of the federal Government should be in urban affairs. This is going to evolve. Before we try to set up a department with clearly defined and, one hopes, relatively permanent functions in this particular field of urban affairs, some evolution both in thinking and in experience is needed. But perhaps at this juncture it would be unwise to try to establish a department of urban affairs, because it is not too clear what kind of role the federal Government should play in assaulting this particular problem.

**The Acting Chairman:** Because of provincial and municipal interests?

**Hon. Mr. Drury:** Because of the provincial and municipal interests and, indeed, jurisdiction.

**Senator Walker:** Are there any other prospective ministries that would necessitate this bill, which seems quite ample to deal with the creation of ministries of state? It occurs to me that there could be some conflict between housing and urban affairs since they are so interrelated.

**Hon. Mr. Drury:** They are interrelated and quite clearly the housing function of the federal Government will be part of the responsibility of this particular minister of state. That is the permanent plan.

**Senator Forsey:** It will be "housing and urban affairs," then?

**Senator Flynn:** It is a question of semantics.

**Hon. Mr. Drury:** Put it this way: housing will be included in urban affairs.

**Senator Walker:** Mr. Andras is a minister without portfolio, is he?

**Hon. Mr. Drury:** He is a minister without portfolio, yes, "in charge of housing," which means that CMHC reports to him.

**Senator Walker:** I see.

**Hon. Mr. Drury:** As a minister without portfolio responsible for housing he also answers to the Government in respect of housing questions.

**Senator Walker:** Yes. Have you any other indication, Mr. Minister, as to other ministries that might be created that you might care to name?

**Hon. Mr. Drury:** There appears to be emerging a clear desirability for a minister of state and a ministry of state for science. These are the two to which a considerable amount of thought has already been given, and I would forecast as being likely.

**Senator Carter:** Is that for science or for science policy?

**Hon. Mr. Drury:** Well, I am not quite sure how one distinguishes between science and science policy.

**Senator Flynn:** Science is more inclusive, perhaps.

**Hon. Mr. Drury:** Science is perhaps more inclusive than science policy.

**Senator Carter:** Well, straight science would be more or less dictating projects which should be left to scientists themselves, whereas the overall policy would be concerned with the determining of goals and priorities and the allocation of resources. A science minister should be responsible for policy without the actual responsibility of saying, "This will be done there, and that will be done somewhere else."

**Hon. Mr. Drury:** I would agree with you that the function of such a ministry would be co-ordinating and dealing with questions of policy rather than trying to operate as manager or controller of large scientific or research establishments. I might add the further qualification that the desirability or the pressure for this is much greater in the



field of the natural sciences than in the social sciences, and when one talks about this prospective ministry of state for science policy, there is a possibility that this will be related to the natural sciences or the physical sciences rather than the social sciences.

**The Acting Chairman:** But the minister would not be responsible for the day-to-day operations of whatever establishments come within the purview of his department.

**Hon. Mr. Drury:** That is one view. I think the general consensus at the moment is that such a minister should not be in charge of, or have put under his jurisdiction, all the scientific establishments under the control of the federal Government.

**Senator Forsey:** He should not?

**Hon. Mr. Drury:** He should not. This does not mean that under his jurisdiction there may not be one fairly large operating establishment such as the National Research Council, which is a big operating establishment. On the other hand, it would be clearly undesirable that he should have the functional control, for instance, of the Defence Research Board, or the Communications Research Laboratory of the Department of Communications, or the Experimental Farms of the Department of Agriculture. I do not want to say he would have none, because the National Research Council has to come under somebody, and I do not want to say he is going to have them all.

**Senator Walker:** Mr. Minister, there are a great many Crown corporations formulating policy, and once such policies are formulated you do not have to go back on them very often because policy is policy and is not changed from day to day. Have you in mind creating ministries of state and attaching to them the various Crown agencies? NSTANCE, THE CBC is one that I can think of, and Polymer, and keeping in mind that the purpose of the function of the minister is to formulate policy, have you something like this in mind, or is it going to be a very narrow field where only a few ministers are going to be appointed?

**Hon. Mr. Drury:** Well, my guess would be that the number of ministries of state or ministers of state created would not be large. At the present time each of these Crown corporations, and there is quite a variety of them, is the responsibility—insofar as the Parliament of Canada has a direct responsibility for them—of a named minister. By way of example, the Canadian National Railways reports to Parliament through the Minister of Transport. This is part of his load of responsibility, and because the railway operation is so intimately linked with the general operations of the Ministry of Transport, as long as this is not too great a load on the particular minister this would seem to be a satisfactory continuing arrangement. Polymer Corporation reports to Parliament through the Minister of Supply and Services, which again appears to be the appropriate one. I cannot remember all the list, but there are a number in the financial field who report through to the Minister of Finance. The Canadian Export Development Corporation reports through the Minister of Industry, Trade and Commerce, and this is closely linked to his departmental functions and responsibilities.

**The Acting Chairman:** CIDA?

**Hon. Mr. Drury:** CIDA reports through the Secretary of State for External Affairs.

**The Acting Chairman:** Of course, that is not strictly a Crown corporation.

**Senator Walker:** It would be a pity, would it not, to bring in ministers to interfere with functions of the Crown corporations unless there was some new project where you were going to enunciate new policy and change the Crown corporation radically, and even then it would be a temporary measure? In other words, what I am getting at is that you do not contemplate the creation of these ministries for the purpose of supervising or checking or controlling or running the Crown corporations.

**Hon. Mr. Drury:** That is not the plan. Mr. Chairman. I will not say it will never occur because, in fact, we are contemplating doing this in relation to Central Mortgage and Housing which is a Crown corporation. The reason for this is that the activities of the Crown corporation are such that it is too much of a load to attach this additional responsibility to a minister who already has heavy departmental responsibilities. As you remember at one time Central Mortgage and Housing reported to Parliament through the Minister of Transport.

**Senator Martin:** Senator Walker—or Mr. Walker as he then was—had this responsibility.

**Hon. Mr. Drury:** I am looking at more recent history.

**Senator Martin:** He is familiar with having several departments, including this one.

**Senator Walker:** I had three. I had the National Capital Commission, Public Works, and Housing. We got along well. We had a huge expansion in housing at that time. We got along well and we had a huge expansion of housing at that time in the National Capital Commission. I do not see why, if you have departments competently led, you need to have a Minister for Housing to run the present outfit. It is doing pretty well. Why would you need a minister?

**Hon. Mr. Drury:** In the current year we are likely to have what is termed a record in housing starts. This is partly due to having an energetic minister who is devoting full time to this and nothing else.

One of the important ingredients in the success of CMHC is the availability of loan funds for placement in the private sector. That particular Crown corporation has to bid for these funds, the sole source of which is the fisk, against other ministers. It helps a great deal to have a minister engaged in this process of making the case rather than merely the president of the corporation.

**Senator Walker:** Is not this the beginning of proliferation? You will have a minister of state for urban affairs. I am not criticizing it. I know you are feeling your way on this, as you must. A great part of the housing department is going to be transferred to the department of urban affairs. Surely, having another Minister of State for CMHC, which deals almost exclusively with housing and apartments, would mean a proliferation. In other words, you are splitting the great housing problem into two parts and having two new ministers. This thing could grow like Topsy. This is what we are worried about.

**Hon. Mr. Drury:** Perhaps I did not make myself clear. There will be only one minister for urban affairs, including housing.

**Senator Walker:** And a separate one for CMHC?



**Hon. Mr. Drury:** No. CMHC includes housing.

**Senator Walker:** When you say that we are going to have a minister of state to take care of CMHC, you mean that it would be the minister of urban affairs.

**Hon. Mr. Drury:** That is correct.

**The Acting Chairman:** The only additional one is the possibility of a minister in connection with science or science policy.

**Hon. Mr. Drury:** Some argument has been put forward in the House of Commons for naming a Minister of State to deal with the Report on the Status of Women.

**Senator Flynn:** That is a full-time job.

**Hon. Mr. Drury:** The problem concerning that report is that it does not fit into any particular of our departmental structure. This is the kind of phenomenon which, if it is of sufficient importance and is going to be dealt with in a focused way, might best be handled by one of these inter-departmental disciplinary ministers of state.

**Senator Walker:** All 28 ministers will keep their eye on that problem. They are, anyway—particularly the first minister.

**Hon. Mr. Drury:** Clearly there is a danger or possibility of a proliferation. However, the experience of the present Government indicates that there is a desire, when a new department or agency is created, to at least co-ordinate, consolidate, meld or abolish some of the older ones that do not quite seem to fit. The process of organization development does not lead to increases with no corresponding offsetting decreases.

**The Acting Chairman:** We have had an example of that in connection with the proposed establishment of the Department of the Environment to which, as I remember the figures, some 10,000 employees of various departments will be transferred.

**Hon. Mr. Drury:** That is correct. The Department of Fisheries and Forestry will no longer continue as a department.

**Senator Forsey:** It will disappear?

**Hon. Mr. Drury:** As a department.

**Senator Walker:** Have any disappeared yet?

**Hon. Mr. Drury:** I am not sure how you measure disappearance. If one looks at the salaries one will find that there is no longer a salary required for a Minister of Industry. Under this bill a salary for the Minister of Fisheries and Forestry will no longer be provided.

**Senator Isnor:** What is the argument for doing away with that?

**Hon. Mr. Drury:** Well, the term "doing away with" means having the function of these particular departmental arrangements conducted by someone else.

**Senator Burchill:** Will the name be dropped?

**Hon. Mr. Drury:** The name will not be dropped. In response to an expressed desire, the name "Minister of Fisheries" will be continued. I think there is a specific amendment in the bill which allows for that.

**Senator Forsey:** There will be someone who will be minister of something or other and also Minister of Fisheries. He will have two portfolios?

**Hon. Mr. Drury:** It would be difficult to say that he would have two portfolios, because there is no portfolio of Fisheries.

**Senator Forsey:** I should have said that he would have two departments under him, which used to happen with the Department of Mines and the Interior, and that sort of thing. There was no provision for a separate minister in some instances.

**Hon. Mr. Drury:** In this case there is provision for two ministers but only one department.

**Senator Flynn:** Section 3(3) says:

The Minister of the Environment is the Minister of Fisheries for Canada

That means only one. I suggest also that it means that he will always be called the Minister of the Environment. The Minister of the Environment discharges the responsibilities of the Minister of Fisheries, but that is not his title.

**Hon. Mr. Drury:** It is quite clear. The Minister of the Environment is also the Minister of Fisheries for Canada. He is the Minister of Fisheries and people are entitled to address him as such.

**Senator Isnor:** How would they address him in future?

**Hon. Mr. Drury:** I am not sure what you mean by "they". It is quite clear that some of the members of the House of Commons who represent Newfoundland will address questions in the house of Commons to the Minister of Fisheries, and the Minister of Fisheries, otherwise known as the Minister of the Environment, will rise in reply.

**Senator Walker:** Have you in contemplation the creation of a minister of state responsible for the CBC?

**Hon. Mr. Drury:** Not at the present time.

**Senator Walker:** You surely would not create one for the National Capital Commission?

**Hon. Mr. Drury:** That is not in contemplation either at the present time.

**Senator Walker:** But that does not mean, of course, particularly with reference to the CBC, that you have not been thinking of it?

**Hon. Mr. Drury:** We have been thinking in both fields.

**Senator Flynn:** It is an obsession with every government.

**Hon. Mr. Drury:** It is really a determination or judgment as to whether the activities of a particular agency or Crown corporation are such as to warrant virtually the full time attention of a senator.

**Senator Walker:** Did you ever consider one minister, a member of the cabinet, not just a minister of state . . .

**The Acting Chairman:** A minister with portfolio.

**Senator Walker:** A minister with portfolio, for Crown corporations?

**Hon. Mr. Drury:** Yes, that has been considered and rejected, I think for the reasons you indicated, that a minister of

state for Crown corporations would find himself with responsibilities for widely differing functions. The only common denominator of the whole field is that they are corporate in their structure.

**Senator Walker:** Quite so; thank you very much.

**Senator Flynn:** With regard to the principle contained in clause 14, does the minister not agree that under its powers the Governor in Council would in effect legislate and create new departments of which we would be unaware? It could be any department that the Governor in Council decided should be organized immediately.

**Hon. Mr. Drury:** It is difficult to get at the motivation, if you like, for the decision-making process. Someone decides, but the effective implementation of this decision or desire is subject to certain restrictions.

In the case of clause 14 . . .

**Senator Flynn:** And clause 16.

**Hon. Mr. Drury:** The Governor in Council may decide, put it that way. However, all he can do under the provisions of clause 14 and subsequent clauses is submit a proposal to the House of Commons, which has the right to reject it.

**Senator Flynn:** It is legislation; that is why I wonder why only the House of Commons would pass on this?

**Hon. Mr. Drury:** There has been, I am told, a number of instances involving delegation of functions between the two chambers.

**Senator Flynn:** Delegation, yes, by one house to the other. That happened in connection with divorce. The other place was quite satisfied to delegate the power. However, the Senate has not been asked to delegate its powers in the present case.

**Hon. Mr. Drury:** Perhaps not expressly, but it has certainly been asked implicitly.

**Senator Forsey:** It is being asked here.

**Hon. Mr. Drury:** That is right, as I say, implicitly. The question asked is why? The rationale is that the executive is controlled by and directly responsible to the House of Commons, rather than to the Senate.

**Senator Flynn:** As far as a vote of confidence is concerned, I agree; the Senate cannot vote non-confidence in the Government.

**The Acting Chairman:** And have it stick.

**Senator Flynn:** I suggest that if we never have any amendment to the organization legislation, it would mean legislation by order in council approved only by the House of Commons. A permanent department could be created by this means.

**Hon. Mr. Drury:** I will put it another way: it will be legislation approved only by the House of Commons, that is correct; not Parliament as a whole.

**Senator Flynn:** Do you see any advantage in keeping the Senate out of this?

**Hon. Mr. Drury:** Not really any significant advantage. It does appear to be organizationally rather more tidy to acknowledge the prime responsibility of the House of

Commons for control of the executive. It is the body which effectively can put them out of office. The other effective control, of course, is the supply procedure, which also is essentially a House of Commons device.

**Senator Flynn:** Would you say that if the house refused to approve such an order in council it would be the equivalent of a vote of non-confidence in the Government?

**Hon. Mr. Drury:** I would think it would, yes, although this is a question of judgment. We have no constitutional rules with respect to this.

**Senator Flynn:** We have a precedent under which the house can reconsider its decision.

**Hon. Mr. Drury:** Yes, that has happened.

**Senator Flynn:** Would you not agree that in such a case, if it were not considered as a vote of non-confidence, resource could be made to clause 23 in order to accomplish the same end without having the approval of the house? It seems to me that under clause 23, in practice, a minister of state may be appointed for exactly the same purposes as a minister for specified purposes.

**Hon. Mr. Drury:** The essential and significant difference between clause 14 is contained in the words "ministry" and "minister". Under clause 23 a minister of state can be named, but he cannot be provided with any apparatus with which to be effective.

**Senator Flynn:** He can be provided with employees.

**Hon. Mr. Drury:** He cannot.

**Senator Flynn:** At the present time for instance, the minister without portfolio responsible for Information Canada has staff. He may not have a deputy minister, but he has a large number of staff.

**Hon. Mr. Drury:** No; the staff is that of the Secretary of State.

**Senator Flynn:** I know, but in practice this staff is under the authority of this minister without portfolio.

**Hon. Mr. Drury:** When you say "in practice," it is by agreement with the Secretary of State.

**Senator Flynn:** Yes, that is what is provided also in section 23.

**Hon. Mr. Drury:** That is correct, but I suggest that this is not quite the same as providing him with staff for whom he is responsible.

**Senator Flynn:** Especially when he would not have the same authority in principle. Also, in practice, his salary would only be half; he would receive \$7,500 instead of \$15,000.

**Hon. Mr. Drury:** That also makes a difference; if his responsibilities are less, that seems to be appropriate.

**The Acting Chairman:** The legislative authority provided by the bill is legislation by order in council in respect of the appointment of these men. Clause 18 is simply a provision to confirm the proposed action of the Governor in Council, but the authority to legislate is an authority that is to be exercised by the Governor in Council.



**Hon. Mr. Drury:** The authority to name, I would not quite call it legislation, is in the Governor in Council. However, I was indicating the restrictions contained in the bill. The proposed order in council must be approved by the House of Commons. Secondly, the provision of supply moneys to pay his staff and put this ministry or secretariat in being must also be approved by legislation of the House of Commons through the Estimates and supply procedure. The Governor in Council is not free to act in any way he wants without scrutiny, and indeed legislative approval, as perhaps just a reading of the words themselves would indicate.

**Senator Flynn:** The Auditor General is not entirely in agreement with your last statement.

**Hon. Mr. Drury:** Well, the Auditor General has some views. I hope we are going to debate these.

**Senator Martin:** Not today.

**Hon. Mr. Drury:** Not today?

**Senator Walker:** Mr. Minister, in any questions I have asked, when I have said "Do you contemplate", you were referring in your replies, I presume, to the Government; you were not just giving your personal point of view?

**Hon. Mr. Drury:** Insofar as I can discern or engage the views of the Government.

**Senator Walker:** Is there any thought, that you know of, of creating a ministry of unemployment, which is the greatest problem in Canada today? I am reminded of this because we have here the Leader of the Senate (Hon. Mr. Martin) who was the chief critic of another government at the time of the recession. It is a serious question I am asking.

**Hon. Mr. Drury:** Obviously consideration has been given to this. There are perhaps two problems in connection with it. First, we have not got the right to do it yet.

**Senator Walker:** You mean until this bill is passed?

**Hon. Mr. Drury:** That is correct.

**Senator Walker:** Well, we will accomodate you in that way in half an hour.

**Hon. Mr. Drury:** Secondly, there is the efficacy or desirability of doing it. I would be very glad to hear your views. Do you think we could have them?

**Senator Walker:** You should do something, God knows.

**Hon. Mr. Drury:** We are doing something.

**Senator Walker:** I suggest it would be a good idea, so that you could have somebody focus his particular attention on unemployment and call on all the different departments of the Government to assist, because one person could then formulate policy and think of nothing else except that. He would be given, I would think, co-operation from all the other departments in carrying out any plans he might enunciate which found favour with the Cabinet. I think that is one place where you could do a lot of good, and one hopes it would be only a temporary ministry, that some day you would get this solved.

**Senator Forsey:** The Labour Government in England did that in 1929. It put two ministers in charge, Jimmy Thomas

and Sir Oswald Moseley, and the thing was a complete frost.

**Hon. Mr. Drury:** In response to Senator Walker, I might say that we regard this problem of unemployment as of such importance that it is the first priority of all ministers. It might well be that the appointment of a single minister, especially a minister of state, who is likely to be relatively junior, would be downgrading this problem rather than improving it.

**Senator Walker:** At the present time, though, there is no particular minister concentrating on it. If we could loan you the honourable Senator Martin, who was the greatest authority on unemployment when he was in opposition—and had a lot of bright ideas, it would not downgrade any department to put him in charge of it.

**Senator Flynn:** He was served by a special bureau of statistics too.

**Hon. Mr. Drury:** While we have not got the body, at least we have a large part of the mind of Senator Martin already, who is worried about this and providing ideas, and useful ideas I am glad to say.

**Senator Walker:** I do not care about the Labour Government in England in 1929; that was at the beginning of the great depression, and in any event many of those fellows think from the ears down, particularly in those days they did. Right now, with all the bright people around, with 155 members on your side, all of them looking for an extra job, surely this must be a wonderful opportunity for originality, forcefulness and administrative ability to really solve this over-riding problem, which depresses everybody, including the Government. Would you give it some thought and perhaps let the matter go back to the Cabinet for a word there?

**Hon. Mr. Drury:** I will certainly convey those views to the Cabinet.

**Senator Forsey:** I would like the minister to give us some idea why there is a possibility of such a considerable increase in the Cabinet. This worries me. I recall when the first cabinet was formed, it had 13 members, and Mr. Mackenzie, the leader of the opposition, said this was too many. It was held at that number until about 1896; it ran up a little sometimes; then it began to grow and grow. It seems to me from the look of this thing that we might very soon have not merely a cabinet of 30, which we had a year or so ago, before the resignation of Mr. Kierans and the disappearance of somebody else—I cannot remember who now—but a much larger cabinet. I am doubtful about the efficiency of a decision-making body of that size. I notice that the minister spoke of the possibility of abolishing old departments. The only one that seems to be going now is the Department of Fisheries and Forestry, unless I am mistaken.

**Senator Flynn:** It is to be replaced by a department of environment.

**Senator Forsey:** Quite, but even so there is only one going. The minister seemed to paint a picture of a new broom sweeping very clean and getting rid of these superannuated passé departments and putting new ones temporarily or permanently in their place, but I do not see any sign of any of the old departments going.

I cannot understand quite why the maximum number of



ministers of state is put at five. We have had mention of a couple of things that might be put under ministers of state, but five seems a more than ample number.

**The Acting Chairman:** I do not think that remains in the bill.

**Hon. Mr. Drury:** No.

**The Acting Chairman:** That does not remain.

**Senator Forsey:** What does it say now? Nothing?

**The Acting Chairman:** It is open ended.

**Hon. Mr. Drury:** It says nothing.

**Senator Forsey:** Oh! This is worse still.

**Hon. Mr. Drury:** There is no limitation. The trade, if you like, was a maximum of five ministries of state to be set up by proclamation. Now provision has been made for scrutiny by the other place of each individual creation, so the number five has been taken out. This is the control rather than the ceiling.

**Senator Forsey:** I am sorry, but I left my glasses behind this morning and I had not looked at the amended version.

**The Acting Chairman:** This was not in the original print of the bill. It came only after the amendment in the other place on third reading.

**Senator Forsey:** I know that, but it was five in the original print?

**The Acting Chairman:** Yes, it was.

**Senator Forsey:** That is how I came to make the mistake. I had not had an opportunity to look at it again. I am throwing out a number of ideas. The other thing that occurs to me is why there was not perhaps considered to be some opportunity here to reduce the size of the Cabinet as such, and set up something like a two-tier ministry and cabinet à la English practice of long standing. We did have the germ of that here in the creation of the solicitor generalship and the controllerships of customs and inland revenue, I think it was, under the acts of 1888, if I remember correctly. From 1892 to 1895 we had a ministry which included the solicitor general and the controller of customs and inland revenue, and a cabinet that excluded those ministers. Then, right from 1892 to 1915, the solicitor general was never in the cabinet. After that, until about—I have forgotten just when—1930 or 1935 he had a sort of “in again out again, on again off again, gone again Finnegan” existence. Sometimes he was in the cabinet and sometimes he was not. He was still a subordinate personage in the Department of Justice, but when he was in the cabinet he was a fully-fledged cabinet minister.

I remember that the front page of *Hansard* in 1915, when Meighen was Solicitor General and was put into the cabinet, described him as minister without portfolio with “Solicitor General” in brackets.

But we had the germ then of this two-tier system. It seems to me that the cabinet is getting so very large now, some consideration might have been given to the possibility of placing, for example, a department like National Revenue under the authority of the Minister of Finance, and having a sub minister for National Revenue outside the cabinet. Similarly, the Post Office could be put in the same kind of relationship to the Department of Communi-

cations. Perhaps that was considered, I do not know; but I am really rather frightened by the growing size of the cabinet and I am not by any means certain that it is a case of the larger the cabinet the more efficient the process of decision-making. It seems to me that quite possibly it might be the reverse.

**Hon. Mr. Drury:** Mr. Chairman, the senator has raised quite a broad issue and it is one of, I suppose, a value judgment, as to what works best. Ideally, in theory, the most efficient in the decision-making process would be to have one minister only, call him the prime minister, and there would not be much of a problem then of co-ordinating ministers.

**Senator Forsey:** That is a *reductio ad absurdum*. Nobody proposes that.

**Hon. Mr. Drury:** I agree that that is so, but there are these two extremes. The other is to have every elected representative as a minister, a decision-maker, a part of the cabinet. Somewhere in between these two extremes lies the right answer.

If the cabinet, the number of decision-makers at the political level, is very small, this means that most of the decision-making in fact is done by people other than cabinet. They only have so much time, they can only absorb so much and understand so many questions. If the number of ministers is few, the multiplicity of decisions required to be made must be taken by somebody else, which means bureaucracy.

**Senator Forsey:** Does the minister think that is the state of affairs in the United Kingdom now, for example? Their cabinet is somewhat smaller than ours, if I recall correctly; and their ministry is vastly larger and takes in all kinds of parliamentary under-secretaries and I do not know what-all.

**Hon. Mr. Drury:** This is correct. One gets into a bit of a semantic problem. What is the difference between a minister in the cabinet and a minister of state not in the cabinet, in the United Kingdom? How does this affect the decision-making process? Is there any value to having a minister of state not of the cabinet, and presiding over a department? Why not just have a deputy minister? He is not in the cabinet, either. Why insert this fellow?

**Senator Forsey:** Do you mean a deputy minister in the sense of a parliamentary under-secretary?

**Hon. Mr. Drury:** No. Our kind of deputy minister, or a permanent secretary.

**Senator Forsey:** That is really quite a different thing.

**Hon. Mr. Drury:** What is the difference between a minister of state not of the cabinet, with no powers to make decisions, presumably, and a permanent secretary who also is not of the cabinet?

**Senator Forsey:** One is a civil servant and the other is a political personage. I should have thought that was the simple answer to that. It seems to me that what the minister is overlooking is the difference between policy formation, broad policy formation by the cabinet, and a relatively detailed decision-making by junior ministers. Surely there is some possibility of devolution and delegation there, so that the people in the cabinet are concerned rather with large policy formation and do not have their minds cluttered up with a great mass of detail.

**Hon. Mr. Drury:** I agree with this. The Canadian solution to this dilemma of, in effect, decentralization is, rather than have a formal structure of a cabinet, quite small, and a much larger ministry which has to be co-ordinated, we have a larger cabinet than the United Kingdom and a larger cabinet than the United States, which does not really function as a cabinet, anyhow.

**The Acting Chairman:** It is not parliamentary.

**Senator Flynn:** It is not like ours.

**Hon. Mr. Drury:** It is not parliamentary at all. Our solution is to establish functional cabinet committees.

**Senator Forsey:** Yes, I know that.

**Hon. Mr. Drury:** This performs the same kind of function which the two-level ministry does in the United Kingdom. The time of the cabinet, on what you have described as minor subpolicy matters, is not taken up, in the case of the cabinet as a whole. These things are performed in the cabinet committees. The larger policy issues, which do come to cabinet, do come to a larger body, but they have already been refined to a limited number of issues.

**Senator Walker:** And that is what you are doing at the present time.

**Hon. Mr. Drury:** That is what we are doing at the present time.

**Senator Burchill:** Do all those committees report to the cabinet?

**Hon. Mr. Drury:** They do, sir.

**Senator Burchill:** When the report is presented, does that not arouse a long discussion with a large group in cabinet?

**Hon. Mr. Drury:** No, because the reports and decisions, I suggest, are so sufficiently coherent and well-reasoned that they do not give rise to discussion.

**Senator Carter:** Could I ask, taking the average week, how many hours a week are spent in cabinet?

**Hon. Mr. Drury:** Are spent in cabinet as a whole?

**Senator Carter:** Cabinet meetings, yes.

**Hon. Mr. Drury:** Let me see. Roughly, three.

**Senator Carter:** Three hours a week?

**Hon. Mr. Drury:** Thursday morning, from 10 to 1.

**Senator Carter:** Is that all?

**Hon. Mr. Drury:** That is the schedule. Now, there are a number of occasions when we have a special cabinet meeting, and there are others when we enjoy a sandwich lunch beyond one o'clock.

**Senator Carter:** Does that three hours take in your cabinet committees as well?

**Hon. Mr. Drury:** Reports from cabinet committees.

**The Acting Chairman:** But not the sessions of the cabinet committees?

**Hon. Mr. Drury:** Oh, no, no.

**Senator Carter:** It is cabinet sessions I am talking about.

**Hon. Mr. Drury:** That is the full formal cabinet?

**Senator Carter:** Let me put it in another way. Perhaps I am not phrasing it right. Out of the average working day, the average working week, how much of that work week does the minister spend in his department, getting to know his department, to know the problems of his department; and how much of that time is spent talking about his department in cabinet?

**Hon. Mr. Drury:** I hope he is doing more than talking about his department in cabinet. This varies quite a bit between ministers. We have provision made for the meeting of a functional cabinet committee, every morning and every afternoon of the work week.

**The Acting Chairman:** But all ministers do not have to attend all those meetings?

**Hon. Mr. Drury:** That is correct.

**Senator Carter:** My question is based on personal experience, that when a minister spent much time in cabinet, he hardly knew his department at all. That applied to practically all ministers a few years ago. They could hardly discuss the problems in Parliament or in cabinet intelligently because they did not spend enough time in their departments to know what it was all about.

**Senator Smith:** I did not know you were formerly a member of the cabinet.

**Senator Walker:** He was a good member, too. I remember.

**Hon. Mr. Drury:** I have been around Ottawa for some time, in one guise or another, and despite Senator Forsey's worries I must say that the present cabinet is better instructed, both in its own departmental affairs and in the general policies of government, than any previous cabinet.

**Senator Walker:** It does not show it, does it?

**Senator Forsey:** Order.

**Hon. Mr. Drury:** Perhaps I laid myself open to that.

**Senator Forsey:** That is a matter of judgment.

**Hon. Mr. Drury:** I would remind those present, Mr. Chairman, that the problems are rather more difficult today than they were in the halcyon days of the past.

**Senator Macnaughton:** Much can be said in favour of a system of super and junior ministers. For example, the Minister of Agriculture has roughly 25 subsidiary acts to operate, one of them involving the Research Institute in the Department of Agriculture. That in itself is a huge affair, involving much money, time and detail. Surely, it would be a tremendous help to the Minister of Agriculture were he able to delegate just that section on research to some junior minister who could then do his own homework and advise the minister. That would be better than having the minister rely solely on the deputy minister. It seems to me that much can be said in favour of delegating this to a junior ministry.

**Hon. Mr. Drury:** We have what Senator Forsey calls the germ of this in the Department of the Secretary of State, where there is a junior minister sharing the duties, whereas in terms of the statute the responsibility continues to vest in the Secretary of State, although he has someone to help him. This is perhaps a refinement of the system of parliamentary secretaries. Generally, it would be an improvement on the operations of the parliamentary secretary system.



**The Acting Chairman:** There is no doubt about that.

**Hon. Mr. Drury:** Under the prerogative there is no limit to the number of ministers without portfolio who could be appointed to do just that, as, indeed, the present minister assisting the Secretary of State is. He will be given rather a more precise designation and a series of duties. Under this act he will be called instead a minister of state.

**Senator Macnaughton:** The idea is to give authority to a man who has the judgment and the power to make decisions.

**Hon. Mr. Drury:** That is correct.

**Senator Macnaughton:** Hence he would assist a super-minister.

**The Acting Chairman:** Are there any other questions, honourable senators?

**Senator Flynn:** Mr. Chairman, the minister has said that he is going to ask the Senate to relinquish its responsibilities somewhat. I do not want the Senate to relinquish its responsibilities in any way. Therefore, I would move an amendment to clause 18 of the bill. I have a formal amendment which you can read, if you wish, Mr. Chairman. The effect of the amendment is to add the words "the Senate" wherever they are needed, and it means simply that the Order in Council will have to be approved by a resolution of the Senate and the House of Commons.

**The Acting Chairman:** I assume honourable senators have before them a copy of Bill C-207, and will bear in mind the wording of clause 18, subclauses (1) and (2). Senator Flynn's amendment reads as follows:

18. (1) An Order in Council authorizing the issuance of a proclamation under section 14 or 16 shall not be made until the proposed text of the Order in Council has been laid before the Senate and the House of Commons by a member of the Queen's Privy Council for Canada and the making of the Order in Council has been approved by a resolution of both Houses.

(2) Where the proposed text of an Order in Council has been laid before the Senate and House of Commons pursuant to subsection (1), a motion in the Senate and House of Commons proposed by a member of the Queen's Privy Council for Canada in accordance with the rules of that House, praying that the making of the Order in Council be approved, shall be debated in each House for not more than seven hours, after which time the question shall be decided in accordance with the rules of each House.

**Senator Flynn:** Incidentally, Mr. Chairman, I hardly think the Senate would require seven hours time for debate, but I did not alter that because I did not wish to complicate the text any more than it is.

**The Acting Chairman:** This will be the first time we have had a time limit fixed for the Senate. There is another problem, however, in that the Queen's Privy Council for Canada would have to submit the resolution to the Senate.

**Senator Flynn:** The Leader of the Government in the Senate is a member of the Privy Council.

**The Acting Chairman:** There are times when the Leader of the Government in the Senate is not a member of the Privy Council. That does present a problem. There are at

all times in the Senate other members of the Privy Council who are not members of the Government.

**Senator Flynn:** It does not mention "of the Government". It is curious. It says, "member of the Queen's Privy Council for Canada". That could mean any Privy Councillor.

**Senator Forsey:** Surely there is a personage who is called the Leader of the Government in the Senate who is a member of the ministry, is there not?

**The Acting Chairman:** There is no question about the present situation.

**Senator Forsey:** But is it not necessary now? Formerly you could have a situation where the Leader of the Senate was not a member of the cabinet, as was the case with Senator Aseltine; but I thought that now the Leader of the Senate had to be a member of the cabinet.

**Hon. Mr. Drury:** If I may interject, Mr. Chairman, under the Rules of the House of Commons the particular phrase "a member of the Queen's Privy Council for Canada" means a member of the ministry. Resolutions, amendments and so on can be moved only by a member of the Queen's Privy Council for Canada. That does not include members of the Queen's Privy Council on the opposition side or ex-members of the ministry.

**Senator Flynn:** If this were the only objection, Mr. Minister, I would be willing to move an amendment to change the text to meet that situation. However, I think we could vote on the principle and, if need be, we could amend this amendment.

**The Acting Chairman:** Is there any further discussion on Senator Flynn's amendment?

**Senator Carter:** I should like to ask Senator Flynn if the principle involved in his amendment applies only to clause 18(1)?

**Senator Flynn:** No, Senator Carter, it applies to both of the subclauses in clause 18.

**Senator Carter:** Once you have approved the principle there, it follows.

**Senator Flynn:** The idea of section 2 is to limit the debate. A question could be raised, but I do not mind. It is the question of principle only that I am concerned with.

**Senator Carter:** Well, I do not see the principle that because the house wants to debate it for seven hours, the Senate should want to debate it at all.

**Senator Flynn:** I would be satisfied to amend only section 1.

**Senator Burchill:** Well this is a matter of the organization of the house of Commons, and it is their business.

**Senator Flynn:** Well, as I say, I do not mind. We could put only "by resolution of the Senate and the House of Commons," in section 1 and leave section 2 as it is, because it concerns the House.

**Senator Forsey:** We would still have the opportunity to debate it under our own rules.

**Senator Martin:** I would like to point out in regard to this matter, and this is not my only reason for the intervention, but there is a practical consideration, and that is that an



amendment to the bill at this time would, of course, mean its going back to the House of Commons. I agree that that is certainly our right and our privilege. But as Leader of the Government in the Senate, I have to think of our time-table. We have to think of some of the other difficulties that attend this matter, for example the long delay in having this measure passed in the other place which of course was not our fault, but that is nevertheless a very pertinent fact. Nevertheless, I put my argument on the basis of principle. As Senator Burchill has just observed, this is a matter which essentially concerns the organization of the ministry and it involves a possible vote of confidence in the ministry. While both houses may express a vote of confidence, only one house by its vote can affect the tenure of the executive, and I think that this provision is in consequence quite a proper one and surely in keeping with our concept and our practice of responsible government. Moreover, there is ample precedent for one house giving to another house powers that it is prepared in particular situations not to exercise. The delegation by one house of Parliament to another is not new in our system.

**Senator Flynn:** It happened only once, I guess.

**Senator Martin:** There are at least two cases that I know of. In 1963 we had the Divorce Act, when the House of Commons gave to the Senate exclusive authority to legislate in divorce matters. The important point is that we should not be precluded from passing an enactment in which that delegation is provided, and that is now, of course, provided for in this bill. For these reasons I would be opposed to this amendment.

**Senator Flynn:** In reply let me say this; the delegation of the powers from the House of Commons to the Senate in matters of divorce was to rid the House of Commons of a very burdensome job, whereas here it would not be difficult to pass a simple resolution. My second point is that if we approve of the creation of a Department of the Environment, I do not see why we should not be called upon to approve the creation of a ministry of state for specified purposes.

**The Acting Chairman:** Are there any other observations on this, honourable senators?

**Senator Carter:** Question!

**The Acting Chairman:** Will those who are in favour of the amendment, please raise their hands?

Three in favour.

Will those opposed to the amendment, please raise their hands?

Four opposed.

I declare the amendment lost.

Are there any other questions arising out of this bill which any senator cares to raise while the Minister is still with us?

**Senator Flynn:** No. We hope for the best.

**The Acting Chairman:** Shall I report the bill without amendment?

**Some hon. Senators:** Agreed.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*



WEDNESDAY, JUNE 16, 1971

**Fifth Proceedings on Bill S-9,**

intituled:

**"An Act to amend the Copyright Act"**

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird,	Haig
Beaubien	Hayden
Benidickson	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)
Grosart	

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the Motion of the Honourable Senator Urquhart, seconded by the Honourable Senator Cook, for the second reading of the Bill S-9, intituled: "An Act to amend the Copyright Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, June 16, 1971

(33)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *further* consider the following Bill:

Bill S-9, "An Act to amend the Copyright Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Grosart, Haig, Isnor, Lang, Macnaughton, Molson and Sullivan. (15)

*Present but not of the Committee:* The Honourable Senator Lafond. (1)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Pierre Godbout, Assistant Law Clerk, Parliamentary Counsel and Director of Committees.

*WITNESSES:*

(*Sound Recording Licences (SRL) Limited*):

(*Canadian Recording Manufacturers' Association*):

Mr. Yves Fortier, Counsel;

Mr. Paul Amos, Counsel;

Mr. Fraser C. Jamieson, President (SRL);

Mr. F. T. Wilmot, President (CRMA).

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, June 16, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-9, to amend the Copyright Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we continue our hearings on Bill S-9. We have before us this morning the representatives of Sound Recording Licences (SRL) Limited, represented by Mr. Yves Fortier, their counsel. He will now present the other members of his panel.

**Mr. Yves Fortier, Counsel, Sound Recording Licences (SRL) Limited; Canadian Recording Manufacturers' Association:** Mr. Chairman and honourable senators, I have on my right my partner and colleague, Mr. Paul Amos. To his immediate right is the president of Sound Recording Licences (SRL) Limited, Mr. Fraser C. Jamieson; and to his right is the president of the Canadian Record Manufacturers' Association, Mr. Fred. Wilmot. As I look around me, this could well be a joint meeting of the Senate and the Canadian Recording Manufacturers' Association.

Mr. Chairman, I have had the privilege of hearing presentations to your committee on Bill S-9 in the course of the last month; and I have also read the transcript of those hearings which I did not attend. It appeared to me, on listening to presentations and upon reading others, that you had been fed a great deal of irrelevant material. I say this with the greatest of respect for my learned friends who preceded me here, but I still say it.

I will attempt to stay in what you have called the main stream of this hearing, which is Bill S-9, as presently before you; and I will be very brief.

It appears to me, Mr. Chairman and honourable senators, that there are only four main points that need to be dealt with, and I will take them one by one. I certainly will not be reading from the brief, which has been in your hands for the last four weeks, I believe. I know that you have read through it. We have tried to make it as succinct as possible. We have tried to summarize the issues as we see them, and we are not going to go through the process of summarizing it again.

The four main points which I think you need to concern yourselves with, as you deal with Bill S-9, are, in my humble opinion, the following:

1. What are we dealing with? I am addressing myself now, I know, to honourable members of the Senate, some of whom are lawyers and businessmen, and I am sure that on none of you will be lost the fact that what we are dealing with is in fact an element of property. The Copyright Act deals with what has been referred to by the authors, over the years, as intellectual property, but prop-

erty, nevertheless. It is property of the same kind as patent; it is property of the same kind as trade marks.

The Copyright Act is a very complex piece of legislation, even on the admission of those who have spoken before me, Mr. Chairman, on Bill S-9. I think it may be useful if, very briefly and very slowly, you and I looked at the Copyright Act. I do not know if you have been provided with copies. If not, since there are only some two or three sections I wish to deal with, I will summarize them for you.

I think it is useful, before we look at Bill S-9, to see what the Copyright Act says about copyright. Section 3(1) of the Canadian Copyright Act, which has been in existence since 1921, says that copyright means the sole right to produce or reproduce the work, or any substantial part thereof, in any material form whatsoever and to perform the work or any substantial part thereof. If I may stop there, this is what the definition of copyright is—one, the sole right to produce or reproduce work; and, two, the sole right to perform.

Now, what are we dealing with here? What is Bill S-9? Contrary to what has been suggested by some people, Bill S-9 is not legislation which is going to remove or going to do away with copyright in records. It is legislation which preserves the copyright in records but which, if I may use the word, dismembers the copyright because it removes the performing right.

What does the legislator say at the moment about the copyright which exists in records? Well, he says in section 4, subsection (3) of the act—and he said this in 1921:

(3) Copyright shall subsist for the term hereinafter mentioned.

And I will deal with that later.

(3) Copyright shall subsist... in records... in like manner as if such contrivances were musical, literary or dramatic works.

This was inserted in the original Copyright Act in 1921. At the same time as it was said for the purposes of the Canadian legislation in section 3(1) that copyright meant the sole right to produce or reproduce a work and the sole right to perform that work in public it also said that copyright "shall subsist... in records... in like manner as if such... were musical... works."

Bill S-9, as you are aware, honourable senators, deals with section 4, subsection (3), and it consecrates, if I may put it that way, or it recognizes that copyright shall continue to subsist in records. That is what the minister through whom the bill has been introduced is saying.

The minister is saying that copyright shall continue to subsist in records, but—and this is the nature of the amendment before you—he says in the new subsection (4) of section 4:



(4) Notwithstanding subsection (1) of section 3, for the purposes of this Act "copyright" means, in respect of any record, . . . the sole right to reproduce any such contrivance or any substantial part thereof in any material form.

I hope I have made my point clear. The legislator does not say we were wrong in 1921 to introduce protection in the Copyright Act for records. He says we were wrong in 1921 to introduce full protection as understood within the meaning of the Copyright Act of this and other countries. He says we were wrong to tie to the copyright the right of public performance. He is recognizing, honourable senators, that a record is worthy of some protection because he says that copyright shall subsist in records in like manner as if they were musical works. He recognizes that copyright will continue to subsist in records. He recognizes creativity. The copying right is not removed but, as I said earlier, the legislator is dismembering the copyright. In presenting this bill to you he says, "Let copyright in records subsist, but let there not be attached to this copyright the performing right."

At the risk of repeating myself, I would remind you of section 3(1) of the act: "For the purposes of this Act, 'copyright' means the sole right to produce or reproduce"—that is, to preserve, and "the sole right to . . . perform". That is what is being removed here.

I submit that the legislator, or the minister here, in introducing Bill S-9 in the form in which he has introduced it is being illogical. You cannot dismember copyright. Either you wipe it out altogether or you do not. If, by his own admission, there is an element of creativity in a record, which is worthy of protection under the Copyright Act, then I say that that element of creativity should also entitle the author—the author of the contrivance or author of the record, which is a term well-known to those who deal in copyright—the element of creativity should entitle the author to full protection; not only to protection from reproduction; not only to protection from piracy; but also to protection from use of his work by others for profit.

I will be returning to this very shortly, but this is essentially what we are dealing with here. Under the Copyright Act as presently existing, and as would exist if Bill S-9 becomes law, we are dealing with the author of a record, and we are dealing with that element of copyright by which the legislator is saying the author of that record is entitled only to some but not complete protection.

**The Chairman:** Mr. Fortier, are you saying that Parliament cannot or should not dismember?

**Mr. Fortier:** I am saying, Mr. Chairman, that Parliament should not. I am saying that it is illogical for Parliament to say on the one hand that it recognizes that there is creativity here which is worthy of protection but, on the other hand, that this protection will not carry with it the protection which all other copyright has under the law. I realize full well that Parliament is supreme and that Parliament can dismember copyright, if it wishes. But I say that it should not.

**Senator Grosart:** Mr. Chairman, Mr. Fortier says that the act should not dismember copyright. Is the original author's or composer's performing right not already dismembered by the compulsory licence section?

**Mr. Fortier:** Quite the opposite, with respect, senator. Under the compulsory licence section of the act, section 19,

there are, as you know, compulsory royalties which must be paid to the author or composer.

**Senator Grosart:** But it is a dismembering, because he ceases to have control of that right.

**The Chairman:** Dismembering does not involve losing control, does it?

**Senator Grosart:** That is the very point Mr. Fortier is making. The loss of control is the dismembering.

**Mr. Fortier:** I am afraid not.

**Senator Grosart:** If you cease to have the right to exercise control, that is a dismembering.

**The Chairman:** I did not take that as the point Mr. Fortier was trying to make.

**Senator Grosart:** I did.

**Mr. Fortier:** Perhaps I can attempt to answer the question, Senator Grosart. By dismemberment of the right I am saying that there are two elements to the copyright. On the one hand there is the element of protection from reproduction and on the other hand there is the element of compensation for public performance. The author or composer either under the terms of section 19 of the Copyright Act or under the terms of a non-compulsory licence still retains both elements of the copyright. He is still protected and compensated when there is a public performance of his work and he is still entitled to prevent others from producing or reproducing, except under the conditions set forth in the act.

**Senator Grosart:** But you say he ceases to have the right . . .

**Mr. Fortier:** He continues to have the right, but he is compensated for it.

**Senator Grosart:** What does "compulsory" mean? He is compelled by the statute to allow anybody to make a record.

**Mr. Fortier:** That is correct.

**Senator Grosart:** Once an original record has been made. If that is not dismembering of a right, I do not know what dismembering is. He is compelled. In other words, his right is completely taken away from him. He loses the right to say that record manufacturer "B" may or may not use his property.

**Senator Cook:** That is only limiting the right. It is not dismembering.

**Mr. Fortier:** For good and valuable consideration.

**Senator Grosart:** It depends how far you take the arm off.

**The Chairman:** Let us say the little finger.

**Senator Grosart:** You are introducing a new concept, that the record manufacturer now becomes the author. I suggest there is nothing in the Copyright Act that gives him that right. I suggest to you it does not make him the author.

**Mr. Fortier:** It may not be too, too important, but I wonder if I could direct your attention to section 10 of the Copyright Act with which you must be very familiar and which says:

10. The term for which copyright shall subsist in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of such contrivance . . .

I did not invent the word; the legislators recognized in 1921 that the maker of a record was to be deemed to be the author of that record.

**Senator Grosart:** For the purpose of duration of copyright.

**Mr. Fortier:** Ditto with the author and composer.

**Senator Grosart:** The position of the author in the original author-composer sense has many other facets within the terms of copyright. That is my point, but it is not that important.

**Senator Connolly (Ottawa West):** This may not get us anywhere, but I wonder whether we could deal further with this point. You said that the author of a work because of copyright had the right to prevent performance by others for profit. Would you agree that he has even a further right and that is to prevent performance by others under any circumstances? For example, if the author of a musical work were to decide that a certain artist would probably perform the work very badly, I would assume that because of copyright the owner of that copyright or the author of the work could refuse to allow that artist to perform that work.

**Mr. Fortier:** It is a very pertinent question indeed, and I think there is an answer, Senator Connolly. Under the act as it exists today, unless, to use your words, "bad performance", is equivalent to infringement of copyright, then there is no discretion on the part of the author or composer to prevent that particular performer from recording or performing his work under the terms of section 19. This is what the Canadian statute says at the moment. But if that performance is tantamount to an infringement, because it is so bad—and that is a question of degree—then there could be an action for infringement and injunction.

**Senator Connolly (Ottawa West):** Is infringement the only remedy the author has?

**Mr. Fortier:** Under the terms of section 19 and the compulsory licence provisions, senator, once the work has been recorded—and to be recorded for the first time the consent of the author-composer is required—but afterwards under the terms of section 19 there is what Senator Grosart referred to as a compulsory licence provision and there is no discretion on the part of the author.

**Senator Connolly (Ottawa West):** But the action is for infringement. It is not in some other area. I suppose damages could arise in an action of this kind.

**Mr. Fortier:** Right.

**The Chairman:** Well, senator, you know the opening words in section 19 are:

19. (1) It shall not be deemed to be an infringement of copyright in any musical, literary or dramatic work for any person to make within Canada records, perforated rolls, or other contrivances . . .

So it would appear to take the ground away from any recourse the author might have in wanting to exercise a right of selection.

**Senator Connolly (Ottawa West):** Selection of performers?

**The Chairman:** Yes, of a performer.

**Mr. Fortier:** He could not select a performer because, as I said earlier, it is well settled, and I know Senator Grosart is familiar with this, that if the performer is performing the work so badly there could be an action for infringement since he could argue that this was not the rendition of his work.

**Senator Connolly (Ottawa West):** It might derogate from his property rights.

**Mr. Fortier:** That is right. The point I was trying to make is that even under the terms of section 19 where the control has been removed, the right to compensation is recognized and it flows from the public performance, that if a record manufacturer and/or producer has made a record from an author's or composer's work and if he has applied for and has been granted a compulsory licence, then he must pay royalty to the author or composer under the terms of section 19. Consequently although control has been removed, compensation is recognized. That is the point on which I ended this first element of my presentation. The right is recognized, as it should be, indeed, in favour of the author or composer—that if his work is performed in public, he should be paid for it and he is being paid for it. The point I am making here is that S-9 is not only saying the record manufacturer cannot control but it is also saying that we are removing his right to be compensated where his work is used in public or performed in public.

**Senator Connolly (Ottawa West):** You are removing the record manufacturer's rights here?

**Mr. Fortier:** Yes, senator.

**Senator Grosart:** Would you say, Mr. Fortier, that section 19 takes away the special status given to the recordmaker in terms of its performing rights where the record is made under compulsory licence?

**Mr. Fortier:** We have argued that point, senator, before the Copyright Appeal Board, and although, as you know, the Board does not publish the reasons for its decisions, I think it is implicit in the decision that such is not the case.

**Senator Grosart:** That is going very far in interpreting the effect of the Copyright Appeal Board's decision, particularly when the Copyright Appeal Board makes it very clear that it is not making a decision on that basis.

**The Chairman:** I do not think we need to make a decision on that basis either.

**Senator Grosart:** Would you read section 19, Mr. Fortier.

**Mr. Fortier:** Well, it is a very long section, senator.

**Senator Grosart:** The particular part that would appear to take away the special position respecting performing rights given to a record made under compulsory licence.

**Mr. Fortier:** With respect, senator, you will have to orient my eyes again, because I do not know where in the Copyright Act, whether in section 19 or in other sections, there is to be found such a provision.



**Senator Grosart:** It is the one that is generally referred to as possibly having that effect. You are well aware of it. You have argued it. You are aware of what I am speaking of. Would you read it?

**Mr. Fortier:** Respectfully, senator, no, I am not. This was my point before the Copyright Appeal Board, that there was no such subsection in section 19 which purported to remove the performing right in records.

**Senator Grosart:** Did someone suggest before the Copyright Appeal Board that there was?

**Mr. Fortier:** There were many things said before the Copyright Appeal Board.

**Senator Grosart:** I was not at the hearings of the Copyright Appeal Board. I am asking the question for information. Was there a particular wording in section 19 or elsewhere brought before the Copyright Appeal Board as possibly taking away the performing right from a record made under compulsory licence?

**Mr. Fortier:** Yes. Mr. John Mills, Q.C., counsel to CAPAC argued profusely and very eloquently that the whole of section 19 should be read as removing the performing right. However, if the board so found, it would not have granted an award. It was admitted that 99 per cent of the work before the Copyright Appeal Board were works produced under section 19. The only possible explanation of the decision of the board was that it did not retain that argument.

**The Chairman:** It seems to me that we are getting into an area which is not relevant. While a little is all right in order that anyone may have an opportunity to show his wide scope of reading and understanding, I think we should stay with the subject. Whatever the Copyright Appeal Board may have decided or did not decide is not an issue here, except that it has established a certain tariff.

**Senator Grosart:** As a matter of fact, Mr. Chairman, it probably goes to the heart of the discussion. If by any chance that interpretation, as given to the Copyright Appeal Board, was correct, this bill would not be necessary.

**The Chairman:** If any person feels that he has rights under the Copyright Act, in the form of the presentation that you suggest was made, he can go to the courts and assert them. They are not relevant to this discussion here.

**Senator Grosart:** I do not know what could be more relevant than an argument which might presume to make this bill unnecessary.

**Mr. Fortier:** If that were the submission, senator, as indeed was the point made by you and Senator Flynn two weeks ago, that the bill was unnecessary, I would agree with you.

**Senator Grosart:** I am not asking that. I am merely saying that surely we are talking about something that is the heart of this whole discussion.

**The Chairman:** You are suggesting that we should interpret these sections of the bill, come to a conclusion and act on that conclusion. I thought the courts were there to do the interpretation.

**Senator Grosart:** Yes, they are; but we are here to decide whether Bill S-9 is necessary.

**The Chairman:** No; we are here to decide whether or not it should be enacted.

**Senator Grosart:** Which is the same thing. The question of the compulsory licence is very much the heart of the whole discussion of the bill, and in other respects too, because the compulsory licence takes away from the composer-author, who is the one I am interested in, the right to control his performing right by usage. The composer-author wants to assert that right. If there was no compulsory licensing section he would be able to assert that right.

**The Chairman:** We are not dealing with the composer here.

**Senator Grosart:** But we are dealing with the effect on the composer and on other people.

**The Chairman:** I do not think we are.

**Senator Grosart:** Of course we are.

**The Chairman:** Of course, the fact that you say so does not make it so.

**Senator Grosart:** I am talking about the effect of the bill on a certain section of the public. Surely you cannot say to me that we are not dealing with the interests of a particular group.

**The Chairman:** All I am saying is that because you say that, it does not make it so.

**Senator Grosart:** I am asserting it. I do not need to make it so. If I want to speak for the interests of any particular group affected by a bill before the Senate, I am perfectly entitled to do so.

**The Chairman:** As long as it is relevant.

**Senator Grosart:** It is relevant, because they are affected.

**The Chairman:** I suggest that it is not relevant. If the committee thinks it is relevant, then we can go ahead with it.

**Senator Cook:** I do not think it is.

**The Chairman:** Do you want to vote on this matter?

**Senator Grosart:** No. If you want to rule that way, I will have to accept your rule. I hope you will take a look at it and decide why a member of the committee is not entitled to say that the effect of a bill on a certain group is relevant to the discussion.

**The Chairman:** That is not what I have said.

**Senator Grosart:** All right; I will let it go. I am prepared to leave the record as it stands.

**The Chairman:** So am I.

**Senator Connolly (Ottawa West):** For the purpose of the record, I would like you to correct a statement that I propose to make. I direct my attention to the bill itself, which says:

copyright shall subsist... in records... and other contrivances... as if such contrivances were musical... works.

Subsection 4, which is a new section, says:

for the purposes of this act "copyright" means, in respect of any record... or other contrivance... the sole right to reproduce any such contrivance.



It does not seem to me that we are talking about performance. We are talking about the reproduction of a contrivance.

**Mr. Fortier:** You have read the two sections well, senator, but you have forgotten the first words of subsection 4:

Notwithstanding subsection (1) of section 3.

That is the one that I read at the outset of my presentation.

**Senator Connolly (Ottawa West):** For the purposes of this subsection, would you mind reading section 3(1)? I hope I am not taking too much time on this, but it seems to me to be the key point.

**Mr. Fortier:** With respect, I would agree that this is the key point. It is the one that I attempted to make. Section 3(1) reads as follows:

For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public;

Those are the relevant lines of subsection 1 which I wish to bring to your attention.

**Senator Connolly (Ottawa West):** To summarize section 1, copyright exists for the author in the right to produce or reproduce, and in the right to perform.

**Mr. Fortier:** Correct, senator.

**Senator Connolly (Ottawa West):** And by the bill before us it is stated that copyright shall subsist in records as if they were musical works. "Copyright" means, in respect to any record, the sole right to reproduce any such contrivance or record.

**Mr. Fortier:** This is what I referred to earlier as recognition by the legislator of an element of creativity in a record.

**Senator Connolly (Ottawa West):** By the record maker?

**Mr. Fortier:** Yes. This is for his protection. This is what copyright is all about. Copyright is recognition of creativity and protection of creativity. Copyright includes not only the right to prevent others from copying your work, but the right to prevent others from using your work for profit.

**Senator Connolly (Ottawa West):** This is the point that was made before. You were not here at the meeting, when we heard from the CLC?

**Mr. Fortier:** No, I was not, but I have read the transcript.

**Senator Connolly (Ottawa West):** They said there was a copyright in the record manufacturer, and in addition they said the artists he employed to perform also had a right, not in the work but in the performance.

**Mr. Fortier:** This is a theory to which we subscribe, while we make the following two points. First...

**The Chairman:** Just one minute, Mr. Fortier. We are now wandering, are we not, in another direction.

**Senator Connolly (Ottawa West):** I hope not.

**Mr. Fortier:** I will be dealing with that.

**Senator Connolly (Ottawa West):** If we are wandering, then let us not pursue it.

**The Chairman:** Our narrow point is the taking away of the right to produce, because the word "produce" is not reproduced in subsection (4) of the bill.

**Senator Connolly (Ottawa West):** No, that is right.

**The Chairman:** You do find it in section 3(1) of the act in the definition of copyright. I understood the point Mr. Fortier was making was that this amounts to a dismemberment of the copyright, but the amendment is preceded by the language "notwithstanding subsection (1) of section 3", so whatever appears in subsection 3(1), which Mr. Fortier read, that is what copyright is intended to mean as and when and if this bill becomes law, and it relates only to "reproduced" not to "produced".

**Senator Connolly (Ottawa West):** Not to "produced", to "reproduced"; that is right.

**Mr. Fortier:** And not to "perform".

**The Chairman:** And not to "perform".

**Senator Connolly (Ottawa West):** In other words, it is copying a production.

**Mr. Fortier:** What is called the performing right, which flows from copyright under all legislations where copyright in records is recognized. I will be coming to your point about the performer's right; should I say, in the performance embodied in the record.

**Senator Connolly (Ottawa West):** I am not really interested in that, because I think have made their case. I think we should direct ourselves to your problem, which has to do with the making of the record.

**Mr. Fortier:** That is correct. I think you have opened the door very naturally to my second point, having attempted to make the first one. My second point is: why should there be copyright in a record? The question has been put by honourable senators. It has been suggested to you by people who have preceded me here that the record manufacturer was nothing but a presser. I have seen hands used in this way, denoting pressing, a number of times.

You referred to the presentation by Mr. Dodge of the CLC and his associates. Let me start developing this point by telling you that I am not aware of anything that has happened since 1921, when the Copyright Act was enacted in Canada, which would justify the legislator today saying: "That creativity, which we recognized in 1921 was worthy of protection under the terms of the Copyright Act, no longer exists. Consequently the copyright in the record should not include the performing right. Records were made in 1921; records are made 50 years later in 1971. However"...

**The Chairman:** Mr. Fortier, just stop there. You say nothing has been said. We have had evidence before us when the people making statements have been singing in a high key as to the cost, and putting that forward as a factor supporting this legislation.

**Mr. Fortier:** The cost to whom?

**The Chairman:** The cost to them of having to pay a tariff to SRL.

**Mr. Fortier:** You mean the poor broadcasters?

**The Chairman:** Yes.

**Mr. Fortier:** I was going to end the sentence by saying nothing has happened with respect to the record itself.

except of course that the mechanics have developed and they are now more refined and more sophisticated, but there is a new element that has been introduced since 1921, which is broadcasting; that has happened since 1921. The only purpose, the only possible purpose, of Bill S-9 is to allow the broadcasters, commercial and public—and I will have something to say about the CBC very briefly—to use the record, to sell time before a record is played and after a record is played; to sell it, to make profit from the use they make of our records. You have asked the question, "Can they afford?" I know that Mr. Estey last week said—and I took his words down—that it was an earthshaking emergency for broadcasters. He was referring to the tariff of 0.15 per cent of their income.

**Senator Connolly (Ottawa West):** With deference, Mr. Chairman, when we get into the question of cost are we not getting into the problem of irrelevancy here? Should we not direct our attention to whether or not there is property? Is that not our main purpose, and is that not the purpose of this bill?

**The Chairman:** All I was saying when Mr. Fortier was developing his argument was that a further point has been developed before us, and it has to do with the question of the tariff that has to be paid.

**Senator Connolly (Ottawa West):** It has great weight.

**The Chairman:** We have to give some regard to it, even if it is to dismiss the point. We may say the cost is negligible for the benefit obtained, or we may say it is not relevant to the issue, that we should resolve the issue quite apart from the question of cost and let the cost fall into its proper place. We were told last time about all the money and increasing funds made from fees that have been paid. Mr. Fortier, have you any figures to show how much the broadcasting business has improved dollarwise over the same period of time?

**Mr. Fortier:** Yes, I do. I would like to submit, though, that I am in full agreement with Senator Connolly's point, that this is completely irrelevant to the consideration of Bill S-9. I submit that it should not influence your consideration in one way or another.

Since that argument has been used against our clients, may I quote very briefly from an authority no other than your colleagues on the Special Senate Committee on Mass Media, which was chaired by Senator Davey. In Volume I of the report, at page 57, under the heading "Economics of Broadcasting", this committee of the Senate said:

These revenues . . .  
of Canada's television and radio stations . . .

have increased enormously in the past decade or so. Net advertising revenues in the TV industry have grown from \$8.6 million in 1954 to about \$118 million in 1968—an increase of 1,272 per cent!

**The Chairman:** We have to give some regard to it, even if it is to dismiss the point. We may say the cost is negligible for the benefit obtained, or we may say it is not relevant to the issue, that we should resolve the issue quite apart from the question of cost and let the cost fall into its proper place. We were told last time about all the money and increasing funds made from fees that have been paid. Mr. Fortier, have you any figures to show how much the broadcasting business has improved dollarwise over the same period of time?

**Mr. Fortier:** Yes, I do. I would like to submit, though, that I am in full agreement with Senator Connolly's point, that this is completely irrelevant to the consideration of Bill S-9. I submit that it should not influence your consideration in one way or another.

**Senator Haig:** Not all from the use of records though.

**The Chairman:** Not just from playing records.

**Mr. Fortier:** No. That is not my submission.

Radio revenues almost tripled between 1954 and 1968.

At page 62 Senator Davey's committee said:

The other thing to note is how wondrously profitable some broadcasting operations can be. The largest revenue-group of TV stations, for instance, earned a before-tax profit (one quity) of 98.5 per cent in 1964. At that rate, even after taxes, shareholders would recover their entire investment in two years!

**Senator Moslon:** Is he including the CBC there?

**Mr. Fortier:** I am afraid he is not, Senator Molson. I think that was a loss of \$45 million last year.

**Senator Molson:** Not the real loss. It was much greater than that. That was the book loss.

**Mr. Fortier:** He goes on to say:

In most other industries, that kind of margin would be considered fabulous.

Finally, in Volume II of the Davey Report there is, Mr. Chairman, the last table, on pages 571 and 572. It is a table showing the total operating revenue, the total operating expenses and the net operating profit, of the privately owned radio and television stations in the broadcasting industry for the years 1965 to 1969. We see that in radio the net operating profit between those two years has gone from \$7 million in 1965 to \$14 million in 1969.

**Senator Burchill:** The small radio stations afford a very meagre profit.

**Mr. Fortier:** That is an excellent point, senator. This is why you will have noticed that, in the award of the Copyright Appeal Board, there is a provision made for those radio stations with gross income of less than \$100,000, being charged a licence fee of \$1 a year. This was not the decision of the board. This was a submission by my clients before the board, that in respect of the tariff which they had filed, it should not apply to those stations with a gross income of less than \$100,000. So we recognized your point, senator.

**Senator Cook:** Would it be fair to say that both the major contenders before the committee are doing all right, both the record industry and the others.

**Mr. Fortier:** I think you would be most fair, senator.

**The Chairman:** There is no risk of insolvency in either.

**Mr. Fortier:** I think it would be most fair. We are most fortunate in Canada in having a quasi judicial tribunal such as the Copyright Appeal Board to protect the public interest and decide, as it has since 1935 whether the argument of "biting the hand that feeds you" is a valid one.

**Senator Cook:** They decide as to quantum—if the right should exist.



**Mr. Fortier:** That is correct.

**Senator Haig:** I would ask Mr. Fortier to compare the rate of profits made by radio and television companies. Can he say that the record companies have made further progress than that?

**Mr. Fortier:** I can say that record companies have made progress. The figures were referred to, as I recall, by Mr. Estey two weeks ago, senator, and which we are not disputing.

So, Mr. Chairman and honourable senators, why is a record worthy of protection? As I have indicated, it appears to me that nothing has happened since 1921 which would make a record today less worthy of protection than it was in 1921. Why protection under the terms of the Copyright Act? Mr. Estey, my learned friend and very good friend, I may add, said to you, two weeks ago, that there were no judicial authorities for the proposition that a performing right in record was justified from the "protection" point of view.

My friend Mr. Estey was in error. May I please direct you to page 2 of our brief, wherein we quote a very short passage from the leading case, the *Gramophone Company Limited vs. Stephen Cawardine*, which was decided in England in 1934. Mr. Justice Maugham in that case, after finding, under the terms of legislation similar to that which we have in Canada, that the copyright which existed in a record was one which carried with it a performing right, said this, obviously because of arguments made to him by the respondent:

... I see no injustice or unfairness which is likely to arise from my construction of the section. On the other hand, I can see considerable objection, from that standpoint, to the view that persons may obtain, without doing anything more than buying a record, the advantage of the work, skill and labour expended by the makers of gramophone records for the purposes of a public performance.

It has been suggested to me that it is unfair that the user of a record should pay because he is really not using someone else's property. So, after finding in this case that there was public performance which accompanied the copyright in a record, this is what he found, that there was work, there was skill and there was labour expended by the makers of gramophone records, and that this work, this skill and this labour made the maker of the record entitled to compensation when his work was used for profit.

These, Mr. Chairman and honourable senators, are the three elements which we find in any work which is given protection under the Copyright Act. We find skill, we find labour, which combined together, give that property, intellectual in kind, a protection recognized by the legislator.

**Senator Grosart:** Mr. Fortier, before you go on, is that not a case involving a composition which was in the public domain, so there was no question whatsoever of prior ownership of the performing right?

**Mr. Fortier:** Of course, as indeed I am well aware, it was a work which was in the public domain but, with respect, senator, there is no distinction which is made in the judgment, as to whether the work is in the public domain or not, and I do not see that it makes any difference.

**Senator Connolly (Ottawa West):** What is the year?

**Mr. Fortier:** 1934.

**Senator Grosart:** It makes a great deal of difference. I just call it to your attention because you had not mentioned it was a work in the public domain.

**Mr. Fortier:** We were dealing with the record, Mr. Chairman and honourable senators. Mr. Justice Maugham was going on and was dealing with the record and he said, with respect to that record, that it was a performing right and it was fair that there should be a performing right.

It is very difficult, it seems to me, to come before this august body and attempt to convince you that the producer of a record is infusing an input of creativity whenever he makes a contrivance.

You will recall, honourable senators, the evidence adduced before you by Mr. Stephen Stewart, Director General of the International Federation of the Phonographic Industry. He said, on this very point, that the copyright legislation the world over recognized different kinds of creativity. All creativity is not necessarily a stroke of genius. He brought to the attention of the committee, for example, the fact that the translator of a work was given protection under the terms of the Copyright Act and that there had never been any suggestion that the translator of a work should not continue to be protected under the terms of the Copyright Act. He drew a parallel between the producer of a record and the translator of a work, whose creativity certainly is not as great as the creativity of the author of the work but who is entitled to protection.

I make the same submission to you today. I submit that the producer of a record, the man who brings the artist into the studio, the man who provides the arrangements in a musical sense for the recording of a particular piece of music, the man who uses, with his own experience, the 16 sound tracks which he has to adjust and on which he has to work for days and days before he can produce a record which can be pressed in a final and definite fashion—I say that with respect to that man the element of creativity that man brings to the end product is just as great as that of the author or composer and just as great as that of the performer, Senator Connolly, because we subscribe to the "trinity theory", as it has been referred to.

**Senator Connolly (Ottawa West):** It is theologically sound.

**Mr. Fortier:** Theologically and, I suggest, also "fairly" sound. It is sound that it should be recognized that for a record to be made there must be an author and/or composer; there must be a performer; there must be a record producer. Without any one of those three elements you will not have a record.

**Senator Connolly (Ottawa West):** You say that each one of these three has a property right?

**Mr. Fortier:** I say, senator, that under our law as it exists today only two of them have property rights. The author or composer and the record producers. The performer does not under our Canadian Copyright Act have a property right recognized by the act. We say, and there is evidence before you to this effect, that the performer should be entitled to share in the royalties which will be paid to us by the users of our records.

**Senator Connolly (Ottawa West):** That is a matter outside this bill.

**Mr. Fortier:** With respect, senator, I think it has relevance because it has been said here that there has been no deal between the record producers and the performers, and



that is true. There has been no deal. But three months ago there was a firm offer made to the Canadian Union of Performing Artists. It was a voluntary offer on our part, and with respect to division of the royalties it was identical to that which obtains in England. It was a 50-50 proposition which we were making to the performers, and I have it on good authority that the only reason why the deal has not been finalized at the moment is that as between the different unions who are members of the Canadian Union of Performing Artists there was no agreement as to how it should be divided. That is the only reason there has been no agreement yet. But there will be.

So I say that, without the record producer, the author or composer would not derive any royalties, obviously, from the sale of records.

**The Chairman:** Obviously, Mr. Fortier, if you did not have the vehicle of records, there would be a limit to the number of live performances as compared with the number of performances by the use of records. Therefore, with respect to the composer, artist and author of musical works, there is a greatly increased potential range of revenue for him.

**Mr. Fortier:** Yes, indeed, Mr. Chairman. I agree with you. It would be unthinkable today in 1971 that broadcasters could dream of bringing into the studio live performers and pay them the way live performers would expect to be paid. Broadcasters admittedly—and it is in evidence before the Copyright Appeal Board—use records to an extent as high as 70 per cent of the time. Those stations referred to as the top 40 stations you listen to on your car radio or in your home on occasion, not always by choice, use records for profit up to 70 per cent of the air time, but, as I have said, they could not dream of bringing live performers into their studios and pay them the way they would expect to be paid. So your point is indeed well taken.

**Senator Grosart:** Mr. Fortier, you have made the point that there is an element of creativity in the making of a record and that that element should be protected. That is a very good point. Have you not also made the point that it is already protected, regardless of any change in the Copyright Act and regardless of this bill? That creativity is in the making of a record and, regardless of this bill or anything else, that remains fully protected. The creativity is in the record and that right is still recognized, notwithstanding this bill or anything else. So you are really arguing against yourself. The right is already there in the creativity, in the making of the record, in the thing, and the copyright in the thing is undisturbed in any way by anything we are discussing here. Is that not right?

**Mr. Fortier:** With respect, Senator Grosart, that is wrong indeed.

**Senator Grosart:** Why is it wrong?

**Mr. Fortier:** Because copyright in the record is not respected in any way, as you say. Quite the contrary. Copyright in the record is now defined as meaning only the right to prevent reproduction and it excludes the right to control public performance of the record.

**Senator Grosart:** I agree, but the right to prevent reproduction of the thing created is still there, and that is one aspect of copyright, surely.

**Mr. Fortier:** What we are dealing with here, senator, is the

right to use for profit. That is what we are dealing with. The minister is saying that he is removing from the Copyright Act the obligation which now exists under the act that anyone who uses in public for profit the work of a record producer—in other words, a record—must compensate fairly and equitably the maker of that record. But the legislator is saying, “no”. He says, “No matter if there is any compensation which should be paid; what I am saying now is that in future it will be used for profit by broadcasters. They will not have to pay for it”.

I say that that is unfair. That is a dismemberment of the copyright as we know it, as they know it in England, as they know it in the jurisdictions of most major countries today and as they are going to know it in the United States, because there is a bill, as in evidence before you, before Congress in the United States which was introduced in February of this year which recognizes the copyright in records with the right of the public performance attached to it.

**Senator Cook:** Mr. Chairman, we all recognize that if this bill is passed it will result in a grave interference with what Mr. Fortier and SRL consider are their rights. I think we need hardly go any further on that point.

**The Chairman:** I think you are right, Senator Cook.

**Senator Grosart:** I agree that if this bill is passed it will take away from the record companies a source of revenue which they claim to have under the act as it exists. I am not arguing that. The point that seems to be lost in this discussion, however, is that the record companies live by and profit by the statutory compulsory access to the performing right. The author has no control over that. The record companies have the compulsory right to it. That is why the composer or author says, “If I am going to be forced to give that to you, then take out section 19 altogether.” Would you be happy, Mr. Fortier, if section 19 were to come out altogether and you had to deal directly with the author or composer?

**Senator Cook:** Surely that is another point altogether.

**Senator Grosart:** It is very much to the point.

**The Chairman:** Senator Grosart, have you given thought to the possibility that a substitute for what now exists in statutory form might be that you would have to go to the Copyright Appeal Board to fix what the tariff would be?

**Senator Grosart:** Yes, of course, and no composer or author would ever object to going before the Copyright Appeal Board.

**The Chairman:** This again is a parallel line of argument. Because the rights of composers might be said to be affected adversely by the compulsory licensing, then this bill should pass or should not pass, either one. But I do not think that is the argument. The argument may be that this bill does not go far enough. That may be your point. But it is not an answer to say, “Don't permit these people to retain a right which they have because the authors and composers or unfairly dealt with under the section of the Copyright Act itself.” There would be some affirmative action by them if that is their point.

**Senator Grosart:** It is true, and I think every one agrees, that the whole Copyright Act is in need of revision. It goes back to 1921, as Mr. Fortier has said, and it is out of date in many ways.

**The Chairman:** That may be a good reason for not dealing piecemeal with this. At the moment, while I have not finalized my feeling on this, I feel that the Copyright Act as it stands has certainly reached the stage where there should be wholesale revision.

**Senator Grosart:** I would agree with that, but I would not agree that this is an argument for not dealing piecemeal. We have scores of bills before us each session which deal piecemeal with revisions of existing acts. It is a necessary way of doing it.

**The Chairman:** But we are always told the great urgency which makes it necessary to deal piecemeal with such acts, but here we are told that the great urgency is the tremendous increase in cost, and that has been dissipated by the decision of the Copyright Appeal Board.

**Senator Grosart:** But there is a principle involved here and it is that principle I am speaking to. We must always remember that the composer author, the original owner of the property which is being dealt with, has had his rights to negotiate the use of that taken away by statute.

**The Chairman:** I thought we had decided a few moments ago that this was getting beyond the stage of relevancy and that you accepted that.

**Senator Grosart:** Well, if you want to rule again . . .

**The Chairman:** I am not ruling again.

**Senator Grosart:** Well, if you want to invoke that ruling in connection with this which I agree is another aspect of it, but is one which I think is vital because the record companies are asking that this bill be not passed so that they can exercise certain rights which they have not exercised for many years. That in itself is not a point. The composer author says they should not have this right as long as it does not derive by contractual negotiations from the original owner, and that is the whole point, and that is why the composer authors would support this bill. They say the record companies are taking advantage, and quite properly so, of the compulsory licence. I asked Mr. Fortier would he be happy to have section 19 taken out of the Copyright Act and be in a position where you negotiate the right to make that record with the original author-composer.

**The Chairman:** Mr. Fortier can protect himself. I do not regard the question as being relevant. If he wants to volunteer an answer, I am not going to shut him off. But I do respect him as being a very good lawyer.

**Senator Cook:** It may confuse some other members of the committee too, Mr. Chairman.

**Mr. Fortier:** As Senator Grosart knows, we already negotiate with the author composer in respect of the first record.

**Senator Grosart:** Not "we". What percentage of the records we are dealing with are under compulsory licence? What proportion of the records distributed by SRL members in Canada come under compulsory licensing?

**Mr. Fortier:** More than 90 per cent.

**Senator Grosart:** This is what we are dealing with, Mr. Chairman, and that is why I say it is highly relevant. The records we are dealing with are under compulsory licence.

**The Chairman:** Well, you have made your point now for the second time as to the relevancy, and I have said that I do not think it is relevant. I offered to have the view of the committee canvassed and you said it was not necessary. I repeat the offer.

**Senator Grosart:** You may have to rule against me again.

**The Chairman:** Not "again". I am just calling your attention to the fact that a ruling was made.

**Senator Grosart:** Well, you may have to call my attention to it again because I intend to assert my right to ask questions if I think they are relevant, and I expect you will assert your right to rule whether they are relevant or not.

**The Chairman:** Not my right, my duty.

**Senator Grosart:** Both.

**Senator Molson:** I would like to ask Mr. Fortier why this matter has taken 50 years to come to a head. Why have not the record companies exercised this right that they claim that they have? I don't think in fact that they claim they have the right; I think it is there. But why have they delayed 50 years before worrying about the royalties which might accrue in the course of performing records?

**Mr. Fortier:** Well, Senator Molson, I think there are possibly three answers to your question. The first is that the performance in public of records—and I think by "public" here you have to understand it is almost exclusively radio stations, so let us say we are dealing with radio stations—has only reached the intensity which you and I know exists today since the end of the second world war. This is one of the reasons. Up to that time there was not the extensive public use in Canada for profit made of records. You and I will recall that bands were performing live much more often until 15 or 20 years ago than they do today, and when you say they were performing live, that means not only on stage but also on radio. That is one answer. Senator Molson. Another answer stems from the fact that I will have to admit that amongst the eight major record manufacturers in Canada, there are six which are subsidiaries of American companies and until a few years ago there was very little furor in the United States for the inclusion in the copyright legislation of a copyright in records. It is only in recent years that there has been clamour for the recognition by Congress in the United States of this right, and it is only very recently that there has been an indication from one of the committees of the United States Senate that this right would be recognized in the very near future. Consequently I have to admit that the fact that it did not exist in the United States had some bearing on the fact it was not exercised in Canada.

**Senator Cook:** Did you say that it would be recognized or it might be recognized?

**Mr. Fortier:** That it would be recognized. It is presently in a bill before a United States Senate committee. There is a recommendation by a Senate committee, and recommendations by a Senate committee there are as weighty as they are here.

**Senator Connolly (Ottawa West):** Flattery will get you nowhere.

**Mr. Fortier:** This point should be recognized.

**Senator Grosart:** In fairness, perhaps you would agree that there was a bill approved by the committee of the



House of Representatives which did not include the right, and that bill was not passed. This occurred a couple of years ago.

**Mr. Fortier:** That is correct.

**Senator Grosart:** Would you say, in connection with the bill that is coming from the Senate committee, that it might not become law?

**Mr. Fortier:** All I can say is that it has come out of a Senate committee with the exact wording in the proposed legislation, that the copyright in records shall include the performing right.

**Senator Molson:** Getting back to the question of frequent or common performances, what are the reasons for the 50-year delay?

**Mr. Fortier:** There is another answer also, senator, which may be of immediate concern to your colleague on your right. In Newfoundland that right was recognized as recently as 1941. One of the few things that Newfoundland lost when it joined Confederation in 1948 was this performing right in records.

**Senator Cook:** They became more sophisticated.

**Senator Molson:** There must have been many records made there prior to 1941. I wonder what the dollar loss to Newfoundland has been.

**Mr. Fortier:** I will not venture a guess. However, it is interesting to note that it did exist in Newfoundland. It also existed to a certain extent in Canada in respect of transcription programs, with which you must be familiar. We refer to it in our brief. At the bottom of page 14 we say:

It is often stated that record producers have never exercised their performing rights in Canada. This is not true. Prior to the introduction of tapes, transcription services provided 16" 33 rpm discs which were only permitted to be used by subscribing broadcasters.

These transcription services were in fact an exercise by record manufacturers of the performing right in records. This was done until we did away with transcription services about 15 years ago. In the meantime, SRL has been formed.

This may not be a complete answer, Senator Molson, but as you are well aware there has never been any attempt by record manufacturers to collect public performance fees in respect of past public performance.

**The Chairman:** The next sentence seems to be pertinent to Senator Molson's question.

**Mr. Fortier:** Yes. The Canadian Talent Library is a division of Standard Broadcasting Corporation, which was represented by Mr. Estey, has exercised its performing right, as we say in our brief, in a very active manner for the last six or seven years. Is that approximately the period, Senator Grosart?

**Senator Grosart:** Yes.

**Mr. Fortier:** The Canadian Talent Library is a division of one of the largest broadcasting companies in Canada, and, I might say, one of the very good ones.

**The Chairman:** And it produces records.

**Mr. Fortier:** And it produces records. It leases its records

to radio stations across Canada for a fee. On its records is written, "No right to broadcast this record unless public performance fees have been paid," or words to that effect. So the very people today, who with author-composers, are in favour of Bill S-9 have in fact been enforcing the performing right in records for some years.

**Senator Grosart:** They have really been enforcing the basic copyright in supplying the record. If my information is correct, they have not been collecting performing right fees.

**Mr. Fortier:** They are charged for the broadcasting.

**Senator Grosart:** They are not performing right fees. They cannot collect performing right fees unless they have a tariff before the Copyright Appeal Board.

**Mr. Fortier:** They are being compensated for the use made of their record. That is the way I understand it.

**The Chairman:** For the use in public of their record.

**Senator Grosart:** But that is a very different thing from collecting a performing right fee.

**The Chairman:** However you slice it, Senator Grosart, the fact still remains that in order to be able to use for broadcasting purposes records produced by the Canadian Talent Library, you have to pay money.

**Senator Grosart:** Any radio station can go out and buy a record for \$2. The \$2 payment gives them the right to publicly perform. Any radio station can buy a record for \$1 or 59 cents and play it. Is that not so, Mr. Fortier?

**Mr. Fortier:** Yes. We even give away some of our records.

**Senator Grosart:** Was it 6,000 records that you gave away last year to CBC alone?

**Mr. Fortier:** There are many records given away.

**Senator Grosart:** I think somewhere I saw that figure. You are so anxious to get public performance, that you gave away 6,000 to the CBC.

**The Chairman:** That has been said so often that we do not need the weight of your statement to add to the strength of the evidence.

**Senator Grosart:** I do not know whether we need it, but I suggest that I have the right to make a comment.

**Mr. Fortier:** I was speaking about the Canadian Talent Library. I said it was owned by Standard Broadcasting. It is also pertinent to note that the Canadian Association of Broadcasters have recently formed a recording company called Astra Records Ltd. In their publicity material they say that the reason why Astra Records Ltd. has been formed is to provide insurance against SRL. Astra Records has produced to our knowledge one record to date. The label on the record also indicates that performing right royalties have to be paid if that record is to be used in public.

Again, broadcasters are acknowledging that there is such a thing as a performing right. If their property is being used in public for profit, they should be paid for it.

**Senator Molson:** That is an extension of the answer to my question. I was asking about time. In a great deal of what we are allowed to do by law there are prescriptive times; there are times after which we cannot do things. If I do not



put a fence across my field and it is used consistently by you in driving your car, it then becomes a public right-of-way after, I think, seven years. What about the time element in a right such as this? We are talking about a term of 50 years. Is this without any term of prescription as to the type of right?

**Mr. Fortier:** The tariffs are annual. Under the terms of the Copyright Act a performing right society, CAPAC, BMI, and now SRL, must apply every year to the Copyright Appeal Board for the approval of their tariff. Perhaps another element in your question would go to the term of the copyright. As you said, it is 50 years from the making of the original contrivance. The meaning of this is that after 50 years the work in question becomes, as Senator Grosart said earlier, part of the public domain. There can be no royalties owing to the producer of a record which is in the public domain. Therefore these works are not submitted to the Copyright Appeal Board in yearly presentations made by the Performing Rights Society.

Clearly, as I said earlier, there could be no question of retroactivity. We are not claiming for the use which may have been made in previous years. We are only claiming at the moment, for example, with respect to 1971. We will make an application at the end of this year, in conformity with the act, for 1972. We will have to appear again before the Copyright Appeal Board, which will deal once again with quantum.

**Senator Molson:** Yes, but you are claiming a right which was granted 50 years ago and has not been exercised.

**Mr. Fortier:** No, there is no element of prescription in the picture today. I would defer to my senior colleague, the Chairman, if he feels differently.

**Senator Connolly (Ottawa West):** In effect you are saying that the copyright, by law, is given a life of 50 years.

**The Chairman:** It is the life of the author plus 50 years.

**Mr. Fortier:** No, not in the case of a record. We have to look at section 10.

**Senator Connolly (Ottawa West):** A record is 50 years, since it is a thing that does not die.

**The Chairman:** The life is 50 years from the making of the original plate.

**Senator Connolly (Ottawa West):** That is what I understood.

**Mr. Fortier:** This is really all we are dealing with when we speak of creativity. I told you I would come back to section 10. It provides that the owner of the original plate, that means the first record producer who cuts the record, as they say in the trade, who has the recording studio, hires the performers, makes the arrangement in the studio, brings in this input of creativity which we submit, as the legislator has recognized, is worthy of protection.

To my knowledge this has never been argued anywhere, even before this committee, that at this juncture, that is the time when the first record is made, there is not a high element of creativity introduced. Under the terms of section 10 this is when the author happens. It is of the essence of copyright that there must be an author. La loi sur les droits d'auteurs. There must be an "auteur"; there must be an author. However, section 10 provides that with respect to records the first man is the author. All the others who

press records from a tape made by the author have no more rights than the original one. All the rights flow from the author, in the same way that the author of a book assigns his rights to a publisher and the creator of the patent assigns his rights to users of the patent. The producer who made the record in the studio originally, wherever that may be in the world—music, as you know, is international—the United States, England, France or Canada, is the author of the record and he assigns to others the right to make records from that tape.

The records which are made from that original tape are entitled to protection under the terms of the act. The records made from that tape are entitled to protection in the same way that an assignee of a patent is entitled to protection under the terms of the Patent Act.

**Senator Connolly (Ottawa West):** This bill provides that protection, though.

**The Chairman:** No, this bill would remove it.

**Mr. Fortier:** It removes an integral element of the copyright. Copyright means not only the right to prevent reproduction, as you and I...

**Senator Connolly (Ottawa West):** Let us get it straight; perhaps I am horribly confused. As I understand it, this bill protects your right to prevent the record being copied.

**Mr. Fortier:** That is correct. That right can only be given to a copyrighted work.

**Senator Connolly (Ottawa West):** I assume that you have a copyright in that originally pressed record and no one can produce that contrivance.

**Mr. Fortier:** No one can reproduce it.

**Senator Connolly (Ottawa West):** Reproduce it; all right, no one can reproduce it or copy it.

**Mr. Fortier:** That is correct.

**Senator Connolly (Ottawa West):** Without infringing on your rights. However, you complain that you should also have the right to control the performance of whatever copies of the original are made.

**Mr. Fortier:** Yes, senator. Copyright means, and this is provided by section 3(1), not only the right to reproduce, but the right to perform.

**Senator Connolly (Ottawa West):** That is right; you say that the performing right given you by section 3 should also flow through.

**Mr. Fortier:** Should continue to flow through, as it does in respect of all other copyrighted work.

**Senator Cook:** The performing right has now become much more valuable than the right of reproduction.

**Mr. Fortier:** That is a very important point. Last year in the United States in excess of \$100 million was lost by record manufacturers because of piracy, dubbing, illegal reproduction of records.

**Senator Connolly (Ottawa West):** In whole or in part.

**Mr. Fortier:** In whole or in part.

**Senator Connolly (Ottawa West):** That is what you mean by dubbing.

**Mr. Fortier:** Yes. This supplied the impetus to the United States Congress to bring in legislation earlier this year. Senator Grosart knows that that legislation has now granted a limited copyright to the record producer, the right to prevent reproduction.

**Senator Cook:** We already have that here.

**The Chairman:** We even have the performing right here.

**Mr. Fortier:** It is a moot point as to which is more important. They are equally important; this is why both the right to reproduction and the right to public performance flow at the bottom of the pyramid from the copyright in any work. Whether it be by author, composer or translator, all copyrighted work comprises the sole right to reproduction and the sole right to perform in public.

Now the minister is suggesting to you in respect of records that we close our eyes to what copyright really means and write into our law that copyright in respect of records only means the sole right to reproduce, not the sole right to perform.

**Senator Cook:** That is an interesting figure, \$100 million estimated loss as a result of piracy in the United States.

**Mr. Fortier:** In the United States in 1970.

**Senator Cook:** Which means that some well-known records, such as . . .

**Senator Connolly (Ottawa West):** "Hello Dolly!"

**Senator Cook:** Yes, "Hello Dolly!" is recorded by a very well-known company, then taken by another record manufacturer.

**Mr. Fortier:** These are fly-by-night operators.

**Senator Cook:** This is where you obtain the figure of \$100 million?

**Mr. Fortier:** That is correct; they dub the music by using a small recording machine. They press this new record and put on a label.

**Senator Cook:** There was no protection against that?

**Mr. Fortier:** There was no protection. There now is in the United States.

**Senator Grosart:** As there is here.

**Mr. Fortier:** As there is here, and always has been since 1921.

**Senator Connolly (Ottawa West):** Are you saying that you want to live by the present act, and more particularly section 3, which gives you a performing right?

**Mr. Fortier:** Yes, I am saying that.

**Senator Connolly (Ottawa West):** In other words, this bill takes the performing right away, and therefore deprives you of a property right which your client has in the contrivance he makes?

**Mr. Fortier:** I could not have put it any better. That is correct.

**The Chairman:** Have you another point, Mr. Fortier? I think we have shaken this one to pieces.

**Mr. Fortier:** I do. Perhaps I might end that point by reminding you that we have extended an invitation to

members of this committee to attend in a recording studio. I do not know whether that letter has been communicated to you.

**The Chairman:** It has been distributed.

**Mr. Fortier:** It has been distributed to the members of the committee?

**The Chairman:** Yes.

**Mr. Fortier:** I am reiterating this offer. It seems to me that the only way you can convincingly have demonstrated to you the input of creativity, work, skill and labour—to use the words of Mr. Justice Maugham in the *Cawardine* case—which is expended by the record producer, is if you came into a recording studio and saw what the record producer does in producing a record.

A few years ago, in 1967, there was a book published entitled *Ring Resounding*. It is the history of the English Decca company's mammoth venture in recording Wagner's "Ring" complete for the first time. It took the producer of that record eight years to produce the record. I know Senator Grosart is very familiar with it.

**Senator Connolly (Ottawa West):** Was it a single record?

**Mr. Fortier:** It was 14 L.P.s in all.

**Senator Connolly (Ottawa West):** Two-side L.P.s?

**Mr. Fortier:** Yes, two-side L.P.s.

**Senator Connolly (Ottawa West):** Twenty-eight sides?

**Mr. Fortier:** Twenty-eight sides, yes. You could argue that it does not take eight years to produce, say, "Hello Dolly".

**Senator Cook:** Or "Itsie-Bitsie-Witsie".

**Mr. Fortier:** No, it does not. I suggest to you, however, that it takes an element of creativity. I said earlier there was a whole range to creativity. There can be a good book and a bad book. There can be a useful patent and a less useful patent. I think this is what we are dealing with here. The moment there is an element of creativity there is intellectual property, and it should be protected. Whether it is a record that is eight years in the making, spending millions and millions of dollars in producing it, or one made in eight hours in a recording studio, there is still an element of creativity; it should be protected, there should be copyright, and copyright includes public performing right.

**Senator Carter:** Extending this line of argument, would you not eventually get down to the technician who controls the knob having a part in the creativity, and someone who puts something here instead of someone else having a part in the creativity? Where would you stop?

**Mr. Fortier:** Not any more than I would recognize, for example, that the person to whom the author of a book may have dictated it was entitled to a copyright. If I, the record producer, employ a technician, he is working for me, but his input is part of the total input that goes to constitute the copyright vested in me, the producer. I think with respect, I would not carry it that far.

**Senator Cook:** Really, are not the producers the shareholders of the company, and in the final analysis they own the record?

**Mr. Fortier:** Yes.



**Senator Cook:** What do they have to do with it being creative? They get their dividends, smoke cigars and so on.

**Mr. Fortier:** I am sorry that I lost this point on you, Senator Cook.

**Senator Grosart:** They create capital.

**Senator Cook:** In the final analysis, the shareholders of the company own the record.

**Mr. Fortier:** Whether we are dealing with a company which is a producer or whether we are dealing with an individual, with respect it does not make any difference, because the law of the Copyright Act, no more than the Companies Act, does not make that sort of distinction; the corporate veil is respected.

**Senator Cook:** But it is the person who creates the originality who is entitled to the copyright.

**Mr. Fortier:** That is what the producer of a record does, whether he is employed by a company or whether he is an independent producer.

**Senator Cook:** He does not get it. The shareholders of the company get the royalty.

**The Chairman:** But you have a statutory author under section 10.

**Mr. Fortier:** If you look at section 10 you have the complete answer, I suggest, to your query.

**The Chairman:** You have to use imagination and some creativity to understand this.

**Senator Grosart:** Mr. Fortier, when we discuss the question that has just been raised, as to how far you proliferate the exercise of the performing right, would you say the situation at the moment in practice in Canada is that the exercise of the performing right in respect to receipt of royalties is limited to the original creator, and that you and others, performers, who may wish to share in the performing right are all users?

**Mr. Fortier:** No, I would strongly disagree with that. Your statement is doing away with the following very pertinent proposition. You are dealing with two different types of property. You are dealing with two different works. There is embodied in a record the work of the author composer, but there is also in the end product the work of the record producer, which includes the work of the author composer. Those are two different works, both protected equally under the Copyright Act.

**Senator Grosart:** Would you not agree that the performing right, which is what I am talking about, as asserted in the record, is secondary to and derivative from the original author composer?

**Mr. Fortier:** If you are making the proposition that without the author composer there would be no record, I agree with you. But I draw your attention to the fact that no distinction is made in the Canadian Copyright Act as to a primary performing right or a secondary performing right. There is no distinction found anywhere in the act, which to me is authority for the proposition I make that, since the legislators recognized that both were worthy of protection, they should both continue to be worthy of protection.

In the same way that the record producer has never said, and never will say, that the author composer should not be indemnified for the work he has created, I would hope that the author composer would realize that without the record producer his property rights would not be compensated, because there would be no public performance of his work on radio stations, on television stations, in dance halls, juke boxes and so on.

**The Chairman:** Let us say it would be limited.

**Mr. Fortier:** It would be very much limited.

**Senator Grosart:** What you say would be correct unless section 19(3) is read the way some people read it. Perhaps I should put it on the record, because it deals specifically with the performing right that may or may not subsist. Subsection (3) reads:

For the purposes of subsection (1) . . .

. . . which is the one that grants the compulsory statutory licence . . .

a musical, literary or dramatic work shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

I am not going to argue this point, but merely point out that it may well be that subsection (3) takes the record completely out of the category in which you want to put it, as having, in a compulsory record, an inherent right.

**The Chairman:** In what category do you say Mr. Fortier wants to put it?

**Senator Grosart:** He wants to put it in the category of a musical, literary or dramatic work.

**The Chairman:** The statute says that.

**Senator Grosart:** Of course it does; that is exactly what I said. In section 19 (1) the statute says this; in 19(3) it appears to take it away.

**The Chairman:** You misunderstood the importance . . .

**Senator Grosart:** Let me finish my sentence, Mr. Chairman.

**The Chairman:** I know, but I have to deal with this. You are making a statement as to the effect of subsection (3) of section 19. What I say is that you have to go back and look at what the copyright is that is given. As to the record maker, it is as if it were a musical performance.

**Senator Grosart:** Perhaps Mr. Fortier might argue that. I am surprised that the chairman is arguing it. I am merely saying . . .

**Mr. Fortier:** I think he is only repeating what I said earlier.

**Senator Grosart:** It may be he is, but I say I am surprised to find the chairman arguing on that point.

**The Chairman:** It is unusual to find you surprised.

**Senator Grosart:** I say that section 19(3) may take it out of the category of a musical work as defined in section 19(1) which is the compulsory licensing section which, as I say, is the heart of the whole argument.

**Mr. Fortier:** Senator Grosart, it is . . .

**Senator Grosart:** I am not going to argue.



**Mr. Fortier:** May I be allowed a brief right of reply, Mr. Chairman?

All that section 19(3) says is that you cannot make a record from a record. That is all it says.

**Senator Grosart:** I do not agree that that is what it says, and others do not.

**Mr. Fortier:** Mr. Chairman, we dealt very briefly—and it was said that it was totally irrelevant—with the matter of money. I would very much appreciate an opportunity of saying a few words about money, since the main impetus of the presentation of Bill S-9 in the Senate has been that there was going to be a great sum of money which was going to flow out of Canada. I repeat that this is totally irrelevant, but since the point has been made, may I deal very briefly with Annex M? You have had distributed to you this morning a revision of Annex M which, in the top right-hand corner bears the words "Annex M (Revised)". Originally, in preparing this brief, we had failed to make a distinction between the records made in Canada—that is, Canadian recordings—and records made in other countries. If you look at Annex M you will see that the flowing, the ebbing away of large sums of money, mainly to the United States, is nothing but a red herring and it is not—I repeat, it is not—based on facts.

May I ask you to follow me through the first column of this Annex M? It refers to that portion of the revenue dollar of SRL which will be retained in Canada because it is in respect of Canadian recordings. May I remind honourable senators that since January, 1970, because of a decision of the Canadian Radio Television Commission, there need be, by law now, 30 per cent Canadian content over broadcasting stations in Canada? So, when we are dealing with recordings as a whole, we should bear in mind the fact that, included in those recordings which are used by broadcasters in Canada, will be a minimum of 30 per cent of the total use made by radio stations of records; and that in respect of this 30 per cent the whole of the revenue dollar accruing to SRL, in virtue of the decision of the Copyright Appeal Board, will remain in Canada. This is what the first column indicates.

In respect of foreign recordings . . .

**Senator Grosart:** Excuse me, Mr. Fortier, before you go on. At the present time, what percentage of the recordings of the SRL group is Canadian?

**Mr. Fortier:** What we are dealing with, senator, is what is played on the air, because that is the basis on which the royalties are paid.

**Senator Grosart:** I am asking you what percentage . . .

**Mr. Fortier:** 30 per cent—at least 30 per cent.

**Senator Grosart:** 30 per cent of the records now produced by the SRL group? That is what I am asking you.

**Mr. Fortier:** I am sorry, senator. The answer is less than 10 per cent.

**Senator Grosart:** So we are dealing with less than 10 per cent.

**Mr. Fortier:** No, we are not, senator. We are dealing with at least 30 per cent, because that is the use, the minimum use which must be made today, in virtue of that decision of the CRTC which came into effect on January 18, 1971—that in broadcasting, radio stations in Canada must

now, for a minimum of 30 per cent of the time, offer Canadian recordings.

**Senator Grosart:** Yes, but this does not mean that 30 per cent of the SRL group recording will be Canadian.

**Mr. Fortier:** I think we are arguing at cross-purposes. I am saying that the tariff is based on use made by radio stations and I am saying that now, by law, radio stations have to use Canadian content recordings for at least 30 per cent of the time. So that column represents a minimum of 30 per cent of all the dollars which will accrue to SRL under the tariff approved by the Board, and it has to be, by law.

**Senator Grosart:** Oh yes, I agree.

**Mr. Fortier:** May I open a parenthesis, senator? 30 per cent is an absolute minimum. It is going to be a great deal more, because you and I know that there are two native recording industries—I almost said "two nations," but I do not want to get into a political or constitutional argument here. There are two recording industries in Canada. There is the Quebec, the French recording industry, and there is the English-Canadian recording industry.

In Quebec, the evidence before the Copyright Appeal Board in April was that in excess of 75 per cent of the recordings made in Quebec, the French recordings, are actually produced in studios in the Province of Quebec, by French-Canadian producers; and over the air, on the broadcasting stations in the Province of Quebec, there is thus a minimum of 75 per cent of records, which are records made in Canada, to wit, in Quebec. So that 30 per cent total picture, absolute picture, is a bare minimum. I think in reality we are dealing with—no, I am not going even to venture a percentage, because I think it would be quite misleading and I can err. I am saying that we are dealing in fact with more than 30 per cent.

**The Chairman:** It may well be 50 per cent?

**Mr. Fortier:** I would not wish to hazard a guess.

**The Chairman:** Very well.

**Senator Grosart:** Whatever it may be, the SRL has not contributed very much to it, in the past.

**Mr. Fortier:** The SRL was not in existence in the past.

**Senator Grosart:** I say the SRL group of companies has not been conspicuous in their promotion of Canadian content recordings.

**Mr. Fortier:** You have heard some grumblings from some Canadian producers, which I think are eloquent in themselves. May I make one point, though, Senator Grosart? I certainly do not wish to enter into an argument. The evidence before the Copyright Appeal Board is itself very eloquent. There is, as you know now, an obligation on the part of broadcasters to use Canadian records. Prior to this obligation being decreed by the CRTC, Canadian records, senator, were produced, but they were not played by the stations. They were not played by the stations because the radio stations were more interested in competing with the American music which flowed over the border, than they were in themselves promoting Canadian records. So the Gordon Lightfoots, the Anne Murrays, the Ginette Renods and the Jean-Pierre Ferlands, and so on, were being recorded yesterday, but they were not being given any air play because the radio stations were not obliged to give them air play. Now that they are obliged to give them air

play, the radio stations are screaming for Canadian records.

**Senator Grosart:** I am very glad that is so. But you say that 70 per cent of the records played on the air in Quebec are Canadian-produced.

**Mr. Fortier:** That is correct.

**Senator Grosart:** So it is not quite true to say that these Canadian-produced records, or Canadian-content records, have not been performed. As a matter of fact, they have been performed in Quebec. What you are saying is correct for the rest of Canada, but it is not a correct statement for Quebec over the last five to ten years.

**Mr. Fortier:** Now, honourable senators, with respect to foreign recordings—that is, recordings by the big American or English ogres—will you please follow me through the last column of Annex M? You see that the effect of the distribution pattern of \$1 is as follows. There is a 12½ per cent administration charge. That is self-evident. There is included 10 per cent of the royalties which will be earmarked for music bursaries and scholarships. This and the other items which are recited following this form the basis of the offer, Mr. Chairman, which has been made to the Canadian Union of Performing Artists.

Twenty-five per cent of the remaining amount, that is, 25 per cent of the net, will then be turned over to this union voluntarily by the record producer, because the record producer recognizes the input of the performer and recognizes that the performer contributes to the actual production of a record. So 25 per cent will be paid over to those unions.

Fifteen per cent will then be paid to the performers who are under contract with SRL members. These can only be Canadian performers. Fifteen per cent of the net will then go into a fund for additional Canadian recordings to meet the increased needs of the Canadian broadcasting stations.

So that, Mr. Chairman, leaves then 35 per cent of the original dollar to be shared by members of SRL. That 35 per cent of the net represents 30.62 cents. As I said earlier in respect of Canadian recordings, all of this money remains in Canada and in respect of foreign recordings there is no more than 50 per cent of this 30 cents, in other words, approximately 15 cents, which will be shared with foreign copyright owners. And again this is in evidence before the Copyright Appeal Board.

This is the first time that I have had occasion to say so, but may I say that even in respect of the 15 cents, because of the purport or the intent of the impetus of the presentation of Bill S-9 before the Senate, we advised our clients that they should contact their parent companies in the United States, England and Holland and obtain from them a waiver of this remittance of 50 per cent of the remaining 30 cents. Whether or not this is relevant, I should like to put on record the fact that our clients have obtained from their parent companies a waiver along those lines. Thus, we are assured that the revenue dollar, which will accrue to SRL in respect of performance in public by broadcasting stations and other users of our work, will remain in Canada and will be shared equally between the performers and the record producers in the way in which it is recited here in Annex M.

**Senator Grosart:** Incidentally, Mr. Fortier, I must congratulate you on this because obviously it means a complete change in your existing contracts.

**Mr. Fortier:** It means an amendment to the existing contracts, yes.

**Senator Grosart:** Your existing contracts would call for a remittance of 50 per cent of gross.

**Mr. Fortier:** With respect, senator, no. It was 50 per cent of net. The contracts filed before the Copyright Appeal Board indicate 50 per cent of net.

**Senator Grosart:** But not this kind of net. I am talking about the old existing contracts.

**Mr. Fortier:** The old contracts filed before the Copyright Appeal Board indicate that 50 per cent of net is to be shared between the parent company and the subsidiary.

**Senator Grosart:** How was that net defined?

**Mr. Fortier:** Net is not defined.

**Senator Grosart:** What proportion would have gone under the existing contracts?

**Mr. Fortier:** Fifty per cent.

**Senator Grosart:** I mean of gross. What per cent of gross would that 50 per cent of net have been? I am just interested. That is all. I am not being critical.

**Mr. Fortier:** Clearly that was not evidence allowed before the Copyright Appeal Board, because Mr. Justice Thurlow said, I think rightly, that this was not relevant to the matter which was being considered before the Board. I would answer that the contracts were quite clear. They spoke to 50 per cent which had to be remitted to the foreign copyright owner, being the parent company in most instances. That is, 50 per cent of the net amount which was received by the Canadian subsidiary. Now, if you look at Annex M, senator, you will see that any sum of money which a member of SRL will receive cannot exceed 30 cents. So we are talking of 15 cents today just as we were at the time of the hearing before the Copyright Appeal

**Senator Grosart:** I do not want to get too involved in this, but actually, you would have been receiving more than the 30 cents.

**Mr. Fortier:** Not the members, senator.

**Senator Grosart:** But your receipt—the moneys paid for the exercise of the right.

**Mr. Fortier:** But it is not SRL which is paying for the foreign copyright owners. It is the members of SRL—the same way as it is not the authors and the composers in the United States who receive the money from the publishers over here. They receive the money from the performing rights societies, from CAPAC and BMI.

**Senator Grosart:** I was just interested to see how generous you had been. I should have liked to compare the 15 cents with what it was previously just to congratulate you on your surge of generosity.

**Mr. Fortier:** For which I thank you.

**Senator Grosart:** In connection with the Canadian recordings you will make, will there be any inflow into Canada from foreign performing rights royalties?



**Mr. Fortier:** Definitely. As you know, these are reciprocal arrangements under the terms of international conventions, with which I am sure you are just as familiar as I.

**Senator Grosart:** Is there a mechanism by which there will be an automatic inflow to Canada?

**Mr. Fortier:** There is reciprocity between those countries where the performing rights are recognized by law.

**Senator Grosart:** But not necessarily reciprocity between parent companies and their subsidiaries.

**Mr. Fortier:** I see what you mean. No, not necessarily.

**Senator Grosart:** At the moment there is no mechanism by which there will be an inflow to Canadians from the use of the performing rights of Canadian records abroad.

**Mr. Fortier:** I had missed your point. I see.

**Senator Grosart:** It is a very important point.

**Mr. Fortier:** Yes, it is indeed. I would not want to err here, but I think that mechanism exists in most of the contracts, if not all of the contracts which were filed before the Board by the eight major companies. It is a reciprocal arrangement. If, for example, a Canadian recording of a Deutsche Grammophon work is played in Holland, then there is mechanism for division between the parent company and the subsidiary of the performing right royalties which accrue in Holland. Absolutely.

**Senator Grosart:** So this reciprocity would continue, would it, in spite of this very generous decision of the foreign owners in your group not to receive any part of the money from Canada?

**Mr. Fortier:** These are the indications which have been given by the parent companies, yes.

**Senator Grosart:** You say, then, that, percentagewise, there would be an adequate flow back into Canada of performing right royalties from the use of a Canadian-made record by your group of companies abroad.

**Mr. Fortier:** Yes, I would say that, senator.

**Senator Connolly (Ottawa West):** Mr. Fortier, you said, I believe, that all the profits from the performing right royalties from radio stations are going to be held in Canada by this group of companies. I suppose this does open up quite an area for questioning, but what other source of revenue have these companies in addition to the performing rights of these records on the air?

**Mr. Fortier:** The obvious one is from the sale of records for private use.

**Senator Connolly (Ottawa West):** Is that fairly substantial?

**Mr. Fortier:** I am not going to venture an opinion that it is substantial, or more substantial or less substantial. There are figures which have been produced before this committee by one of my predecessors which indicate that the income from the sale of records at the retail level is approximately \$100 million. Now what percentage of this is retained by the retailer I am not sure.

**Senator Connolly (Ottawa West):** You have to work the mark-up off.

**Mr. Fortier:** My instructions are that we are dealing with a \$50 million a year business approximately.

**Senator Connolly (Ottawa West):** In other words, it is profitable for a foreign company to operate here. If it were not possible for foreign companies to get a reasonable return on their investment in Canada we would lose a record industry which would be to the disadvantage of Canada.

**Mr. Fortier:** Again, many of the artists who are popular—as I said earlier music is international and I do not think I would get any argument on that—"The Rolling Stones," and if I may mention in the same breath—

**Senator Connolly (Ottawa West):** The only ones I know are "The Irish Rovers".

**Mr. Fortier:** "The Irish Rovers," "Mozart," "Beethoven"—if I may use them in the same sentence. These are all just as much part of our music as they are of the music of England and Germany.

**Senator Connolly (Ottawa West):** I hope they get "The Irish Rovers" in England.

**Senator Haig:** Mr. Fortier, as part of your brief you include a letter from Mr. Basford, dated October 29, 1968, to Mr. Harrison, President, Sound Recording Licences Limited. In the fourth paragraph of that letter, Mr. Basford says:

I wish to express my serious concern about this application, and to inform you that I consider it not to be in the public interest.

What is your answer to that? What is the reasoning behind it?

**Mr. Fortier:** The reasoning is provided in the next sentence. He says: (1) that that section has never been used in Canada and (2) the Royal Commission on Patents, Copyright, Trademarks and Industrial Designs concluded that the manufacturer's performing right in broadcasting and records, etcetera, should be abolished. I think it was in this context that the Honourable Mr. Basford was telling us that it was not in the public interest. This is the Ilsley Commission report which I am sure you are familiar with which in four sentences reproduced on page 17 of our brief which you have in your hands at the moment dealt with the performing right in records. You will see those four sentences at the bottom of page 17 and top of page 18. It is of interest to note that they referred to the United Kingdom experience because in the United Kingdom there had been published prior to the Ilsley Commission report a report of a Royal Commission chaired by Mr. Justice Gregory—it was called the Gregory Committee Report—and that report concluded that the performing right in records should be retained, but that report preliminarily stated, and it is the preliminaries that the Ilsley Commission dealt with, that there had been problems encountered in England with the exercise of the performing right. But these problems were encountered prior to the setting up in England of a performing rights tribunal such as we have in Canada, because the performers' unions and the musicians' unions were influencing the record manufacturers and record producers in preventing radio stations from giving an unlimited air-play to their records. You are familiar with the concept of needle-time? In England not only does the performing right in a record mean equitable compensation to the owner of the work, it also means the right vested in the owner or the copyright to restrict unlimited use of the records over the air. And this is one of the elements which is submitted to the Performing Right Tribunal. For example, in the Isle of Man case in England



it was ruled that copyright in a record meant not only the right to prevent reproduction, and the right to enforce public performance royalties, but also the right to restrict needle-time, because one of the main complaints of record producers and record manufacturers with respect to air-play which is given to their records is that too much uncontrolled air-play can kill a record and kill the sale of a record. In England this was recognized.

**Senator Connolly (Ottawa West):** A case of overexposure.

**Mr. Fortier:** Yes, overexposure. What they call "turn-table hits". These records "don't move", if I may use the colloquial expression, in the stores, but they fill up two, three or four minutes every hour on the radio station. The radio station uses it for profit but it does not mean sales so far as the record producer is concerned.

**Senator Haig:** Well, we have already heard that this is the only way in which a record company can sell its records, that is by the public hearing it on the air.

**Mr. Fortier:** Yes, you have heard evidence to the contrary also.

**Senator Haig:** When I used to buy records, I went into the little booth and put the record on the turn-table and listened. But now you hear a record from a radio station, and you get the "Top Ten" each week. Does that not greatly improve the sales of the records?

**Mr. Fortier:** Do you know what percentage of records produced in Canada are played over the air? Less than 10 per cent of all the records which SRL produce will be played on the air. This is a discussion which I would love to continue with you which goes to quantum, because I discussed this for four weeks before the Copyright Appeal Board. I am not disputing that there is an advantage derived by members of SRL from the air-play that is given to some of their records.

**Senator Haig:** There must be if you give the records to the radio stations.

**Mr. Fortier:** I am not disputing that; but surely you will agree with me, senator, that this is a question of quantum. This is why we have the Copyright Appeal Board which every year is called upon to decide who derives the most advantage. Is it the radio station by having access to our complete repertoire? Is it the radio station from having access for a pittance to what occupies in some instances up to 70 per cent of their air time? Or is it the record company which is definitely selling some records as a result of the promotion given to those records over the radio?

There is here an argument which was made ad nauseum before the Copyright Appeal Board. The board obviously found that radio stations derived more of an advantage than record producers because it said there should be a tariff.

My friends on the other side argued until they were blue in the face, after I had become blue arguing the opposite picture, that there was a trade-off. The board did not say there was a trade-off. The Copyright Appeal Board said there should be payments, there should be just compensation.

Are record sales affected by the air-play given to records? The answer is, "Yes". Some records are quite definitely affected by the air play given to records. However, it is not the sole means of promotion.

**Senator Haig:** The record companies, including SRL, do not lose by the playing of your record on the air.

**Mr. Fortier:** In some circumstances, yes, we do lose.

**Senator Haig:** Then the record cannot be very good.

**Mr. Fortier:** I am satisfied that some record companies can definitely lose money because of overexposure given to some of their records by radio stations. Allow me to quote a statement made by the President of the Canadian Association of Broadcasters in April, 1971. The statement came right in the middle of the hearing before the board. The Canadian Association of Broadcasters argued against the tariff. Their lawyer put the argument which you are putting now, that record producers were biting the hand that fed them, that there was a trade-off. They even argued that in effect record producers should be paying broadcasting stations because they were deriving more of a monetary advantage. Mr. McGregor, the immediate past President of the Canadian Association of Broadcasters, said in the middle of the hearing and I am quoting from a clipping in the *Ottawa Journal*—that:

Canadian performers are suffering from overexposure because of the recent increase in Canadian content on radio and television, W. D. McGregor, President of the Canadian Association of Broadcasters said Sunday night.

There is another element which you have to bear in mind, senator, which is that once Decca, Warner Brothers or Deutsche Grammophon are given a record, they are not assured that it will be played. There was evidence before the board of thousands of records which remained in the vaults or libraries of radio stations and were never played.

**Senator Haig:** How would you sell them to the public?

**Mr. Fortier:** That is exactly my point. We have other means of promotion. We have promotion in record shops, in newspapers, in magazines. We have promotion in a number of other outlets which are available to us.

My submission before the board was that not one radio station in Canada—and I make that statement without any reservation at all—could live today without records. Not one radio station could live without records.

**Senator Haig:** Could your record companies live without radio stations?

**Mr. Fortier:** Definitely. Absolutely; because there are two instances of countries where it happened. It happened in Australia and in Germany. This evidence was given to you by the members of the International Federation of the Phonographic Industry. I was sitting behind either you or Senator Connolly when either you or he expressed surprise when Mr. Stewart said before this committee that if there was no air play given to records, record sales would increase.

I stand by that proposition. Speaking for myself, if I could not hear my favourite music by flicking a dial, I would run to the record shop so that I could have access to that music in my home whenever I wanted it, or access to that music on the beach whenever I inserted a cassette in my little machine.

The argument could be made that sales of records would increase if there were no use made of records by radio stations, for the simple reason that music is a commodity with which you and I cannot do without.

**Senator Haig:** I can do without it.

**Mr. Fortier:** All types of music?

**Senator Haig:** No; I withdraw that statement.

**Mr. Fortier:** please remember that Bill S-9 does not make any distinction between different types of music.

**Senator Grosart:** Is there any intention on the part of SRL to restrict needle time?

**Mr. Fortier:** No, there is not.

**Senator Grosart:** Have you ever attempted to restrict it?

**Mr. Fortier:** We never have.

**Senator Connolly (Ottawa West):** Is there not a questionable kind of policy? I do not know much about the television and radio business, but it seems to me that one of the major problems with American television, is that stars become overexposed. As a result, they have less and less air time and appear on shows periodically. Do you not kill your product or maim it?

**Mr. Fortier:** For some records, yes. The evidence before the board on that point was that a new artist, or new record air played will promote sales, but in the case of an established artist or an old record, air play will not promote sales.

**Senator Connolly (Ottawa West):** From the point of view of the Canadian performer, it seems to me to be a pretty important decision, because relatively speaking we have not that many Canadian performers.

**Mr. Fortier:** At the moment, no, we do not.

**Senator Connolly (Ottawa West):** If you overexpose a record by a Canadian performer, you may in time do damage to that performer, apart from the value of the property to the company from that record. Conceivably you might get the public to the point where they are fed up.

**The Chairman:** That is, of course, an observation. It may or may not be relative to the question that we have to decide. I think it was put forward by Mr. Fortier as an answer to a question of Senator Haig as to what was the relative contribution by the broadcasting and records industry when records were supplied to broadcasters. We had evidence which suggested that broadcasting companies were doing a great favour to the record industry. At one time Senator Cook was prompted to make the remark, which I think perhaps he would now regard as being not the greatest remark he ever made, that record companies were biting the hand that fed them. We have had a lot more evidence since then.

**Senator Carter:** Regarding the revenue dollar, how much of it would be profit from sales? Is it from sales?

**Mr. Fortier:** No. This revenue dollar is exclusively from public performance rights.

**Senator Carter:** Not including sales?

**Mr. Fortier:** No. Finally, on the matter of dollars and cents may I remind the committee that we originally asked from the commercial broadcasters 2.6 per cent of their gross income. The award of the Copyright Appeal Board, after a four weeks hearing which included a series of witnesses,

adduced I should add, by the applicant, SRL, with no broadcaster appearing to testify and assist the board in reaching its decision, was 0.15 per cent. Translated into dollars over a year this means approximately \$200,000.

**Senator Connolly (Ottawa West):** Two hundred thousand spread over all the radio stations of Canada?

**Mr. Fortier:** Yes.

**Senator Connolly (Ottawa West):** And the television stations of Canada?

**Mr. Fortier:** yes.

**Senator Connolly (Ottawa West):** I suppose it is pretty hard to say how much it would cost each station, but how many such stations used it?

**The Chairman:** All stations with earnings of less than \$100,000 are eliminated.

**Mr. Fortier:** There are 339 radio stations in Canada. Since no broadcaster appeared before the board to adduce evidence as to the extent of use, we had to monitor a sample of radio stations throughout Canada. The figures obtained from this monitoring experience were filed with the board. They showed that the 16 representative stations in our submission used our music to an extent varying from 14 per cent to approximately 72 per cent. The CBC was low: one of their stations had 14 per cent or 12 per cent. One top 40 station, I think it was CHUM in Toronto, used our products for more than 70 per cent of the time they were on the air.

The answer to your question, how is it divided, would be found by making a calculation, Senator Connolly, of figures contained in a booklet issued each year by the Dominion Bureau of Statistics. One such publication, showing by categories the revenues of Canadian radio stations, was filed with the board. I would be happy to provide you with a copy so that you could make the calculation.

Included in the \$200,000 is a \$30,000 payment by the CBC. Therefore, the figure is \$170,000 per year as far as the commercial broadcasters are concerned.

**Senator Desruisseaux:** All this gives me concern; are you fighting only for principles?

**Mr. Fortier:** No, senator; we are not fighting only for principles.

**Senator Desruisseaux:** Would you be ready to use that \$200,000 as a basis for the years to come?

**Mr. Fortier:** If there were approaches made by broadcasters to SRL, such as are made, as you probably know, senator, in European countries, in order that, one, the right be recognized once and for all; two, that they would indicate to the minister that Bill S-9, which favours them and them alone, should be withdrawn; and, three, that we could see an indication of a reasonable sum of money being offered, then quite definitely.

**Senator Desruisseaux:** What do you term a reasonable sum of money?

**Mr. Fortier:** This would be a subject for negotiation, senator, surely. We have taken the attitude from the start and have even approached some broadcasters and lawyers representing them, seeking to effect a settlement. We never expected to receive 2.6 per cent, any more than when



Senator Macnaughton or any other lawyer takes a damage action for \$100,000 they expect to be awarded \$100,000. A little bargaining room must be left.

**Senator Macnaughton:** Oh, yes, I do.

**Mr. Fortier:** We have never had one of those cases together, senator.

**Senator Molson:** That is what you tell the client.

**Mr. Fortier:** Exactly, but with negotiations; the door is open. I will go even further than that, Senator Desruisseaux. In so far as the CBC is concerned, we are cognizant of the fact that it is a drain on the Canadian taxpayer. They were subsidized to the extent of some \$45 million last year, I believe, by you, me and others. The door has been open for many months. You asked me what I considered to be reasonable. In so far as the CBC is concerned, we would entertain a nominal fee.

**Senator Desruisseaux:** How could you justify that when the others would be treated differently?

**Mr. Fortier:** Commercial broadcasters are in business to make money. If they are making money with my product, they should compensate me. The CBC, as we all know, is not in business to make money.

**Senator Desruisseaux:** May I ask you what percentage of the stations make money?

**Senator Haig:** Over \$100,000.

**Senator Desruisseaux:** Yes, over \$100,000.

**Mr. Fortier:** We have the figures here.

**Senator Desruisseaux:** Yes, and there are more recent figures.

**Mr. Fortier:** I have here the DBS figures, Senator Connolly, if you are interested. The operating revenues of privately-owned radio stations in 1969 varied from \$100,000 to over \$1-12 million. There were 14 stations in Canada which had total operating revenue in excess of \$1-12 million in 1969; 15 were between \$1 million and \$1-12 million; 15 were between \$750,000 and \$1 million.

**Senator Desruisseaux:** What is the percentage? I thought it was approximately 25 per cent?

**Mr. Fortier:** I find it difficult to arrive at a percentage from these figures.

Last week my friend Mr. Estey was asked what had happened to the CAPAC tariff in the course of the last 20 years since they were awarded a percentage of the gross income of radio stations. He did not have the answer at his fingertips. In 1952 CAPAC's rate as approved by the board in respect of commercial radio stations was 1.75 per cent. Today it is 1.85 per cent, representing an increase of only .1 per cent awarded by the board over a period of almost 20 years. May we translate this into dollars now?

**Senator Desruisseaux:** It does not matter.

**Mr. Fortier:** I would like to put it on the record for the benefit of you and Senator Grosart. In 1952 the revenues which CAPAC derived from commercial broadcasting amounted to \$317,000. In 1969, the radio revenue amounted to \$2 million. Why that increase?

**Senator Desruisseaux:** We all know it is the same as in the record companies. You are telling the story of the world when you say that.

**Mr. Fortier:** I am glad to note you would like to see record companies treated in the same way as radio companies. They should be paid for the use made of their property.

**Senator Connolly (Ottawa West):** What is CAPAC?

**Mr. Fortier:** CAPAC is the performing rights society, which comprises the authors and composers in Canada.

**Senator Haig:** Who assign this right to CAPAC?

**Mr. Fortier:** To this society.

**Senator Haig:** And also BMI.

**Mr. Fortier:** That is right. BMI and CAPAC share between themselves the authors and composers in Canada. Again on this point—I would not raise it if my opponents had not done so before this committee as well as before the Copyright Appeal Board—it has been said that all these dollars are flowing into the United States. May I bring to your attention the fact that by the assessment of the Canadian Association of Broadcasters, in a document they filed before the Copyright Appeal Board, they estimated that of the \$5 million which the commercial broadcasters today pay to CAPAC and BMI, in excess of 80 per cent is channelled through CAPAC and BMI to the United States. What is the expression? What is sauce for the goose is sauce for the gander. This is the Canadian Association of Broadcasters saying that already . . .

**Senator Desruisseaux:** Maybe they should be looked at too

**Mr. Fortier:** That is certainly not the essence of my plea.

Let me end on this note, because I have already taken much to much time, honourable senators. I think that Bill S-9 is a bad bill. It proposes legislation that should never be introduced by any government. You will have noticed that clause 2 of the bill makes the effect of the bill retroactive to January 1, 1971. In effect, the Bill S-9 becomes law, the award that the Copyright Appeal Board has rendered, after a hearing which lasted, as I said earlier, in excess of four weeks, after all parties were given their day in court, so to speak, would be wiped out altogether. This would be an intrusion, in my humble submission, by the legislative arm of the Canadian Parliament into what by law since 1935 has been entrusted to this quasi judicial body which is called the Copyright Appeal Board.

There is another element that I think should be brought to your attention. It has happened only in the course of the last 10 days. There is a new court now in existence in Canada, as you are all well aware, called the Federal Court. It came into being on June 1, 1971. Section 28 of the Federal Court Act provides now for an appeal to the appellate division of the Federal Court from a decision of an administrative tribunal such as the Copyright Appeal Board. May I put on record and bring to the attention of honourable senators, that 10 days ago counsel for the Canadian Association of Broadcasters filed an application before the Federal Court, under section 28, in order to obtain an extension of the delay for appealing the decision of the Copyright Appeal Board. In effect, the Canadian Association of Broadcasters, the CAB, has put this matter—I do not want to strain the meaning of the word, but I



will use it in the way in which I mean it, which is very loosely—sub judice; they have sought to refer the award of the Copyright Appeal Board to the Federal Court.

**The Chairman:** What you are suggesting is that they have selected their forum.

**Mr. Fortier:** They have made their bed, yes. I should be totally and completely fair to the Canadian Association of Broadcasters. One of the reasons for making this application, which is recited in the motion, is that Bill S-9 is presently pending, and they say they should not be called upon to pay SRL the tariff, which as you certainly know comes into effect on July 1 only; it is a six-month tariff which was approved by the Copyright Appeal Board. Again a submission we made to the board at the conclusion of the hearing was that, since this was a new performing rights society, any award should not be retroactive to January 1, and radio stations in Canada should have the discretion of deciding whether they wish to use our records or not.

**Senator Connolly (Ottawa West):** Bill S-9 would, in effect, wash out the decision of the Copyright Appeal Board.

**Mr. Fortier:** Completely for this year, and it would prevent us from going before the Copyright Appeal Board in the future.

**Senator Connolly (Ottawa West):** On performing rights.

**Mr. Fortier:** That is right. I think from a purely legal point of view this is bad law. It is retroactive legislation. It is taking away a right that has existed since 1935 to go to a body which has been set up to protect the public interest. As was said by Mr. Stephen Stewart from London, England, three weeks ago, Canada was the first country in the world to set up a performing right tribunal and many other countries followed suit, and Canada would be the first country in the world to do away, in respect of records, with the performing right tribunal.

**Senator Desruisseaux:** Would this reasoning that we have had on this bill reasonably extend to performing rights in sports and other fields, such as football, hockey and baseball performers?

**Mr. Fortier:** No. The amending legislation deals only with records.

**Senator Desruisseaux:** They do have sound.

**Mr. Fortier:** Yes, but it has to be a record or other mechanical contrivance by means of which sound may be reproduced.

**Senator Connolly (Ottawa West):** Suppose they have a record made of a live performance.

**Mr. Fortier:** That could be interpreted as being a literary or dramatic performance.

**Senator Desruisseaux:** It is any contrivance by means of which sound may be mechanically reproduced. A film is that.

**The Chairman:** That is right. What you ordinarily have is a live performance.

**Mr. Fortier:** A film is protected under another section.

**The Chairman:** You have a live performance when there is a broadcast or television showing of a hockey, baseball or football game, so there is no record involved.

**Senator Haig:** The baseball and hockey performance is protected by the owner of the NFL and so on, so it does not appear in this at all.

**The Chairman:** No.

**Senator Grosart:** There is no compulsory licensing.

**Mr. Fortier:** No, you cannot force a professional player to play for free.

**The Chairman:** Is there anything further?

**Mr. Fortier:** No, Mr. Chairman. May I thank you on my own behalf and on behalf of our clients who are here today for your patience. I am very sorry I have taken up so much of your time.

**The Chairman:** Well, we asked a lot of questions.

**Mr. Fortier:** I have enjoyed it, and I hope I have been able to answer all your questions.

**The Chairman:** Thank you very much.

**Senator Grosart:** Mr. Chairman, I should like to bring one matter to the attention of the committee and ask Mr. Fortier to comment on it. I sometimes read a trade publication called *Variety*, which is said to be the bible of show business. In the issue of June 9, 1971, I read the following, which I think is relevant, subject to your ruling, Mr. Chairman. It is dated Toronto, June 8, and says:

With permission recently granted them to charge broadcasters across the country a performance fee, Canadian-based disk manufacturers are moving full swing ahead to hike album prices.

Companies withheld a price increase in line with that which took place recently in the U.S. pending federal government approval of their demands. Latter originally were made 32 months ago. They took the position among themselves at that time that increased prices might offend and prejudice their case for a performance fee.

I skip two paragraphs, in which they detail some of the increases. The last paragraph reads, in part:

Of the disk manufacturers, 95 per cent are foreign owned and are under orders from head office to release a certain number of records over a certain length of time whether the market can bear it or not.

That is a quotation. I am not saying that that is a fact, but I would appreciate your comment. Have you seen it?

**Mr. Fortier:** What is the source?

**Senator Grosart:** "Variety".

**Mr. Fortier:** Who wrote it?

**Senator Grosart:** I do not know.

**Mr. Fortier:** I am informed of this for the first time, senator, so I have no comment.

**Senator Grosart:** So am I. I just happened to see it. Perhaps some of your principals might wish to see it.

**The Chairman:** Let us put it this way. If Mr. Fortier, after investigating and studying it, decides that there is anything he wishes to submit, he could write in to us.

**Mr. Fortier:** Yes, Mr. Chairman.

**The Chairman:** Honourable senators, this concludes the hearing today.

**Senator Macnaughton:** Mr. Chairman, I would like to take the opportunity of congratulating this very able attorney. Whether he is right or wrong, his presentation was extremely good.

**Senator Grosart:** Hear, hear.

**The Chairman:** That is what we expect from Mr. Fortier.

**Senator Macnaughton:** Yes, but we do not always get it from others.

**The Chairman:** Honourable senators, we have given an appointment to the minister for next Wednesday morning, the date being the date that was suggested by him. I mentioned that so that it could not be concluded that we had delayed hearing him until that date. We were offered his appointments, that he would not be available between June 2 and June 22. We had commitments for two of our weeks, so we said we would offer him June 23, and asked

him to tell us, in any event, whether that was acceptable or not. The answer was that it was acceptable. So the minister will appear next week. If Mr. Fortier wishes to attend, he is perfectly entitled to, and if he wishes to make any reply to any of the submissions he would have an opportunity to do so. You can use your own judgment, Mr. Fortier.

**Mr. Fortier:** Thank you very much, Mr. Chairman. I should bring to the attention of the committee that on Wednesday next the Canadian Association of Broadcasters is going to be responsible for my attendance before the appellate division of the federal court on this very matter. Possibly you will be sitting at 9.30?

**The Chairman:** Yes. You will have until a quarter to eleven.

**Senator Burchill:** Did we not have the minister here one day on this bill?

**The Chairman:** No, senator.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

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No. 31

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WEDNESDAY, JUNE 23, 1971

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**Sixth and Final Proceedings on Bill S-9,**

intituled:

**"An Act to amend the Copyright Act"**

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REPORT OF THE COMMITTEE

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(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Haig
Beaubien	Hayden
Benidickson	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).
Grosart	

*Ex officio members:* Flynn and Martin

(Quorum 7)

## Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 30, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the Motion of the Honourable Senator Urquhart, seconded by the Honourable Senator Cook, for the second reading of the Bill S-9, intituled: "An Act to amend the Copyright Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, June 23, 1971

(34)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *further* consider the following Bill:

Bill S-9, "An Act to amend the Copyright Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Flynn, Gelin, Giguère, Grosart, Haig, Hays, Isnor, Lang, Macnaughton, Martin, Sullivan and Walker.—(21)

*Present but not of the Committee:* The Honourable Senators Lafond and McDonald. (2)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

## WITNESSES:

*Department of Consumer and Corporate Affairs:*

The Honourable Ron Basford, Minister;

Mr. A.M. Laidlaw, Q.C., Commissioner of Patents.

*Sound Recording Licences (SRL) Limited:*

Mr. L. Yves Fortier, Counsel.

At 10.30 a.m. the Minister withdrew.

The Honourable Senator Beaubien moved that the Bill be reported now without amendment. The question being put, the Committee divided as follows:

YEAS—7

NAYS—3

The Motion was declared *Carried*.

At 11.50 a.m. the Committee proceeded to the next order of business.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, June 23, 1971

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-9, intituled: "An Act to amend the Copyright Act", has in obedience to the order of reference of March 30, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, June 23, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-9, to amend the Copyright Act, met this day at 9.30 a.m. to give further consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order.

We propose to consider first this morning Bill S-9, and we fixed this date so that we might hear the Minister, Mr. Basford, who is here. Mr. Laidlaw, Commissioner of Patents is with him.

The floor is yours, Mr. Minister.

**The Honourable Ron Basford, Minister of Consumer and Corporate Affairs:** Mr. Chairman and honourable senators, thank you for allowing me the opportunity to appear before you as a member of the Government on this bill, which is a Government bill, and thank you for arranging this meeting. Your schedule and mine for the month of June is very full, and I appreciate your courtesy in arranging a mutually convenient time for my appearance.

I and the officials in the Department, and particularly in the Copyright Branch, have been following the deliberations of this committee with considerable interest.

As I have mentioned and as you already know, this is a Government sponsored bill, the purpose of which is to remove from the Copyright Act any doubts as to the meaning of the "rights" or the alleged rights that record manufacturers might have to royalties from the public performance of their records.

The Government's position which I wish to reiterate this morning was clearly stated by Senator Urquhart when he introduced and sponsored the bill in the Senate, and I should like to take this opportunity of thanking him for explaining so ably the necessity and the purpose of this enactment. It is not my intention this morning to repeat what he has already said in his opening statement, or what has already been said in detail by some of the witnesses before you. However, I should like, if I may, to refer to some of the presentations to this committee on behalf of SRL Limited in which it was argued that the principal ground for this type of copyright was covered by the question "What are we dealing with?" and, "Why should there be copyright in a record?"

With respect to the first question asked by SRL it was claimed that since the right of performance in a record had been embedded in our legislation since 1921, that right

should not now be dismembered. The Government and I, do not accept this argument. The present legislation was copied from the English statute of 1919, and no one at that time realized what was being provided. The manufacture of records was then only in its infancy; broadcasting stations were just on the verge of development; tapes did not even exist. It was the age of the player piano, and no one could foresee the tremendous technological changes that lay ahead and that have since occurred.

Mr. Fortier's comments regarding dismemberment of copyright should, I suggest, be read in the light of conditions existing in 1921. Any Canadian legislature in those days that could have foreseen the future would not, I am certain, have permitted a performing right in sound recordings to exist. As you know, that right was never even claimed until two years ago in Canada.

With respect to the question as to why should there be copyright in records, I quite agree that there is some degree of creativity in assembling groups of performers and musicians to produce a sound recording. But I do not agree that this type of creativity is entitled to copyright in the public performance of that sound recording. The record manufacturers are, of course, entitled to protection against copying or piracy of their recordings, but they have this protection under the act and this protection is maintained even after the enactment of Bill S-9. That, in the Government's view, is all to which they are entitled, and I shall come back to this point later.

More importantly, the Government has not in any way—and this is something I want to make clear this morning because I understand that certain suggestions have been made informally to the committee—withdrawn its views with respect to the passage of this bill. As minister responsible for Bill S-9, I do not treat lightly the judgment, for example, of the Economic Council of Canada which was received subsequently to the introduction of Bill S-9, or the findings of the Ilsley Commission, both of which urged this withdrawal of "rights" provided in the old Copyright Act of 1924, and still extant, for record manufacturers to claim fees for the performance of their recordings in public.

The point I wish to make is that in spite of the suggestion that has been made to the committee, in spite of the findings of the Copyright Appeal Board, it is still the view of the Government that Bill S-9 now before the committee should be passed.

May I be permitted, Mr. Chairman, to draw your attention and that of honourable senators to what I view as certain important considerations. I shall be very brief and will then subject myself to whatever questioning that honourable senators have. As has been made clear in

evidence before you, 95 per cent of the record manufacturers, through this performing right society known as Sound Recording Licences (SRL) Limited, are subsidiaries of, or associated with, foreign firms, in very large measure American firms. The American principals of the SRL group do not have the right in the United States that their Canadian subsidiaries are now demanding and trying to exercise in Canada. Through the tariff that was accorded to them in the recent decision of the Copyright Appeal Board.

What is not available to the record manufacturers in the United States is apparently regarded as necessary in Canada. What is not available to the foreign parents is claimed in Canada. Surely this is an anomalous position for us in Canada to find ourselves in, and surely it is an inequitable one from the point of view of Canadian users of records.

Another point I would like to make is that Bill S-9 has nothing to do with performers in the usual sense of the word. Argument before you, I suggest, has been somewhat confusing, in my opinion, and has served to confuse this issue about performers and the rights of performers. "Rights" of artists, of performers and musicians to royalties for their performance is entirely a separate matter, entirely separate from the considerations of Bill S-9 and the "right" of the record manufacturer.

The planning group which I established within the department to study the recommendations of the Economic Council of Canada on copyright is even now considering the "rights" of performers and what "rights" should be accorded to them under a revised Copyright Act. Performers' "rights" have no part in the bill before you.

You will recall, Mr. Chairman, the appearance before you of Mr. William Dodge, Secretary Treasurer of the CLC, who was spokesman for the various performers', actors', and musicians' groups for which he spoke. He was against the enactment of this bill. He was relying on arrangements between SRL—and I underline and put in quotation marks the word "arrangements"—and the performers whereby SRL would share its royalties from performing rights' fees with the performers. To quote his words "A bird in the hand is better than one in the bush." But counsel for SRL, in the presentation before you on Wednesday two weeks ago on behalf of SRL, made it perfectly clear that no legal contract—and I emphasize this—exists between SRL and the performers' union. Counsel stated that SRL "made a voluntary offer three months ago to the Canadian Union of Performing Artists to divide royalties received 50 per cent with the performers".

It was further admitted there was non-consummation of this proposal, as there was no agreement as to how the royalties were to be divided amongst the various performing unions and performers. If performers need or deserve—and I emphasize this, Mr. Chairman—a performing right, as may well be the case, the provision of it indirectly, through the grace and favour of the record manufacturers, is a most uncertain and inefficient way to achieve it.

Bill S-9 does not deal with performers. It deals with record manufacturers and their claims to "rights" additional to those already available to them through the sale of their records. If we as legislators, or as a Government or as a Parliament, are to write into the law some performing

right for performers, artists, and musicians other than that for the authors and composers, I think we should do it in a straightforward way when the Copyright Act is before the Senate by way of a general revision of that Act rather than this roundabout and indirect and almost back door method of some private arrangement or agreement between the artists, performers and the record manufacturers.

The next point that I would like to make, Mr. Chairman, is that there has been, I submit, another element of confusion introduced into these hearings. It amounts to this: if CAPAC and BMI, the two Canadian performing right societies, are entitled to royalties for performances, why should not the record manufacturers be entitled to enjoy the same right? The answer to that is very simple, it seems to me. CAPAC and BMI represent the true creators of music: the composer and the author. Further, the composer and the author have no other means available to them to obtain rewards for their creative activities. Their rewards can only come through public performance of their works.

Let us, then, not be confused with what properly belongs to creators, and the rights of the record manufacturers whose whole business depends upon the original creativity of authors and composers.

Again, I think I should mention, merely for you to keep in mind, that in so far as the vast majority of SRL shareholders are concerned, master records are not manufactured in Canada. The masters of original tapes are imported. Our record manufacturers make the copies. There is, I am sure you will agree, a difference in that situation. If creative activity is embodied in a recording, that creative activity is carried out in large measure outside this country, and we should not provide fees for the "creations" of foreign record manufacturers.

Lastly, I have heard remarks to the effect that the Copyright Appeal Board awarded only a minimum tariff to SRL—and this is the point I opened with—and therefore there is nothing to be concerned about; there is no urgent need for this legislation. I can only disagree with that suggestion.

As you are aware, I received a report from the Copyright Appeal Board setting out the tariff and I would like to read into the record a statement from that report. It is as follows:

A large part of the time of the hearing was devoted to the question raised in item 6 respecting the quantum of the fees to be set and a number of important aspects of the matter were raised and discussed. The board is of the view that rates of the levels demanded by the tariffs as filed would present an undue increase in a single year in the operating costs of the users of records and that if the fees were ever to reach such levels they should do so slowly enough to enable the users to adjust to them over a period years.

I suggest, Mr. Chairman, there is a clear inference here that if this bill is not enacted, the fees demanded by SRL, and probably awarded, will rise increasingly. If steps are not now taken it is unlikely that appropriate steps will ever be taken.

It has been said to me that this matter could be allowed to stand until the entire Copyright Act is revised. That, of course, I would very much like to do, and this is what I endeavoured to do two years ago by having the SRL group



agree not to try to claim a tariff until we had before Parliament a complete revision of the Copyright Act. But this is a complex subject and a complete revision may well be two years or more away. The "rights" enjoyed by the record manufacturers would by that time, if they rare enforced now, be firmly entrenched; and I suggest, Mr. Chairman, that the time to act on this matter, if there is any time to act, is now.

I think in that sense there is urgency that the Parliament of Canada deal with Bill S-9 and pass it.

I now refer briefly to the point raised by Senator Grosart. Most of the record manufacturers are associated with music publishing houses, and through these publishing companies those that are in that position now enjoy a share in the CAPAC and BMI distribution of royalties to other composers and publishers.

Finally, I raise a further point which causes me concern. If the right of public performance in recordings is not disallowed, some of the foreign principals of Canadian subsidiaries will, through these subsidiaries gain access to the books of Canadian broadcasting firms. This will come about through their auditing of royalties which would be due to them through the SRL tariff. This, I submit, Mr. Chairman, could be a matter for very serious concern, as some of those same foreign principals are in the broadcasting business in Canada. You would be, through this mechanism, running the risk of allowing the principals of the recording manufacturers, in auditing the books of their radio broadcasting competitors, to see what their competitors in the broadcasting business are doing. That seems to me to be a rather serious matter.

I am, of course, open to any examination or cross-examination that you or honourable members may wish. However, my purpose here this morning, in spite of the ruling of the Copyright Appeal Board and the evidence that you have had, is to wage you on behalf of the Government to send back to your colleagues a recommendation that this bill be enacted.

**The Chairman:** Mr. Minister, when do you expect the new Copyright Act to be available?

**Hon. Mr. Basford:** Of course, when I was first sworn in as a minister I asked when would we receive the report of the Economic Council. I was assured it would be presented within a matter of months. It was two years before I received it, early last spring.

I had set up an interdepartmental committee within the Government to consider various copyright matters. I have a review committee working in the department considering the recommendations of the Council. They have not yet made recommendations to me, nor I to the Government.

It may be at least a year before any legislation sees the light of day. It could even be longer, because it is a complex problem. Even the Council could not find answers to many of the problems. I also know that many of those who have made representations have difficulty finding answers. This relates not only to this question but to the whole field of photocopying and the technological changes that have taken place.

A revision of the Copyright Act, in frankness, does not enjoy the highest priority with Members of Parliament. This is often the difficulty in passing legislation through

Parliament, and usually the reason why some of these acts are so out of date.

**The Chairman:** We have heard evidence that at least 23 or 24 developed countries in the world, including England, have a performing right. Have you any comment?

I bring this to your attention because you said if any country in the world was faced with a situation such as we have in Canada now they would vote to eliminate any performing right. I notice that these countries do have this performing right. Most of them have had it for some time; England since 1911.

Do you wish to comment or to revise your statement in any way?

**Hon. Mr. Basford:** No, I do not. In spite of the fact that England has had a performing right in the hands of the record manufacturer for those years you have mentioned, the Ilsley Commission, which examined the law and the practice in this country and many others, recommended that Canada should not copy it. The Gregory Report in England recommended that the right be continued but only because it had been in existence and they would not remove it. They recommended procedures to deal with the right where there had been problems. The Economic Council of Canada, again considering both the United Kingdom and foreign jurisdictions and trying to work out what should be the law in Canada, came to the same conclusion as the Ilsley Commission, that the path taken by England in 1911 as you suggest, or 1919 when the legislation was enacted, is not one we should follow.

If we wish to consider foreign examples we should possibly look south of the border. I am no expert in entertainment nor in copyright, but I would think that here is the biggest entertainment market in the world, the United States, where no such right exists. Although I was assured over two years ago that the United States intended to grant this right, it still has not been given. There is a bill before the Senate, but I suspect there are more bills not passed by the Senate than are passed. This has been a suggestion in the United States for many years, but they still have not accorded this right in Congress.

The biggest entertainment market in the world does not grant this right to the manufacturers, who have developed into very healthy companies and profitable enterprises without it. Why then should we, a small country with a much smaller entertainment budget and with basically foreign manufacturers, accord a right that their parent country has not yet given them?

**Senator Connolly (Ottawa West):** Do I understand that in the United States Senate there is a bill which will give a performing right?

**Hon. Mr. Basford:** There is a bill before the Senate, but I think some of your other witnesses would be more expert in this than I. The purpose of the bill is to accord a performing right to the manufacturer. There is no such right at the moment in the United States and I do not believe that we should precede them in this area. This is one area in which we should not endeavour to lead the United States.

**The Chairman:** The evidence before us is that a bill was referred to a committee of the Senate of the United States. That committee has reported favourably to the Senate, which has not yet dealt with the bill.



**Hon. Mr. Basford:** My point is that the committee was given this information and senators were almost invited to draw the inference that it was imminent that there would be such a right in the United States. I wish to make it clear that I was assured two and one-half years ago that the Americans would very soon accord this right. However, two and one-half years later the bill has not been dealt with by the Senate. It has been reported to the Senate, but I do not think we can take it for granted that the Americans will accord a performing right to record manufacturers.

**Senator Walker:** How many years has it been in the hopper? How long ago was it reported by the committee?

**Mr. A. M. Laidlaw, Q.C., Commissioner of Patents:** The latest information, which we received from officials in the United States Copyright Office, is that there is little hope for a long time that this bill will be enacted in the United States Congress.

**Senator Cook:** Your point is that the creative effort takes place in the United States and why should this country, where it does not take place, take that step.

**Senator Walker:** Perhaps you could answer my question: How long has it been since the bill was reported to the Senate by the committee?

**Mr. Laidlaw:** I believe two years, and then that bill was dropped and another presented to a Senate committee. That committee presented this bill, I believe, last January. However, I may be wrong in that.

**Senator Walker:** Did they again report favourably?

**Mr. Laidlaw:** The committee did, sir, yes.

**Senator Walker:** In the current session of Congress?

**Mr. Laidlaw:** Yes. However, as I say, the officials I spoke with are pessimistic as to its chances of passing.

**Senator Macnaughton:** You mean that there are several other bills which have priority; it does not necessarily indicate opposition to this bill.

**Mr. Laidlaw:** Yes, but they are in difficulties in the United States. They want a performing right in the record, but that involves the juke box industry.

**Senator Hays:** What would it cost the Canadian listener in dollars?

**The Chairman:** This year?

**Senator Hays:** Well, in any one year.

**The Chairman:** The fees are only established for a year.

**Senator Hays:** What would be the cost? What are these people going to receive, these four firms?

**Hon. Mr. Basford:** It is set out in the decision I have read. Approximately \$200,000.

**The Chairman:** We have had evidence to show it would amount to about \$200,000.

**Hon. Mr. Basford:** Yes.

**Senator Beaubien:** That would go to the American firms.

**The Chairman:** Any person in Canada who qualified.

**Senator Connolly (Ottawa West):** On the question of quantum, I take it the \$200,000 is not the quantum that would disturb you, Mr. Minister. I take it what you are anticipating here is a great inflation in that amount over the years?

**Hon. Mr. Basford:** I think we are dealing first with a question of principle that is totally divorced from quantum. Reading the record, I take it that is really the view of this committee.

**Senator Flynn:** That is not the way the sponsor introduced the bill. Quantum was the only reason. I agree that Senator Connolly may have given you a good explanation, but that is what the sponsor of the bill said when he introduced the bill; it was a question of quantum.

**Hon. Mr. Basford:** It is also a question of principle. I think Senator Urquhart made that clear. We, along with the Ilsley Commission and the Economic Council, do not think this is a kind of right that should be recognized in copyright. The other principle is this: if there is to be assistance to performers, to musicians and artists, this is an indirect way of doing it and the wrong way of doing it. If we want to put in the Copyright Act the right to the performer, the musician, that is something that would be before this Parliament in a year or two in the revision of the Copyright Act. It should not be done via this sort of *ex gratia* system by which the record manufacturers out of their great generosity slice in the musicians for a little voluntary payment.

One has to look at quantum. Certainly when this first came up quantum was considerably higher than the Copyright Appeal Board awarded, and could have gone to \$5 million. I should not comment on the decision of the Copyright Appeal Board. They reduced that considerably, as is obvious. One can always see that these fees are increased year by year, and they could be considerably more than \$200,000. One is concerned with the principle of who has a performing right and who has not. It is my position that manufacturer, while he is entitled to protection against copying, which he obviously should have and which right he only recently obtained in the United States, should not have a performing right.

**Senator Connolly (Ottawa West):** Mr. Minister, I do not say this because I have any interest. I never heard about this problem before it came before the committee, so I want you to understand that. One of the things that has been pressed upon us here, although perhaps not in these words, is that the people who make these records have a property right under the present law, and the effect of this law is to deprive them of that property right. It is a valuable property right, I would think, because they have fought very hard for it. I think it would be helpful to the committee if you could address yourself to that point. It would certainly help me. Could you address yourself to the point why this property right should be taken away from them?

**Hon. Mr. Basford:** I think this discussion of property right somewhat confuses us, because we talk in language that is often not really very applicable. I think the better approach to use is that adopted by the Economic Council, that surely you embody these kinds of rights in legislation, not from a point of view of a property right but from a point of view of incentive. Do you want invention, do you want initiative, in terms of patents, for example? Do you want performance in Canada? You use your intellectual

property law as a means of intellectual incentives, and you do not speak of them as property rights. I do not know whether the committee has heard from the Economic Council or its staff. It might be useful to do so, and have them expound a good deal more clearly and ably than I.

**The Chairman:** Who would you suggest, Mr. Minister?

**Hon. Mr. Basford:** The chairman.

**The Chairman:** Mr. Laidlaw?

**Hon. Mr. Basford:** Or Mr. McQueen, who is no longer with the council but who was when they published their report. Parliament accords certain rights through a patent act or a copyright act or a trademarks act, but it does so for the purposes of incentives, to generate a certain kind of activity. I do not think that this will generate that kind of activity. If we want an incentive to performers, let us put into the act a performing right society for performers, not for manufacturers, who surely are producing articles for sale.

**Senator Connolly (Ottawa West):** I am the devil's advocate here when I say this. I am saying it for the purpose of finding out what is in your mind. I wonder if that argument does not rebound against you, because if you protect the position of the record manufacturer—and the way they have put it is that they have a property right here—are you not also encouraging innovation, incentive to produce better things, improvements in the quality of the article they produce, by giving them a performing right? I do not say I am in favour of the performing right. I want to find out what side I should be on.

**Hon. Mr. Basford:** I do not think you are doing that, with respect. There is argument that no such right exists. I am not making this argument this morning. This is not a court of law, but there are those that allege that there is no such right. The purpose of Bill S-9 is to make that very clear, that there is no performing right. If there is a right, it certainly had not been exercised up until two years ago.

**Senator Connolly (Ottawa West):** If it is a right, it is one that is created by statute. It is not perhaps an inherent right. At least, it is recognized by statute now.

**Hon. Mr. Basford:** The point I wanted to make was that it had not heretofore been exercised in this country up until two years ago. Therefore, if it were such a valuable right it might well have been exercised a good deal earlier.

**Senator Connolly (Ottawa West):** I suppose it has become more valuable over a period of time because of the use to which these articles have been put, namely the development of television and radio, and other song distributing devices such as public address systems and the like.

**Senator Lang:** Mr. Minister, we have heard arguments here emanating largely from two competing private interests. How would you interpret the effect of this bill on the public interest as opposed to those private interests, and to what extent does it affect the public interest?

**Hon. Mr. Basford:** I think the public interest is such that this is a charge on the broadcasting business which has to be passed on to the ultimate consumer, either in advertising costs or in some other way.

There is that public interest. There is the public interest in maintaining a viable broadcasting system, a viable pri-

vate broadcasting system. One should avoid putting a cost to them, if one can; a cost which one does not think is justified. There is the public interest of the taxpayer, in terms of the levy against the CBC, of course, which is almost a conflicting interest. The taxpayers have to pay that levy, and that to me is a public interest.

I think it confuses the issue, in terms of support for the artistic community in Canada and support for musicians and performers, because I do not think that is the issue in this bill. It is not the issue here, although it is alleged it is. It is put forward by the manufacturers that this is almost a philanthropic effort on their part to assist performers in this country; and I think that is not right, and I think it confuses the issue to have such a "right" and such an arrangement.

**The Chairman:** Mr. Minister . . .

**Hon. Mr. Basford:** You asked about the public interest, senator. In terms of legislation, this whole issue of copyright in intellectual property will be before Parliament within a year or two. It seems to me that that will be the time to make that decision, and that up until that time the status quo should be maintained. That really is the position of the Government.

**The Chairman:** Now are you ready for a question, Mr. Minister?

**Hon. Mr. Basford:** Yes.

**The Chairman:** Do you think that it should be part of Government policy, in order to reduce the costs of broadcasters, that you take away an existing right which has been written and entrenched in a statute of Canada for as many years as this right has been entrenched.

**Hon. Mr. Basford:** About which there is some argument as to whether the "right" exists and which "right" has never been exercised.

**The Chairman:** I assume, for purposes of my question to you, and I assume by reason of the fact that the Government is before us with a bill to take away that right, that the assumption is that it is a right that exists at the present time by statute. I am making those assumptions.

I am trying to confine this thing, as you will see I tried during the course of the hearing here if you read the record, and to get away from the question of quantum. If you are saying we must keep down or reduce the costs of the broadcasters, then we are incorporating that as a principle in the legislation and, even if you take away existing rights, you justify it on the basis of quantum. I would rather go to the other side of the question. I tried to get the broadcasters, when they were here, to address themselves to the question: Is there anything inherent in a copyright or a performing right in a record; is there an element there, that carries with it, or could be said to carry with it, the right to be recognized as copyright?

How you present that, I do not know; but, after all, the Economic Council faced up to it and made a report and surely they should be able to tell us how they distinguished those elements. Were they influenced only by quantum; were they influenced by the notion that inherently there is no element in the nature of a performing right in a record which should be recognized under copyright legislation?

**Hon. Mr. Basford:** It was the law, surely. These are statutory rights that exist only by reason of a statute. Surely



that was the position of the Council, and surely that was the position of the Ilsley Commission.

**The Chairman:** I am not sure it was, Mr. Minister, but we are entitled to disagree on that question. They sort of disqualified themselves, in my reading of the report, by indicating that they really did not pose as being experts on the question of copyright law. It was quite an intricate subject. You referred to Chief Justice Ilsley's report, which also supported the idea that there should not be a performing right in records. But Chief Justice Ilsley based his report on the Gregory Commission.

The Gregory Commission was a commission headed by Mr. Justice Gregory, in England, which sat around 1952. They ended their hearings by recommending that the performance right be continued, in a different form. In other words, it was continued in itself rather than being treated as though it were a musical work.

**Hon. Mr. Basford:** I am not Mr. Justice Gregory, but I understand the surmise is, and it is made clear in the report, that this was because there was a right that was already being exercised, and they made recommendations by which the exercise of that right should be very rigidly controlled.

**The Chairman:** Wait a minute now; let us stop there.

**Hon. Mr. Basford:** I do not think we can accept the Gregory Report and ignore the Ilsley Report. I do not quite see the logic of that. The Ilsley Report is the Canadian one.

**The Chairman:** Mr. Minister, sometimes you see what you want to see.

**Hon. Mr. Basford:** This is general, and it may be true of both of us, I think.

**The Chairman:** It may be true about me, too. It may be a principle on which I operate—and I would expect certainly that you would double that in spades.

So far as the Ilsley Report is concerned, it was based on the Gregory Report. The Gregory Report came to a different conclusion, but when we were hearing evidence here we were told that they put great restrictions in the Gregory Report. The restrictions they put on the performing rights were these . . .

**Senator Connolly (Ottawa West):** Mr. Chairman, are you quoting Chief Justice Ilsley now?

**The Chairman:** No, I am quoting from a well-recognized textbook, Copinger and Skone James on *Copyright*, published by Sweet and Maxwell, London, 1965. I think that Mr. Laidlaw is thoroughly familiar with this; it is a recognized textbook.

This is what it says on restrictions on performing rights:  
(816) Restriction on performing rights.

As already mentioned representations were made before the 1952 Copyright Committee that the performing right in sound recordings should be restricted. Accordingly it is provided in subsection (7) of section 12 of the Copyright Act of 1956 that the copyright in a sound recording is not infringed by its performance at any premises where persons reside or sleep, as part of the amenities provided exclusively or mainly for residents or inmates, or if it is performed as part of the

activities of, or for the benefit of, a club, society or other organization, which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare. It is, however, provided that the exemption of premises where persons reside or sleep shall not apply, if a special charge is made for admission to the part of the premises where the recording is to be heard. It is also provided that the exemption shall not apply in the case of an organization, if a charge is made for admission to the place where the recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purposes of the organization.

All I am saying is that while you may in a general way talk about restrictions, these are the kinds of restrictions that were imposed. That is all I am pointing out, so it is idle to put forward is a sound argument that, yes, in England, they continued the copyright in records, with restrictions. We have to know the nature of those restrictions. I do not think those restrictions put any restriction on the merit of a copyright as such, but it is the use of it and where they may collect fees for it.

**Senator Connolly (Ottawa West):** The inference from that, I take it, is that in a performance on radio or television or over a PA system, where there is a charge for admission to the premises where it is used, there is a performing right.

**Hon. Mr. Basford:** Yes.

**Senator Cook:** Is it not so that in England the performers themselves get a large portion of this performing fee?

**The Chairman:** I think that is by agreement.

**Senator Cook:** It was recognized by the Gregory Commission that that was the existing state of affairs when they made their report, that they still get a large portion of the fees which the record manufacturers collect from the players.

**The Chairman:** Yes. It was also stated before the commission that the musicians' unions were exercising pressures to cut down on the playing of records so as to have more live performances. All these things came out, but when all the evidence was sifted this was the result.

**Senator Connolly (Ottawa West):** The practical effect of what you have read, Mr. Chairman, seems to be that for all practical purposes what has been contended for here by the record manufacturers is what they already have in England. However, they have not got it in the United States, and at the moment there does not seem to be much prospect of their getting it there.

**The Chairman:** What they may or may not do in the United States could not be used by us as any basis to say we should either continue or discontinue copyright.

**Senator Cook:** The point is, Mr. Chairman, that if they are not doing it themselves, then why should we do it. If what they are trying to protect is United States manufacturers, then I think that is substantial.

**Senator Hays:** Mr. Chairman, we have been dealing with this bill for months. Although I have not been at all the meetings I have read the evidence. It seems to me that laws are made to work for people. In 1911 you could have



ridden a horse and buggy on the 401; today you would not be allowed to do so. I do not think that the manufacturers are going to give one nickel back to the performers, if I know business people. Business people keep what they get. It is then reflected in what the shareholders get.

I wish to go on record now as supporting this bill. We have dealt with it for a long time and we are now merely delaying it. It is time we reported the bill. In my opinion, the Government is correct. It is not going to make music any better by not having Bill S-9. Just as a farm boy, I think we should report the bill. I think it is common sense.

**The Chairman:** What was that additional qualification? You are just a simple farm boy?

**Senator Hays:** I think we should dispose of this matter.

**Senator Beaubien:** Perhaps we could have a motion, Mr. Chairman.

**Senator Flynn:** Mr. Chairman, there is still one point with respect to the statement made by the minister that I wish to have clarified. I am sorry if this delay bothers my good friend Senator Beaubien, but he can wait another few minutes.

The minister seemed to indicate that he intended to amend the Copyright Act eventually in order to give recognition to performers' rights which at the present time are not recognized in the act. The amounts of money paid to CAPAC and BMI are paid under agreements, but not because of any rights contained in the act. Did I understand the minister to say that when the Copyright Act is reviewed this aspect will be considered?

**Hon. Mr. Basford:** It will be considered. I want to be very careful in not making a commitment at this point. What I said was this, and I will read it again, senator, just so we are clear:

The planning group which I have set up to study the recommendations of the Economic Council of Canada on Copyright is even now considering "rights" of performers. Performers' "rights" have no part in the Bill before you.

The Economic Council of Canada recommended against both the public performing right of the manufacturer and the right of the musician, but we are not bound by the Economic Council's recommendation. We can accept it or reject it. We are examining it.

Undoubtedly, when the legislation is before Parliament, the artistic community will be coming to Parliament and saying, "If the bill says there is no right, we are here to say there should be a right given to the performer." What I am saying is that I think the legislature should deal with incentive or lack of incentive to performers in a straightforward and direct way in the Copyright Act, and not in this indirect way by allowing the copyright fee to the manufacturer who, out of the generosity of his heart, may give something to the performers with no legal obligation whatever to do so.

The arrangement between the manufacturers and the artists is not consummated. It could be torn up one week after this bill is given royal assent, so far as I read the situation. This committee has made certain representations to the effect that the manufacturers want to help the performers, but there is no obligation upon them to do so. There is no contract or anything of that sort.

**Senator Flynn:** But what you said, I think, implies support for the recognition of the rights of the musician or performer, eventually.

**Hon. Mr. Basford:** I wish to be very careful on this point. I am indicating neither support for nor rejection of such recognition. I simply have not formed a view on this matter. I am not being coy with you either when I say so. I just do not have a view.

**Senator Flynn:** I accept that. Do you not agree, then, that the whole problem of performers' rights or musicians' rights, is tied to the problem of producers' rights? I am not speaking merely of manufacturers of records but of producers of records. It is all tied together.

**Senator Beaubien:** No, no.

**Hon. Mr. Basford:** No, I do not think it is. I think they are quite different.

**Senator Flynn:** You think they are different?

**Hon. Mr. Basford:** Yes.

**Senator Beaubien:** Sure.

**Senator Flynn:** In some countries they have tied those rights together. The law has considered this as a package.

**Senator Beaubien:** No, they are different.

**Senator Flynn:** Senator Beaubien says no, but I have other information.

**Senator Beaubien:** I do not know what other countries you mean, but they are totally different things.

**Senator Flynn:** If you do not know the countries, then why say no when I say they exist in other countries?

**Senator Beaubien:** You said they were tied together, and I am saying no to that; afterwards you mentioned the other countries.

**Senator Flynn:** I suggest to you, Mr. Minister, that there is a relationship between the performers' rights, or musicians' rights, and the producers' rights. I insist on the word "producers" because the preparation of a record involves much more than simply the stamping of the record. I was wondering why the Government had not brought the whole problem before Parliament rather than simply dealing with only one aspect of it and promising that it would deal with the rest in a few years.

**Hon. Mr. Basford:** The reason for that is that we had asked the Economic Council to consider the whole question of property rights in intellectual property and to report on that to the Government. While that report was in the course of preparation, before it had been submitted to the Government, SRL endeavoured to exercise an alleged right under the copyright that it had never exercised before. I suggested to SRL that they wait until the report of the Economic Council was published and we knew what their recommendations were. They accepted my suggestion and waited for two years. Then they stopped waiting. We had introduced this bill two years ago and had then withdrawn it, because we did not want this right established immediately before a revision of the Copyright Act.

**Senator Flynn:** Well, whether you take it away in principle or take it away in practice, it amounts to the same thing.

**The Chairman:** May I make this comment, Mr. Minister? As I understand what we are doing here, it is not that we are establishing a right. If we support the bill we will be taking away a right. If we do not support the bill we will be maintaining a right.

**Hon. Mr. Basford:** I am not sure that that is entirely correct. What we are trying to do is define what copyright means in respect of records.

**The Chairman:** But it is already defined in the statute at the present time.

**Hon. Mr. Basford:** Well, there has been a good deal of argument on both sides, and this committee has heard both sides.

**The Chairman:** Yes, the committee has heard both sides.

**Hon. Mr. Basford:** I take it the Chairman, having heard both sides, has made up his mind on the legal argument.

**The Chairman:** You are wrong in your taking.

**Senator Benidickson:** Mr. Minister, in your basic statement which you read and in the context of reference to the SRL representations, and I think in the context of references to the report of the Economic Council, I think you twice used the words "tariff" and "low tariff". What kind of tariffs were you talking about? Customs tariffs?

**Hon. Mr. Basford:** No, the tariff under the Copyright Act. The Fee that is approved by the Copyright Act is called a tariff. It could well be called a fee or a tariff.

**Senator Connolly (Ottawa West):** A royalty.

**Hon. Mr. Basford:** A royalty, yes.

**Senator Cook:** Mr. Chairman, speaking on behalf of the fishing interests I am prepared to go along with this bill.

**Senator Hays:** I move that we report the bill.

**Senator Beaubien:** I second that.

**The Chairman:** In view of what the committee approved of in procedures at the last meeting, and you can overrule me if you wish, but I did offer Mr. Fortier when he was here at the last meeting a right of reply. I told him that the minister was coming to the next meeting and I invited him to attend if he wished. I said that since he was in the position of being the only one on one side, and everybody else with the exception of one or two being on the other side, if he had anything further we would give him an opportunity to reply. I did make that offer to Mr. Fortier. Senator Hays, who was not at that meeting, is now proposing a resolution which would withdraw that offer.

**Senator Hays:** I will withdraw my motion.

**Senator Benidickson:** I heard the offer. I remember that.

**Senator Hays:** I certainly think we should hear him.

**The Chairman:** When we get to that stage we can have a discussion if there is a motion, or we can have a discussion without a motion.

Before we do that, Mr. Minister, is there anything more that you would like to add at this time?

**Hon. Mr. Basford:** No. Mr. Laidlaw may want to go back to your question about the Gregory report or the IIsley report.

**The Chairman:** He has the floor if he wishes it.

**Mr. Laidlaw:** Thank you, Mr. Chairman. I happened to be the secretary to the IIsley Commission under the late Chief Justice IIsley and the late Guy Favreau the third member being Mr. William Buchanan, who was then Chairman of the Tariff Board, and when the subject of the right of performance in recordings came up, the Gregory report was carefully studied. Mr. Fortier was perfectly correct in his testimony—

**Senator Connolly (Ottawa West):** Would you speak a little louder?

**Mr. Laidlaw:** I am sorry. Mr. Fortier in his testimony before this committee mentioned that there were various reasons. There were difficulties in England between the various performers' unions and the record manufacturers, and Chief Justice IIsley did not want this type of thing to be repeated in Canada. However, that was only one of the reasons why Chief Justice IIsley advised in his report that this right, if it existed, should be removed. During the discussion—and in this regard I am afraid you will just have to believe me—the members of that commission were very reluctant to add what they called neighbouring rights or secondary rights to the original concept of copyright. They considered that there were enough rights in the Copyright Act already, and the prime purpose of the Copyright Act was to protect the original composer and author, and no-one else should be added along the line. That was the basis for the recommendations of the IIsley Commission.

**The Chairman:** Mr. Minister, if you wish to remain while Mr. Fortier is making his reply that is all right, but should you have other appointments I am sure the committee will see that you are well protected even though you are not physically present.

**Senator Grosart:** Mr. Chairman, the minister might like the right of reply to Mr. Fortier's remarks.

**The Chairman:** Well, we could go on.

**Senator Grosart:** I thought you might offer it to him.

**The Chairman:** Knowing the views you have expressed so far, Senator Grosart, and how close they are to the minister's, I am sure his rights would be well protected by you in his absence.

**Senator Grosart:** I, do not intend to give evidence, Mr. Chairman.

**The Chairman:** Or express opinions?

**Senator Grosart:** Express opinions, yes, but not give evidence.

**Hon. Mr. Basford:** Thank you very much, Mr. Chairman and honourable senators.

**The Chairman:** Thank you. Mr. Fortier, have you anything you would like to add?

**Mr. Yves Fortier, Counsel, Sound Recording Licences (SRL) Limited:** Yes, I do, Mr. Chairman.

**The Chairman:** You understand, Mr. Fortier, that what you are doing now is exercising a right of reply, and you should not repeat except where it is incidental to the reply.



**Mr. Fortier:** Yes, I understand, Mr. Chairman, and I wish to thank you and the members of the committee for allowing me to reply to the minister's brief. I will attempt to be brief. I took some notes as the minister was speaking and I think I can address myself succinctly to the points which he has put forth. I think the first point he put forth was that the fact that this is a Government bill and he was urging that the Government sponsored legislation be adopted as is. The second point which I think the honourable minister put forth was no one realized in 1921 what was being introduced in section 4(3) of the Copyright Act. I took this note: "Any legislature which could have foreseen what did happen would not have passed such legislation."

With this I respectfully disagree. I think the evidence before this committee, Mr. Chairman and honourable senators, is that the trend in the world is not to do away with this right, but rather to recognize this right. I respectfully submit that the minister is in error when he stated that today, given the development of radio and given the development of record manufacturers, no legislature in its right mind would recognize a performing right in a record. There is evidence before you that in Australia and in Japan in the last five years this performing right in recordings has been recognized.

May I also remind the honourable senators that in so far as the United States is concerned—and here I bow to the superior knowledge of Mr. Laidlaw, but I think that it is worth correcting a statement which was made—what has happened there in recent months is the following: in February of this year there was enacted a bill which recognized a copyright in records to the extent of preventing reproduction of records. In other words, it protected the record manufacturers against piracy. If we look to the most recent development in the field of copyright with respect to records in the United States we see that as recently as February of this year both the House of Representatives and the Senate passed a bill affording a limited protection to record manufacturers. So the trend, even in the United States, the "mother country" in the case of many members of SRL, is not negative as the minister stated. The trend is in favour of protecting a performer's right in records.

**Senator Benidickson:** Would you just describe what the United States has done? What is the extent of this protection you talk about?

**Mr. Fortier:** The extent of this protection I am speaking of, senator, is exactly what we find now in Bill S-9. In other words, section 4(3) of the Canadian Copyright Act as amended would give protection to record manufacturers against dubbing or piracy of their records.

**Senator Connolly (Ottawa West):** Or use of their records.

**Mr. Fortier:** No, against dubbing or . . .

**The Chairman:**—copying.

**Mr. Fortier:** That is right. That is one point. The second point, and this one was mentioned by the minister, is the fact that again as recently as early this year—Mr. Laidlaw said January, and I am sure he is correct—a Senate Committee in the United States has reported that not only the right against copying be granted to record producers, but also that the performing right in records be recognized in the United States. Two years ago the honourable Mr. Basford was given an indication that in the United States

there would be such legislation, but at that time there was no Senate committee which had reported to the Senate. Today there is. It is a recent development, and it is one which should be appreciated and which should be looked at also in the light of what has happened with respect to protection against copying.

If you look, gentlemen, to the United States—and much weight seems to be given to the fact that of the eight member companies of SRL, six are subsidiaries of the United States corporations—in the United States this right is not being removed; this right is on its way to being recognized. The Minister did not forecast and I am not going to forecast when the performing right is going to be enshrined in the United States copyright laws, but I can say that the trend seems to indicate that there is a growing movement in the United States in favour of the recognition of a performing right in records, and that a competent and habilitated body of the United States Senate aided and abetted by members of the Copyright Office of the United States—and I think this is very important—has published this unanimous report that there should be a copyright in records, a performing right in records.

**Senator Connolly (Ottawa West):** You say this report supported the establishment of a performing right in the United States; that this has been contained in a report from the United States Copyright Office?

**Mr. Fortier:** No. I say the United States Copyright Office has assisted a Senate committee which is deliberating, and I can produce and file before this committee statements from members of the United States Copyright Office and employees of the United States Copyright Office where they have gone on record as favouring the recognition of a performing right in records.

**Senator Benidickson:** Surely that is the opposite to what Mr. Laidlaw has said.

**Mr. Fortier:** Well, I do not think Mr. Laidlaw took any position.

**Senator Benidickson:** He said that his information from the copyright people in the United States was that this recommendation of the United States Senate Committee was not likely to carry.

**Mr. Fortier:** That was Mr. Laidlaw's testimony. My information is to the contrary.

**Senator Walker:** It is all *obiter dicta*. Neither one of you really knows.

**Mr. Fortier:** Very much so. It is rather like when a lawyer tells a client that he cannot lose.

**The Chairman:** You except lawyers from that category, Senator Walker?

**Senator Walker:** I except you.

**Senator Grosart:** Mr. Fortier, would you not agree that over the last 20 years the subject of revision of the Copyright Act has been almost continuously before Congress, that there have been bills actually passed by one house which did not recommend the recognition of a performing right in records, and which did not become law, and that this process of attempting to revise the Copyright Act has been going on for 20 years? Would you not agree that bills supported and sponsored by the Registrar of Copyright, to



give him his correct title, have not passed Congress? Is not that pretty well the picture?

**Mr. Fortier:** I cannot just say yes or no to your statement, senator, with respect.

**Senator Grosart:** I was so sure that you would have studied the history of copyright in the United States.

**Mr. Fortier:** That is why I cannot agree fully with you. Let me say this: there has indeed been continuous study over the course of many years in the field of copyright particularly with respect to records in the United States. I think that this shows that this is not a matter which should be treated lightly with a seemingly innocuous piece of legislation which at one stroke of the pen removes in Canada a right which has been recognized for 50 years. I agree with that part of your statement. I think that Canada should give as much consideration to the matter of copyright in records as has been given in the United States, and I think this is not given a complete and full consideration in the enactment of Bill S-9. This right is so important that for many years in the United States it has been studied and examined and reported upon.

However, may I also say this: there has never to my knowledge been a bill which has originated in the Senate and which has gone through the committee stages in the United States Senate, and which has been reported on, where the clear precise and definite recognition of a performing right in records was mentioned. Your information may be different, but mine is to the effect that there has never been one so clear and precise as this one, so I say that all this talk for many years in the United States has produced a consensus among a committee of the senators.

**Senator Grosart:** You say your information is that there has never been a bill from the Senate in which the question of a performing right in records has been "mentioned". May I suggest that you are quite wrong in that because there have been several bills in which it has been mentioned.

**Mr. Fortier:** Yes, mentioned, but there has not been any bill in which it has been stated in the legislation that there shall exist a performing right in records.

**Senator Grosart:** That is exactly my point, because what has happened in the other bill was that they have rejected that.

**Mr. Fortier:** Thank you for pleading my case, senator.

**The Chairman:** That is the end of that part of it, because we get pros and cons.

**Senator Grosart:** Surely that is what we are here for, to get pros and cons.

**The Chairman:** Have we not had enough of them?

**Some Hon. Senators:** Yes.

**An Hon. Senator:** We just do not want to be conned.

**Mr. Fortier:** The next point which I think the minister made before this committee, Mr. Chairman, was that there was some type of creativity in the manufacturing or producing of a record which was deserving of protection, and he mentioned that Bill S-9 in fact continued to recognize this creativity. My answer to that, Mr. Chairman, and I will

not repeat what I said before you last week, is that creativity under the terms of the Copyright Act is translated in a copyright, un droit d'auteur. Creativity under the terms of the Copyright Act is not translated in one facet of a copyright; creativity can only spell copyright, and copyright means both protection against reproduction and protection against use being made of your property by someone else for profit without compensation. And so if the minister recognizes that there is a creativity put into the record by the record producer, and that this creativity is deserving of protection under the Copyright Act, I repeat the point which I attempted to make before this committee last week, that this creativity should be translated into a full copyright and not a dismembered copyright.

**Senator Benidickson:** I should like to question that. I did not get that impression from what the minister said. I thought he said the very opposite, that there was not creativity in the actual production of a record.

**The Chairman:** He even referred to the Economic Council report in which they said that there was some input of creativity.

**Mr. Fortier:** His very words were that there is some type of creativity, and I would stake my presence here on the minister's using those words. Would you agree, Mr. Laidlaw?

**Senator Cook:** I was just going to say that surely copyright is a statutory right, and therefore copyright means what Parliament says it means.

**The Chairman:** It means what you give.

**Mr. Fortier:** I cannot dispute that. Parliament, both in Canada and the United Kingdom, and in other legislation where there is a copyright in records, has always said that copyright shall mean protection against copying, and against use by others without just and equitable compensation.

**Senator Connolly (Ottawa West):** Would you address yourself to the question of public interest? The minister said basically that the reason why this right is being modified, and withdrawn in the case of performing rights, is because he believes it will serve the public interest to do so.

**Mr. Fortier:** He gave three reasons.

**Senator Connolly (Ottawa West):** He did not expand on that. He said to us, "you had better ask the Economic Council." Perhaps we should do that. But would you like to say what you think about this?

**Mr. Fortier:** Yes, senator. I noted your question and also the minister's answers. He gave three reasons. I think senator Lang asked, "Where does the public interest lie?" He gave a three-pronged answer. He said that advertising costs charged by broadcasters will have to be increased, and that is not in the public interest. I think I leave you to conclude whether or not it is in the public interest that advertising costs should be increased because of the levy of 0.15 per cent on the commercial broadcasters.

**Senator Beaubien:** But you do not know what that will be.

**Mr. Fortier:** Yes, we do.

**Senator Beaubien:** Perhaps today, but not tomorrow.

**The Chairman:** You will have to wait until next year until the Copyright Appeal Board sets the tariff again. So it is speculation either way.

**Senator Beaubien:** It will give the CBC a chance to approach us for a bigger deficit. I am against it.

**Mr. Fortier:** So far as the CBC is concerned, the minister said that the taxpayers will have to bear an increased burden. Unfortunately, you were not here last week when I pointed out on behalf of my clients, the record manufacturers, that they were quite conscious of the fact that the CBC was a drain on the Canadian taxpayer, and that it was the avowed intention stated publicly before this committee of SRL to accept a nominal fee by the CBC in exchange for the granting by SRL to a licence which would allow the SRL and its affiliated stations across Canada to use, as they do today, our records. The award of the Copyright Appeal Board in respect to the CBC at the moment is \$15,000 a year.

I repeat, I do not think that \$15,000 a year, in the light of the deficit last year—was it \$47 million?

**Senator Beaubien:** \$183 million, plus interest.

**Mr. Fortier:** Then I should increase the nominal fee! I repeat, we cannot honestly say that the protection of the public interest means that the CBC should not be called upon to pay \$15,000 a year for use of my product.

**The Chairman:** What you are really saying is that this should not be looked at on the basis of quantum, but on what is inherent in whatever right there is in a record.

**Mr. Fortier:** I have always taken that attitude, senator. Since the minister and other people have spoken so much about quantum, I feel that I should address my mind to it. The third argument of the minister as to why this existing right was against the public interest was—I do not have his exact words, but I translated it as “the poor broadcasters”. I do not think it is valid to come before this committee and say that commercial broadcasters in Canada cannot afford to pay a tariff to the record producers. I do not accept that statement.

**Senator Burchill:** The radio station in our small community made representations to me violently opposed to the bill because it will increase their expenses, which they cannot afford.

**The Chairman:** What is the total of their revenue?

**Senator Beaubien:** They are for the bill, not against it.

**Senator Burchill:** Yes, they are for the bill.

**Mr. Fortier:** SRL recognizes that. It is in evidence before this committee that SRL said publicly before the Copyright Appeal Board during the month of April, while these hearings on the tariff were going on, that it withdrew its application for a tariff in respect of those poor little radio stations in Canada which had a gross income of less than \$100,000. Without knowing which radio station you are referring to, I would be prepared to guess that the broadcaster which made these representations to you fits into this category and has a nominal \$1 licence to pay to SRL at the moment. We are conscious of the fact that there are radio stations which cannot afford to pay a tariff, but there are those that are.

**Senator Cook:** Would it not be a case of “Come into my parlour, said the spider to the fly.”?

**Senator Connolly (Ottawa West):** You are operating on the principle that the public interest has to be taken into account in your operation?

**Mr. Fortier:** Absolutely. If you speak about public interest, I think you must recognize that we have in Canada a body which was set up to do just that, to protect the public interest. I refer to the Copyright Appeal Board. Canada was the first country in the world to set up a performing right tribunal. Why was it set up? It was because of exaggeration by CAPEC—BMI did not exist in those days—in the fees which they were extracting from the users of their music. In 1935 the Parliament of the day passed an amendment to the Copyright Act and said that in future the authors and composers would not be able to decide what they will charge to the users of their music. They would have to go before a quasi-judicial administrative tribunal, which would protect the public interest.

This is what any performing right society has had to do since 1935. This is what CAPEC has done for the last 30 years. This is what BMI has done since it was created, and this is what SRL has been obliged to do since it was set up.

There is a body in Canada which was set up to protect the public interest. We have been before that body, and that body has said: “The public interest will be protected if your fee is lowered from 2.6 per cent to 0.15 per cent.” We are not complaining. We are satisfied about that.

My full answer to your question, Senator Connolly, is that the three reasons given by the minister are, I submit with the greatest respect, not valid, and that he should have referred to this tribunal which exists in Canada and which has been set up to protect the public interest.

On that point I will close by referring to a question by Senator Lang: Does not Bill S-9 settle a debate between two commercial interests? My submission is that it does that and nothing else, and it settles it in favour of the broadcasters and against the record manufacturers. I think it is not the role of Parliament to take a stand between two commercial interests. This is basically what we are dealing with.

**Senator Connolly (Ottawa West):** Why should not Parliament do this? I am trying to elicit information from you for the benefit of the committee. Why should not Parliament decide what is in the public interest? I put it to you, Mr. Fortier, that when you say you will not charge any more than one dollar for a licence to a station making less than \$15,000 a year you are doing that because it is in the public interest. However, you do it so that this bill can be withdrawn and you can show your sense of responsibility. Who is in charge of the public interest or who should be the judge of it?

**Mr. Fortier:** The Government decided many years ago that the public interest should be the concern of the Copyright Appeal Board, which I think should continue.

**The Chairman:** We must take the position that certainly if a statutory right exists Parliament at any time can deal with it for any reason. Whether it will receive public support depends on the reasons and their justification.

Mr. Fortier's argument could only go as far as to say that Parliament has the right to amend and withdraw existing



or to grant additional rights. However, the question of justification is another matter. Mr. Fortier's argument is that we should not do it on a basis of resolving in favour of one commercial interest against another. That is why we have continued this inquiry on the basis of what is inherent in the right. Is there something that should be maintained?

I do not think it is a solid argument to say that because we are resolving a difference between two commercial groups we cannot act. Maybe you should say we should not act. However, Parliament has the authority to act and it is not departing from its role in doing this.

**Senator Beaubien:** As a layman sees it, if I buy a record...

**The Chairman:** A sophisticated layman, senator.

**Senator Beaubien:** As a layman I can buy a record and play it; that is why I bought it. However, if I happen to own a broadcasting station and put it on the air I would be charged for broadcasting it.

Do you argue that if I buy a book and quote it on radio the author is entitled to be paid a fee?

**Mr. Fortier:** As one layman to another, this is exactly -hat copyright is all about.

**Senator Beaubien:** No; if I buy a book and wish to read it that is what I bought it for.

**The Chairman:** But you cannot read it to the public without paying a licence fee or royalty. That is the law.

**Senator Beaubien:** I think it is all wrong.

**The Chairman:** Yes, but it is the law.

**Senator Beaubien:** It will not be the law when you pass this bill.

**Senator Haig:** Mr. Fortier indicated that the CBC will pay \$15,000 for the next six months.

**Mr. Fortier:** That is correct.

**Senator Haig:** Which amounts to \$30,000 a year.

**Mr. Fortier:** But we have to go back for 1972.

**Senator Haig:** If this bill is not passed and the copyright fee or tariff is in force, the CBC will pay \$15,000 for the next six months, rather than the SRL request, which amounted to \$900,000.

**Mr. Fortier:** Do I need to address myself to Senator Beaubien's comment? Again I consider this to be the essence of copyright.

**The Chairman:** I do not think you need to do more than that; Senator Beaubien says it is bad law.

**Mr. Fortier:** Bill S-9 is bad law.

**The Chairman:** No, the copyright.

**Senator Beaubien:** Bill S-9 is required because there is some doubt.

**The Chairman:** Even if Bill S-9 passes and you take a book and read it on radio you could be in trouble for royalty.

**Mr. Fortier:** I am selling you my property to use in your home for 95 cents. If I knew that you were going to use my property to make money, which is what broadcasters do by the use of a record, I would charge you more than 95 cents for that record.

**Senator Beaubien:** No, you have been paying in some cases for people to play your records.

**Mr. Fortier:** That is absolutely true in the case of some records, but not of our whole repertoire.

**Senator Beaubien:** The music has become popular simply because it has been broadcast so much.

**The Chairman:** The argument may be as good as your book argument, which was wrecked.

**Senator Hays:** If we continue this exercise on Bill S-9 it will take the manufacturers 10 months to catch up to the fees received by Mr. Fortier.

**Senator Connolly (Ottawa West):** In the course of the minister's presentation he spoke of the problem of encouragement, improvement, invention and development of technology. I asked him, simply to clarify that point, if a performing right is allowed to continue as it is under the present law, surely the improvement of the quality and character of productions would be encouraged. The producers would be encouraged to that end by receiving these fees and royalties. Have you anything to say with regard to that?

**Mr. Fortier:** No, except that I agree with your statement, senator.

**Senator Connolly (Ottawa West):** It is not a statement; it is a question.

**Mr. Fortier:** I agree with the substance of your question. I answer in the affirmative. I attempted to make the point last week that because of the recent CRTC regulations there was an increased need by broadcasters for Canadian content records. The only manner in which Canadian content records can be produced by record manufacturers in Canada at the moment is by increased access to funds such as those which would flow from an SRL tariff.

This is not a complete answer, but it is one of the answers. You will recall that the division of the royalties involved three categories. One is to encourage the development of Canadian artists, for which 30 per cent of the SRL dollar would be ear-marked. Another was to encourage the recording of Canadian content pieces. On that point, Mr. Chairman, may I be allowed to say further to Senator Hays' comment that the manufacturers, if he knows them, will not give one nickel to the performers—

**Senator Hays:** Of this amount.

**Mr. Fortier:** With respect, senator, there is evidence before the committee to the effect that in all countries where the performing right in records is recognized and enforced and performers do not have their own separate and independent right, there is a division of the royalties between the record producers and the performers. It cannot be otherwise.

I agree with the point made by the minister that at the moment there is not a contract. It is true we do not have a valid contract. We have made an offer to the Canadian



Performing Artists' Union. There is a dispute between the members of the Union as to how the money should be divided between themselves. This happens not only amongst unions, but amongst corporations on occasion. I can only go so far as to say we have made an offer, which we will not withdraw. Even if the offer is not accepted we will pay 50 cents of every dollar we receive into a fund which will be available for the performers, because we, the record producers, recognize that without the performers we cannot cut or produce a record. The argument which I made last week was that there were three integral parts of the record. It is easy for the minister to say that the record manufacturers depend on the creativity of authors and composers, but it is conversely true also that the authors and composers, in order to get their royalties, depend on the creativity of the record producers. If we do not produce records, the authors and composers are only going to have to sell sheet music; and, as Senator Grosart well knows, they do not make that much money by selling sheet music. They have to get their works on record, so you have a trilogy.

**Senator Cook:** They have to get them played over the air.

**Mr. Fortier:** And, in some instances, get them played over the air. But there is an assurance, and it cannot be otherwise, and the history worldwide, senator, is that when the record producers have received money from users of their records, they have shared that money with the performers. We have said it; we have offered it. Mr. Dodge has come before this committee and has said, "Yes, we have received the offer but because of differences between unions we have not been able to accept it yet." I know what Mr. Dodge told me privately, but I do not wish to go any farther. I repeat the assurance which I have given, that this is not anything novel; this is normal. In the field of copyright, if the record producer is granted a royalty, he shares that royalty with the performers. We are not obliged to do it under the law, but we are going to do it.

**Senator Grosart:** Mr. Fortier, I am sure you are aware that the statement made by the minister is that the performer may be entitled to some part of the performing right but this should be dealt with separately, and it should not be derivative or at the mercy of the record manufacturer.

**The Chairman:** The minister did not say that.

**Senator Grosart:** He did.

**The Chairman:** What the minister said was that this was one of the factors that the committee reviewing that had been asked to look into. The minister was very careful, he said he was not committing himself one way or the other. He said that two or three times. It will be a subject matter for consideration.

**Senator Grosart:** Yes. He certainly enunciated it as a principle under discussion in respect to the revision of the Copyright Act. I am sure, Mr. Fortier, you did not intend to mislead the committee when you made a statement, which I paraphrase, that the "only way" in which the funds can be obtained by the record companies to supply the records required for the 30 per cent Canadian content, would be by access to such additional sources of funds as the performing right in the record.

**Mr. Fortier:** If I said that was the only way, I made a mistake.

**Senator Grosart:** I think you did say it was the only way.

**Mr. Fortier:** I thank you for correcting me.

**Senator Grosart:** I presume you did not intend to mislead, because I am sure you are aware that there are hundreds, perhaps thousands, of Canadian records that have been made profitably and are being used to supply that 30 per cent Canadian content, without access to any performing right.

**Mr. Fortier:** I am also aware that, before the CRTC regulations in January 1971, there were hundreds of Canadians records which were made by these very people who belong to SRL, but the broadcasters were not using them, because they were not able to compete with the American records; and the Canadian broadcasters, although they wave the Canadian flag, are very conscious of the fact that they can sell their time mainly when they play American records. That is one thing that has not been said before this committee.

**Senator Grosart:** The obvious answer, Mr. Fortier, I think you will agree, is that the companies comprising SRL probably did, certainly did, less and have done less than any other group of companies which could be put together, to assist in the Canadian content in records.

**Mr. Fortier:** This is as wrong a statement as I have heard before this committee.

**Senator Grosart:** Will you tell us, then, what percentage of all the records distributed, say in the last year, by the SRL group of companies was made in Canada?

**Mr. Fortier:** The figure which I gave last week was under 10 per cent, and I still stand by it.

**Senator Hays:** When did you make the offer to the performing artists?

**Mr. Fortier:** The original offer was made two years ago. Thank you for asking the question. There was a deal which was made two years ago with the Canadian Performing Artists' Union of Artists. That is when the SRL first filed a tariff, but you will recall that that tariff was withdrawn when the Bill S-9—which was then Bill S-20—was dropped. So that particular agreement was never enforced.

When we filed the new tariff in 1970, we renewed our offer to the performers and their unions, in the fall of 1970. I wish to stress that we have been in constant communication over the years with Mr. William Dodge, the secretary-general of the CLC, who is chairman of this Performing Artists' Union council or committee, so this offer in fact has always been before the unions.

**Senator Hays:** What were you giving them before?

**Mr. Fortier:** That is a very good question. We were not giving them 50 per cent. We were offering, then, as I recall, 35 per cent. Yes, we were offering 35 per cent. In view of recent evolution in the United Kingdom, particularly, and in some European countries, of a 50-50 division, within the last two years we offered 50 per cent.

**Senator Hays:** In the last three or four years, how much have you given the performing artists?

**Mr. Fortier:** Unfortunately, we have not received anything from the broadcasters, so of course have not given anything to the artists.

**Senator Hays:** You have not given anything?

**The Chairman:** This was a sharing of any royalties they might get.

**Mr. Fortier:** The tariff only takes effect on the 1st July, next week, senator.

**Senator Haig:** I move that we report the bill without amendment.

**The Chairman:** Just one second. Mr. Fortier, are you through?

**Mr. Fortier:** I would make one last comment, if I may, senator, before the axe falls. If, as the minister says, we are dealing here with a question of principle, then I say that you have the opportunity in this committee of preserving the principle.

The principle is that there should be no performing right in records. May I recommend to this committee, and may I strongly suggest, very respectfully and with much humility, that you confirm the principle which the minister has put forward, and remove the copyright in records. But, for goodness' sake, please recognize the principle that, if someone who is managing a commercial concern, a commercial interest, such as a broadcasting station in Canada, uses records which have been paid for by others, that person should be obliged to compensate the owner of that property. And do as has been done in other countries, and recognize that the record producer, although he may not have a performing right in his record, should be entitled to just and equitable remuneration for the use which is made by others for profit—I stress "for profit"—of his property.

This can be done by amending Bill S-9, recognizing the principle that there should be no performing right in records, but leaving to the Copyright Appeal Board the obligation of deciding, on a year to year basis, what is the just and equitable compensation that should be paid to the record producers when people in Canada use their property for profit.

That is done in some European countries, Mr. Chairman, and I would be very happy to submit to you a text of such an amendment. I would be very sad if this bill were reported without amendment.

**Senator Connolly (Ottawa West):** Have you not got this proposal which you are making in the present law?

**Mr. Fortier:** No, senator. At the moment in the present law there is a performing right, and the performing right is translated into compensation.

**Senator Connolly (Ottawa West):** I am sorry.

**Mr. Fortier:** I would be very sorry if this committee reported to the Senate favourably, or whatever words are used in parliamentary jargon, without having accepted SRL's offer to visit a recording studio and seeing for yourselves the element of creativity, or the work, labour, and skill, to use in the words of Lord Justice Maugham in the *Cawardine* case in the United Kingdom. What is the element of creativity? What is the input of creativity which goes into the making of a record? If you think that a musician walks into a recording studio with a sheet of music and then steps up to a microphone and records a performance you are wrong. The record producer is an essential creator of that record. I would be very sorry to

see the day when the Canadian Parliament would say that you can create something in Canada, but you are not protected. In most countries in the world today if you create something like a record you are entitled to be compensated if someone uses your property. If you write a book and someone reads that book in public, then that person is using your property and you should be compensated for it. There can be difference between the author of a book or the assigner of a patent and the producer of a record.

I would urge you, Mr. Chairman and members of the committee, not to report this bill to the Senate, but rather to continue your deliberations, and possibly report it with the amendment which I have suggested.

**Senator Benidickson:** Do you want to put on record your proposed amendment?

**Mr. Fortier:** Yes, I do, senator, and I would be glad to draft it.

**Senator Benidickson:** It is not drafted?

**Mr. Fortier:** I do not have it with me this morning.

**The Chairman:** Is that your submission now?

**Mr. Fortier:** Yes, it is.

**The Chairman:** Thank you very much, Mr. Fortier.

The committee has two courses. One is to deliberate further, and the other is to abruptly terminate the hearings with a motion to report the bill without amendment. The question is which course does the committee take?

**Senator Connolly (Ottawa West):** I wonder whether we should hear from the Economic Council?

**The Chairman:** The minister suggested that. We could hear from the Economic Council on Monday or Tuesday.

**Senator Connolly (Ottawa West):** Yes. We do not have to do it today. At least, I do not see any purpose in reporting this bill that quickly. Whether the minister had suggested it or not, Mr. Chairman, I was going to ask that it be considered by the committee. I do not have any motive other than to try to get some answers on this question of public interest.

**The Chairman:** The first question is: Does the committee favour calling some officials from the Economic Council to answer questions?

**Senator Beaubien:** I would say no.

**The Chairman:** Will those who are in favour of hearing the Economic Council please raise their hands? Those who are opposed? The majority decision is that we do not hear from the Economic Council.

**Senator Hays:** I move that we report the bill.

**Senator Beaubien:** I second that.

**Senator Haig:** Mr. Chairman, before the vote is taken I want it recorded that I am not voting on this.

**The Chairman:** We have a motion to report the bill. Those in favour of that please raise your hand? Contrary? The motion is carried.

The committee proceeded to the next order of business.









THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 32

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WEDNESDAY, JUNE 23, 1971

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Complete Proceedings on Bill C-219,

intituled:

"An Act to establish the Canada Development Corporation"

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REPORT OF THE COMMITTEE

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THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28).

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 23, 1971:

"Pursuant to the Order, the Senate resumed to debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Fournier (*de Lanaudière*), for second reading of the Bill C-219, intituled: "An Act to establish the Canada Development Corporation".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Macnaughton, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, June 23, 1971.  
(35)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 11.50 a.m. to consider the following Bill:

Bill C-219, "An Act to establish the Canada Development Corporation".

*Present:* The Honourable Senators Hayden (*Chairman*), Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gélinas, Giguère, Hays, Lang and Sullivan.—(12)

*Present but not of the Committee:* The Honourable Senator McDonald.—(1)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

## WITNESSES:

### *Canadian Chamber of Commerce:*

Mr. E. H. Peck, Vice-Chairman,  
Public Finance and Taxation Committee;

Mr. H. J. Hemens, Q.C.,  
Legal Counsel;

Mr. W. J. McNally, Manager,  
Government Relations Department.

Mr. D. J. Gibson, Manager,  
Policy Department.

At 12.15 p.m. the Committee adjourned.

2.15 p.m.  
(36)

At 2.15 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Carter, Cook, Croll, Gélinas, Giguère, Martin and Sullivan.—(10)

*Present but not of the Committee:* The Honourable Senator McDonald.—(1)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

## WITNESSES:

### *Department of Finance:*

Mr. W. A. Kennett, Director,  
Capital Markets Division;

Mr. R. B. Love,  
Legal Advisor;

Mr. W. D. Lennox,  
Accounting Consultant.

Upon Motion it was *Resolved* to report the said Bill without amendment.

At 2.40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, June 23, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-219, intitled: "An Act to establish the Canada Development Corporation", has in obedience to the order of reference of June 22, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, June 23, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-219, to establish the Canada Development Corporation, met this day at 11.50 a.m. to give consideration to the bill.

**The Chairman:** Honourable senators, we will now resume our hearing and proceed with Bill C-219. The Canadian Chamber of Commerce is represented, and we have told them that we will hear them first. They made representations in the House of Commons committee, and many of those representations were accepted in one form or another and were incorporated in the bill.

**Senator Benidickson:** On that point, Mr. Chairman, I have a copy of the bill as passed by the House of Commons. I have compared it to the bill on first reading in the House of Commons, and I cannot find anywhere an underlining to indicate an amendment. Therefore it must simply be an elimination of certain things.

**The Chairman:** We can ask that question. The committee would be interested in any representations that the witnesses wish to make on points where the bill does not suit them. I do not want to know where they think the bill has been adapted, or where the explanations are such that they meet their points. We take that as fait accompli.

From the Canadian Chamber of Commerce we have Mr. E. H. Peck, Vice-Chairman, Public Finance and Taxation Committee; Mr. H. J. Hemens, Q.C., who has been before us on many occasions; Mr. W. J. McNally, Manager, Government Relations Department; and Mr. D. J. Gibson, Manager, Policy Department. Mr. Peck, you may proceed.

**Mr. E. H. Peck, Vice-Chairman, Public Finance and Taxation Committee, Canadian Chamber of Commerce:** Mr. Chairman and honourable senators, we learned only last week that we would be appearing today. In a letter which the Executive Council of the chamber sent to Senator Hayden we pointed out that we did not really have the time to present another brief. We therefore simply made some comments in a letter. If it is in order, Mr. Chairman, I would like to read that letter.

**The Chairman:** Go ahead.

**Mr. Peck:** The letter reads as follows:

Dear Senator Hayden:

The Executive Council of The Canadian Chamber of Commerce appreciate the opportunity of appear-

ing before your Committee to present the Chamber's views concerning Bill C-219, an Act to establish The Canada Development Corporation.

As there has not been sufficient time since the Bill was passed by the House of Commons for preparation of a new Brief on this proposed legislation, I am appending to this letter copies of the Chamber's submissions to the House of Commons Committee on Finance, Trade and Economic Affairs. A number of copies of this letter and above-mentioned attachments are also being delivered to the Clerk of your Committee for distribution to its individual members.

The present position of the Chamber on the Canada Development Corporation was stated quite clearly in the Introduction on page 5 of the appended Brief. It was explained on the same page of the Brief, that these submissions by the Chamber on Bill C-219 are being made on the conviction that the government fully intends to proceed with this project, as well as with the desire to help achieve legislation which will be as clearly understood and soundly practical as possible.

Following hearings and study of numerous submissions by interested parties, the House of Commons Committee referred to presented a report recommending a number of amendments. These amendments, and no others, were incorporated in the Bill as passed by the House of Commons on June 9, 1971. While many of the points raised in the Chamber's submission were given consideration in the deliberations of the said Commons Committee, very few amendments to the Bill were, in fact, made. Nevertheless, we would like to submit to your Committee a short commentary on some of the major contentions and recommendations contained in the Chamber's earlier submissions on the Bill. These will be discussed under the same headings as in our original Brief.

### INVESTMENT POLICY

Although there was considerable discussion of Clauses 7 and 6 of the Bill, which cover the objects and powers of the Company, no amendments thereto were recommended by the said Commons Committee. In his comments on this subject during the third reading debate in the House of Commons, Mr. P. M. Mahoney (Parliamentary Secretary to the Minister of Finance) was reported on page 6390 of *Hansard* for June 4 to have said:

"The objects of the CDC are deliberately broad. Restrictive terms would hamper the CDC's mandate to fulfill its purpose as set out in the Bill. The directors must be free to establish new policies to meet new situations. *In this respect the CDC will be on all fours with other successful Canadian corporations.*"

(Emphasis Added)

He went on to say:

"Much has been said in and out of Parliament about the danger of conflicts between the national interest and profitability. Others seem to feel that the two are irreconcilable. The government rejects that contention..." The Chamber maintains that, in this respect, the CDC will, in fact, not be "on all fours" with other Canadian corporations. We still content that CDC directors, *if they are indeed to remain independent from government influence*, should be provided with more specific guidance as to objects and investment policy than is included in the Bill.

#### OPERATING CONTROL

In its Brief, on pages 9 to 11, the Chamber discussed this subject as it relates to CDC subsidiary holdings, and we submit that our recommendations, in this regard, are still appropriate. In its subsequent letter to the Chairman of the said Commons Committee, copy appended hereto, the Chamber commented on the matter of government control of the CDC itself. This was debated at some length on pages 24 to 27 and 35 to 37 of Issue No. 45 of the Minutes of Proceedings and Evidence of the said Commons Committee for May 27.

On page 6391 of the June 4 House of Commons *Hansard*, Mr. P. M. Mahoney is reported to have said:

"Some critics of the CDC concept believe that any government participation in the corporation will be synonymous with interference in its operation. The best protection against such interference is a strong and independent Board of Directors chosen from the private sector. The Bill explicitly contemplates their independence. I am confident that as soon as the CDC is incorporated a strong Board will be readily formed and will assert its independence."

The Chamber contends that if the CDC is to be on "all fours" with corporate practice in the private sector, the directors will, nevertheless, be subject to government control and policy influence as the Bill now stands. In our view, this will be so at the outset, as well as in the event that the government's voting interest is some day reduced to only 10 per cent.

In commenting on the Chamber's reference in its appended letter to Section 4(2)(i) of Schedule I, on page 34 of the Bill, Mr. Mahoney pointed out (page 25 of Issue No. 45, Minutes of Proceedings and Evidence of said Commons Committee) that the wording

of this particular paragraph is identical with the wording of a related paragraph in the Schedule to the Canada Corporations Act dealing with constrained share companies. This is quite true. In the case of constrained share companies the paragraph is necessary to prevent groups of associated non-residents or non-citizens, but not Canadian residents or citizens, from obtaining a voting influence. On the other hand, the paragraph in Bill C-219 prevents associated groups of any and all shareholders from effectively combining to outvote the government's nominee (the Minister of Finance) at meetings.

In the practical corporate world, a 10 per cent holding sometimes is sufficient to ensure control of a company. However, a shareholder group may be formed to outvote the previously controlling block, or a take-over bid may succeed in obtaining effective or ful control. With a limit of 3 per cent of outstanding voting shares permitted to be held by a single shareholder and his associates, clearly there can never be an effective challenge of the government's ultimate control of the CDC. Undoubtedly this is as it should be.

I would like to interject here, Mr. Chairman, that the Chamber is not averse to the 3 per cent limit, which in our view should be more to prevent others from gaining control than to permit the Government to dictate policy.

Again, in practice, it is usual and proper for the controlling shareholder or group to be very much involved in policy making and very much concerned in the process of electing directors and electing or appointing senior executive officers. We do not believe that as the Bill now stands, the CDC can be much different as regards these matters than holding companies in the private sector.

It is not the Chamber's desire to comment further on this situation except to say that, unless it is to be clearly stated otherwise in the Bill, we must believe that it is the government's real intention to retain a firm control over CDC policies and activities. This conclusion would help explain the lack of precision in the objects section. In this connection we do appreciate the likelihood that it will be a good many years before the government's 100 per cent voting interest can be reduced through offerings to the public.

At this point, Mr. Chairman, I would like to reiterate the recommendations of this section on investment policy, which appear at page 9 of our brief. Our recommendations are:

—That a concise and unequivocal statement of CDC investment policy and its role in ensuring Canadian control of the Canadian economy be included in the Bill.

—That such a statement of policy include provisions limiting CDC investments to profitable or potentially profitable and sound situations.

—That the CDC's freedom from government direction be clearly stated in the Bill.



**Senator Benidickson:** That relates to the paragraphs immediately above taken from the Australian Industry Development Corporation Act, 1970. I think that should be on the record because it more clearly illustrates the objects.

**Mr. Peck:** Yes sir; we do refer in our commentary in the brief to certain provisions in the bill which established the Australian Industry Development Corporation.

**Senator Benidickson:** Would you care to read those paragraphs?

**Mr. Peck:** I shall read those three clauses from the Australian Act:

The Corporation shall pursue a policy directed to securing, to the greatest extent practicable, participation by Australian residents in the ownership of the capital and in the control of companies to which it provides assistance.

The Corporation shall act in accordance with sound business principles and shall not provide assistance in relation to a particular company unless it is satisfied that the company will operate on a profitable basis.

In the exercise of its powers the Corporation is not subject to direction by or on behalf of the Commonwealth.

**Senator Croll:** Do you think the second clause means a great deal? I would love to be in that position.

**The Chairman:** It is similar to provisions included in a will which we refer to as the pious wishes of the testator.

**Senator Croll:** Do you remember we always termed those motherhood clauses?

**Mr. Peck:** If I may, Mr. Chairman, I will comment on that. There has been some debate on this matter of policy and perhaps an inconsistency between objectives. It has been argued that there is a possibility that the CDC might become involved in investments which would be profitable only in the very long term or, conceivably, might be only in the national interest and not profitable at all. I know that the bill does mention the word "profitable".

**Senator Burchill:** Would that not be a matter of judgment on the part of the directors?

**Mr. Peck:** I have to admit that is true.

**Senator Cook:** Some of the provincial governments have been involved in unprofitable ventures.

**The Chairman:** I am a little concerned with respect to the statement in the brief. The statute does provide guidelines which are, no matter how hard it may be to harness them, the national interest and a degree of profitability.

**Senator Beaubien:** Only a degree.

**The Chairman:** Another way of expressing it would be that they will act in accordance with sound business

practices and will not give assistance in relation to a particular company unless it appears that the company will operate on a profitable basis. Nothing requires the directors of this company to guarantee the profitability, but it must appear that there is a reasonable expectation in the minds of men skilful and knowledgeable in the field that there will be profit.

Therefore, it appears to me that the bill provides exactly what you say. Clause 2 sets forth the purpose of the act, as follows:

The purpose of this Act is to establish a corporation that will help develop and maintain strong Canadian controlled and managed corporations in the private sector of the economy and will give Canadians greater opportunities to invest and participate in the economic development of Canada.

The very points we are discussing are inherent in those purposes. It is different language, but the same description of intent.

**Senator Cook:** The reference to the private sector excludes the post office.

**The Chairman:** I am not sure; we may find that it will become a private business operation one day. Let us hope.

**Senator Benidickson:** There is nothing in the bill as specific as the third clause the witness read from the Australian act, which states:

In the exercise of its powers the Corporation is not subject to direction by or on behalf of the Commonwealth.

That is very clear; we have had statements of ministers, but not a statute.

**The Chairman:** Clause 6, dealing with the objects of the company, provides that they shall be carried out in anticipation of profit and in the best interests of the shareholders as a whole.

**Senator Benidickson:** That was not my point. The Australian clause provides that the Crown shall not interfere and the witnesses told us that according to business experience it is quite likely that for many years the Crown will have 100 per cent of the shareholdings. At the minimum it will hold 10 per cent, which will likely provide effective influence in the operation and directions to the directors.

**The Chairman:** Senator Benidickson, there appears to be an anomaly there. Shareholders own the company. Because for a period of time these shareholders may be the Government of Canada, you suggest that they should deny themselves their right as shareholders. It is their money.

**Senator Benidickson:** I am not saying that at all. I am saying that if I were a director of a company I would be quite respectful to the shareholders.

**The Chairman:** Yes, or you would not be there very long.

**Senator Benidickson:** The shareholders in this case are likely to be the Government, and that will probably be so for some time. It would be very influential as a shareholder, even if it is reduced to a 10 per cent holding.

**The Chairman:** As shareholders should be.

**Senator Benidickson:** That is right.

**Senator Cook:** As a matter of law the Government could not veto actions by the directors.

**The Chairman:** No.

**Mr. H. J. Hemens, Q.C., Counsel, Canadian Chamber of Commerce:** That may be subject to question. First of all, as a matter of law the Government can always amend the statute. That is point number one.

**Senator Cook:** Parliament can.

**The Chairman:** Parliament can, not the Government.

**Mr. Hemens:** Thank you very much. The second point is that, in respect of any amendment of the charter, the Letters Patent, the views of Parliament, the approval of Parliament has to be obtained; so if the directors have proposed something which requires supplementary letters patent, or their equivalent, Parliament clearly can veto it. It is not quite as clear, with respect, sir, as it seems.

**Senator Cook:** If you put in the act that Parliament could not veto, then at the next opportunity Parliament would change that act. You cannot stop Parliament.

**Mr. Hemens:** That is quite true. We are just pointing out some of the confusions there. May I take a moment on some of the confusions? Senator Hayden referred to clause 2. Reference was made a little earlier by Senator Croll to motherhood, and if ever I saw a definition of "motherhood" there it is in clause 2.

With respect to clause 6 we have the confusion, to me at least, that clause 6(1)(c) requires the company to invest in shares or securities related to the economic interests of Canada. This is a function of the directors.

**The Chairman:** When you say that it requires, let us get our language straight. These are the objects of the company. In the operation of the company, the directors determine the course of action.

**Mr. Hemens:** That is right.

**The Chairman:** And the areas in which they venture and the areas in which they do not venture.

**Mr. Hemens:** That is correct, sir.

**The Chairman:** So because clause 6(1)(c) may read with any interpretation that you want to give it, it does not mean that the directors must carry out the intent of paragraph (c).

**Mr. Hemens:** No, but it does mean that they cannot do anything which is in conflict with that paragraph (c).

**The Chairman:** Why should they?

**Mr. Hemens:** Because they may not know what are the economic interests of Canada.

**The Chairman:** Then they should not be directors—and we have the power to fire them. Is not that right?

**Mr. Hemens:** That is very good. The only difficulty is that, from time to time and, on occasion, even in parliament, there are different views as to what are the economic interests of Canada in a particular matter. I suggest to you that this is a problem which may require some clarification. If you look at paragraph (d).

**The Chairman:** If you think it does, what do you suggest?

**Mr. Hemens:** That is a very good question.

**The Chairman:** It certainly is. It is easy to take away, but I want to know what do you suggest would be better language?

**Mr. Hemens:** I think what we have suggested, senator, is more specific references, more specific statements of objects, more specific statements of policy, set out in our brief.

**Senator Hays:** What page do you have those on?

**Mr. Hemens:** We have references to this under "Investment Policy", starting on page 6 and running through to page 9. As a matter of fact, Mr. Peck read those recommendations a few moments ago.

**The Chairman:** Do you agree, in relation to your reference on page 9, that there should be incorporated into this bill the third item that you quote from the Australian Industrial Development Corporation Act, that in the exercise of its powers the corporation—that is the CDC here—is not subject to direction by or on behalf of the Commonwealth. Would you agree to that going into this bill?

**Mr. Hemens:** Speaking on behalf of the chamber...

**The Chairman:** Yes?

**Mr. Hemens:** And without reference to personal views...

**The Chairman:** Yes?

**Mr. Hemens:** That is what we stated, sir.

**The Chairman:** What you are saying in effect is that the Commonwealth, it is all right for it to put its money in but it cannot go where its money is going.

**Mr. Hemens:** It has a right to persuade the directors to the extent of its holdings in the corporation, just as in any other corporation.

**The Chairman:** That means by firing them?

**Mr. Hemens:** That means by firing them, yes.

**The Chairman:** They have the power to fire them.



**Senator Benidickson:** The directors have power under this bill to elect some other directors—which is not usual. Usually, the shareholders elect the directors.

**The Chairman:** You are mistaken, senator, may I say, with all due respect. Under this bill we provide for a minimum of 18 directors and a maximum of 21. So long as the Government has 50 per cent or more of the voting shares, it can nominate I think it is the Deputy Minister of Trade and Commerce and the Deputy Minister of Finance.

**Senator Benidickson:** Ex officio.

**The Chairman:** They are ex officio directors in that period, but they have no vote and they get no remuneration. As to the rest of the directors, the shareholder, the Government of Canada, is entitled to designate four or, if it does not designate them, it just takes its chances at an annual meeting, which is not much of a chance, and it could elect the whole board. There is power in the bill under which a director may be removed at any time.

**Senator Benidickson:** By the board of directors.

**The Chairman:** Yes.

**Senator Benidickson:** Which is normally done by shareholders.

**The Chairman:** Well, this is different, and this is to make absolutely sure that the directors adhere to the policy and the guidelines laid down in the bill. If they do not, out they go.

**Mr. Hemens:** May I speak to that, senator? That is a very unusual provision. The shareholders elect the directors, the shareholders having elected the directors, four-fifths of the directors then fire the directors they do not like.

**Senator Benidickson:** Yes. I have never heard of that before.

**Mr. Hemens:** I have never heard of anything of this nature.

**The Chairman:** It may be you will hear more of it in the future.

**Mr. Hemens:** We say that this is a corporation which will be on all fours with other corporations—

**Senator Beaubien:** That is the point.

**Mr. Hemens:** —and then we say it is going to have special powers.

**The Chairman:** Wait a minute now. We do not say that this is a corporation which is going to be on all fours with others. We provide certain powers for this corporation that you may not find elsewhere. We do give them special powers.

**Mr. Hemens:** Yes, you do.

**Senator Benidickson:** There is a clause with respect to C.D.C., that the Canada Corporations Act will not apply.

**The Chairman:** No. There is a clause which says that there are certain exclusions from Part I of the Canada Corporations Act, but all the other provisions in Part I apply.

**Senator Benidickson:** I was referring to the exclusions.

**The Chairman:** They exclude certain features. I can tell you one of them. If the ancillary powers in the Canada Corporations Act apply, this corporation might have a right to join in amalgamations. That is one of the sections which is excluded. But you will find that the section is repeated almost word for word as an ancillary power, except that the words "other than an amalgamation" are put in to make the change. You will find many instances where they have excluded sections of the Canada Corporations Act but they have repeated sections that, to a very great extent, are the same.

**Senator Benidickson:** They put them back in again.

**The Chairman:** Except that they put in qualifications that were not in. I would say the qualifications are by way of restriction.

**Mr. Hemens:** May I make a comment, senator? You say that, with the exception of the exclusions, the Canada Corporations Act provisions apply. That is true, but they apply to the company "with such modification as circumstances require". I have not the foggiest notion what that means, and I would challenge anyone to interpret it.

**The Chairman:** I think one of the things it means is that this is a special act company, and yet you can change the character of the company by supplementary Letters Patent. That is a modification.

**Mr. Hemens:** Which applies to the utilization of the provisions of the Canada Corporations Act?

**The Chairman:** Yes, so as to make it applicable. It was an oddity until the power was created whereby you could amend a company incorporated by statute by supplementary Letters Patent under the Canada Corporations Act. I think this is one of the things they have in mind. We will have the departmental officials here and maybe they can pick out other instances.

**Mr. Hemens:** It is an extremely broad provision favouring the directors. It may be useful, I do not know; but, on the other hand, it may be difficult.

**The Chairman:** Well, let us put it this way, that if we are dealing with the giving of legislative powers in statutes, our inclination is to be very exact. We are governed by the purposes of the bill and sometimes we had representations made that the purpose of the bill did not lend itself to being so exact, and in that event we would broaden it out. Maybe this is the type of bill, having regard to the purposes, where there should be a broad scope. They should not have to get on the telephone to the Minister of Finance to find out whether or not they should invest certain moneys. I would expect they would



consult him from time to time, if they needed some money by way of a loan, and there is provision for loaning moneys, on terms that he may dictate. But would you have to ask, "Do I have a broad power to do certain things?" In talking to the Minister of Finance I would not say, "Do you want me to do this?". I think the position the minister would take would be, "Yes, you have authority." He would ask you what you were going to do with the money, and then he could decide whether or not he was going to lend it to you. It certainly inhibits the exercise of investment policy to have to get on the telephone all the time to find out, "Can I do this?". You cannot say to the market, "Just hold that position or, if you are going to do anything, go down until I decide whether I should do this or not." You have to take advantage of situations as they arise and, therefore, you need broader powers. I am sorry, I cut in. Go ahead.

**Mr. Hemens:** I think I have finished, senator.

**Mr. Peck:** Mr. Chairman, I would like to point out what we are trying to point up here, and we did discuss this in our brief at pages 6 and 7, where we make the point that we believe there is a conflict between the objectives of national interests and seeking the most profitable investments. We simply discussed this point. We feel that without more specific direction the directors could perhaps have a hard time resolving this conflict in some instances. Again we are...

**The Chairman:** Well, if you will stop right there, please. Supposing it is a resource industry. The development of resource industries, I think you would agree, would be in the national interest.

**Mr. Peck:** Yes.

**The Chairman:** So, then, the next question I address myself to...

**Senator Benidickson:** Well, it could be a flop, as happened in Manitoba.

**The Chairman:** Yes, but this bill does not guarantee things. They have to make a decision as to whether it is profitable or not.

**Senator Benidickson:** And the Quebec flops of Crown companies that have been developing resources.

**Senator Cook:** In sponsoring the bill, Mr. Chairman, you made the point quite clear that with good luck and good management the company may have some hope of success.

**The Chairman:** Having money alone is not going to make this thing operate well. The key to the whole thing is the management and its direction. You make the best selections you can; you ride herd on them, but no one can guarantee. That is why I made the suggestion the other day that I thought that in dealing with resource industries maybe they should move in at a higher level. For instance, when they get to the stage where the feasibility studies have been completed, and they know that if they get into production it is normal and reasonable to expect that it will be profitable, and yet, even at

that stage, there is tremendous difficulty in finding large quantities of money. I could cite so many illustrations of that that I have been through. The enterprise would become profitable more immediately than if you went into the forest in the northland and did all the original work. It may be in the national interests to do it, and it may ultimately be profitable, but the board of directors of CDC will have to say: "Are we going to go in so early?"

**Senator Cook:** And even when the private sector reaches that stage there is still lots of money lost, so you have to have good luck.

**Mr. Hemens:** With respect, senator, I think you have pointed up the conflict for the board of directors as between the national interests and profitability. It may well be in the national interest to do something immediately and it may be that that something, in the judgment of the directors, would not be profitable.

**The Chairman:** Then, they cannot do it.

**Senator Hays:** They cannot do it.

**Mr. Hemens:** I hope you are right.

**Senator Beaubien:** I think they would probably do it.

**Mr. Hemens:** Clause 6(1) states:

...and shall be carried out in anticipation of profit and in the best interests of the shareholders as a whole.

**Senator Hays:** That would be dollars, would it not?

**Mr. Hemens:** I would hope it might be, yes.

**The Chairman:** The purpose refers you to the national interest, and the only word you are using that I did not feel I could accept was that there was a conflict between national interests and profitability. I do not think there is a conflict. I would say that exercising your judgment to harness the two of them will require considerable know-how and judgment, but I do not think there is a conflict where one is repugnant to the other.

**Mr. Hemens:** No, but in particular cases you might have this conflict.

**The Chairman:** Maybe the directors in those particular cases would have some judgment in the matter that might even coincide with your judgment.

**Mr. Hemens:** They might have.

**Senator Hays:** They might even ask the Chamber of Commerce about it.

**Mr. Peck:** Mr. Chairman, I wonder if I might read the summary on page 1 of our brief in this matter?

**The Chairman:** Yes.

**Mr. Peck:** I might just read that because it goes to the problem we are discussing. It reads:

It is contended that the proposed CDC policy to promote greater Canadian control of its economy

while, at the same time, to maximize economic return may lead to conflicts between these objectives. Foreign, and particularly U.S., interests are willing to pay a premium for shares of Canadian companies in the raw materials and technology fields. Therefore, in order to avoid paying excessive prices for such interests in open bidding, the CDC will have to become involved in joint ventures with foreign concerns. Government policy with respect to foreign ownership remains to be enunciated and a great deal of public uncertainty exists in this regard.

**The Chairman:** If you would stop right there, please: The budget that just came down deals with one of these questions and the ability of U.S. investors to be able to pay a premium, because in the United States the great complaint—and, Senators Hays, you will remember this was discussed before our White Paper committee—was that the investor in the United States who borrowed money for the purchase of shares could write off the interest. The budget now provides for that, so that has been equalized. With respect to the other aspects, I do not think anyone is saying that there cannot be conflict or repugnancy between national interest and profitability, but the bill says both must exist in the opinion of the board, so I would assume, and I think we have a right to assume, that if there is a conflict between the two aspects and you cannot fit them together, then, you do not do it.

**Mr. Peck:** The other point which bothered us—and this is why we quoted Mr. Mahoney on the subject—is the fact that he mentioned that the best protection against such interference as Government interference was a strong and independent board of directors.

We find this difficult to understand, because we feel that, as the bill stands, the Government itself would have this controlling function, and the directors, without more specific objects spelled out in the bill would have to refer back to the Government on what Government policy might be or in connection with matters of national interest. Therefore it would not be an independent board of directors. That is a question that we find puzzling.

**The Chairman:** Do you think that there are not enough public men in Canada who would take on the job of directorship in connection with such an important operation as this, that they would not be prepared to assert independence when they knew that that was a concept of their job?

**Senator Benidickson:** Several of our financial journals have suggested that it would be difficult to get people to take on the job.

**The Chairman:** But I do not agree with that.

**Mr. Peck:** I do not necessarily agree with that, either. Undoubtedly it would be possible to set up a board of directors. However, it would be very much easier for a board of directors to function effectively if their terms of reference were spelled out more clearly.

**Senator Burchill:** It will be a difficult job for a director of this corporation to steer a course between the national

interest and profitability. I am thinking of the big enterprise on Cape Breton, Nova Scotia. Money has been put into it by the provincial government, and it is a profitable enterprise. However, would the directors have been justified in buying stock in that concern before?

**The Chairman:** Perhaps not. That was a delayed reaction. However, that does not condemn or support the bill.

**Senator Burchill:** No, but it shows the difficulty that exists in following a course between profitability and the national interest.

**The Chairman:** When the Government of Nova Scotia put money into it, they had a purpose for doing so. They hoped that it would be profitable and that it would provide development for the area.

**Senator Hays:** The terms of reference were a little different than those that are here.

**Mr. Peck:** Continuing with my letter, we say:

#### LEGISLATIVE CONSISTENCY

We maintain that the comments and recommendations under this heading, on pages 11 to 14 and page 20 of the appended Brief, are still valid. In particular, we would like to draw attention to the second point made in the Chamber's appended letter to the said Commons Committee. This refers to Section 20(3) of the Bill and the confusing element which in our view would be introduced into the existing body of law on the subject of when a person is "ordinarily resident in Canada". As mentioned in that letter, this matter was discussed by your Committee on January 27, 1971, with reference to the Investment Companies Act.

#### MARKETABILITY OF SHARES

In the Chamber's view, the amendments to the original Section 16 of the Bill will do little to improve marketability of CDC shares, when and if they are issued to the public, as claimed by Mr. Mahoney (page 6391 of the House of Commons Hansard for June 4). We submit that the complications and uncertainties of the Bill's provisions as discussed on pages 14 to 16 of the attached Brief will constitute serious inhibitions to satisfactory marketability. It is our contention that adoption of the recommendations on page 16 of the attached Brief would alleviate the problems outlined. However, we admit that these will not have to be faced until a public offering of CDC shares is actually contemplated. When and if this happens, it will always be possible to amend the Act should the problems referred to prove insurmountable.

#### GOVERNMENT PARTICIPATION

No significant amendments have been made to this part of the Bill. We contend that the procedure of CDC redemption of government-owned common shares at net asset value, and their re-issue to the public at a marketable price, may not be possible to put into effect. In our view this can be done only



when and if a market can be made at a price equal to or greater than net asset value. Yet, the market prices of closed-end investment and holding company shares in Canada, over the years, have been consistently at substantial discount from net asset values. Perhaps the CDC will be so successful in establishing an earnings and growth record that such a discount in the case of its common share prices will be eliminated. If it is not, then it would be likely that shares should never be issued to the public. The Chamber's discussions and recommendations on pages 17 to 19 of the appended Brief were made in an effort to point out this problem and assist in its solution.

I do not think that I need touch on the heading "Certain Technical Aspects". They were covered in the appendix to our brief. We mention in that paragraph that a number of amendments were made which we had actually recommended. That completes what we have submitted to you, sir.

**The Chairman:** To summarize the points that you are raising, they go to the more general scope in language of the objects and purposes of the bill. You think that it should be more specific. You feel also that the directors should be independent of the influence of the Government of Canada, and you realize that to do that we would have to redefine what are the rights of shareholders.

It is conceivable that at some stage we might get a bill in form and with limitations that even the Government would not put money into it. The Government could always revert to the present system, like the Cape Breton Development Corporation in the Maritimes. The Minister of Finance is the responsible minister. They can provide capital funds at the direction of the board of directors, but that has to meet certain tests and requirements as being a proper thing for regional development. Alternatively, the Government could guarantee.

That course is always open to the Government. The CDC introduced the extra feature to try to create a vehicle which at some stage might be attractive for public investment; to create it in such a way that nobody could get control, and there could be no grouping for purposes of getting control; in other words, to try to keep it in the public domain.

True, that cannot happen as long as the Government is a substantial shareholder. But conceivably, if this vehicle works the way they want it to, they may be able to withdraw a substantial part of their money some day—although for a long period of time I made my own assessment of what I thought about this as a public investment. However, Rome was not built in a day. Have you anything else to add?

**Mr. Hemens:** The Minister of Finance, when speaking to the House of Commons committee, referred to the: fairly tenuous position controlling a corporation of 10 per cent, if there really is dissatisfaction at the way the corporation is running.

He then went on to say that if the directors were messing things up, and were being supported by the Government 10 per cent, it would become very difficult because the

other shareholders will mobilize or somebody will mobilize them.

This is not feasible under the act, because of the definition of "associates".

**The Chairman:** The only way that could be done effectively would be at an annual meeting.

**Mr. Hemens:** So long as there is in the judgment of the directors an arrangement between two shareholders there is an association and therefore a forced sale.

**The Chairman:** But if the shareholders feel the directors are not taking a proper stand they do not have to go further, they can nominate.

**Mr. Hemens:** The definition of "associates" raises a problem.

**The Chairman:** I know it is not easy; that only means an associate in the event of pooling of shares to be more effective.

**Mr. Hemens:** No, sir, it does not. That is what bothers me. Section 4(2)(i) of Schedule I of Bill C-219 reads as follows:

(i) both shareholders are parties to an agreement or arrangement, a purpose of which, in the opinion of the Board of Directors, is to require the shareholders to act in concert with respect to their interest in the company;

That effectively overcomes any possibility of mobilization of shareholders in respect of directors. I suggest that should be considered.

**The Chairman:** Are you suggesting that if I decided to put on a proxy fight I could not go out and solicit proxies from all the shareholders?

**Mr. Hemens:** I do not think you could.

**The Chairman:** I can go and ask them to give me their proxies.

**Mr. Hemens:** I do not think you could; that would be an arrangement with another shareholder.

**The Chairman:** Is it? It depends on what I say.

**Mr. Hemens:** It is in the opinion of the directors.

**The Chairman:** Oh, yes; then there would be a lawsuit.

**Mr. Hemens:** That is correct.

**Senator Benidickson:** At page 5 of the brief the following appears:

It is generally known that the Chamber has not favoured the formation of the Canada Development Corporation. In fact, its Policy Statement on this subject in September, 1970..

Which is not long ago. It continues:  
was as follows:

It has not been demonstrated that the Canada Development Corporation fulfills an economic need



in Canada at the present time or that its proposed methods of financing or operating are practicable. (It can be questioned that there is an entrepreneurial gap or a gap in our capital market and, if there are such gaps, that the Canada Development Corporation is the best way of closing the gaps.) It is submitted that a full exploration should be conducted into the use of fiscal policy to encourage savings and their investment by Canadians in Canadian equity securities. The Chamber, therefore, is of the view that the Canada Development Corporation should not be proceeded with.

My observation is that you now take the stand that the Government is determined to have this bill passed and you question the usefulness of repeating your strong statement of last fall. You went further and were helpful in suggestions as to simply patching up the bill, but you kind of went chicken on your basic objection, in my opinion.

I wonder why that developed?

**Senator Hays:** It is similar to the capital gains tax.

**Mr. Peck:** We attempted to point out in the brief that the Chamber of Commerce has a procedure for developing policy, which flows through democratic processes from chambers throughout the country. The executive council could not make another statement on policy at this stage without conflicting with the usual procedures.

**Senator Benidickson:** Yes, but as the chairman has pointed out, this reference to the use of the fiscal weapons was utilized quite effectively on Friday night with respect to foreign investment in allowing interest to be charged as expense.

**The Chairman:** I would think that is the case in other parts of the budget. I have not made a particular analysis of it as yet.

**Senator Benidickson:** At the same time I rather agree with the fall statement that some of the faults could be remedied better by fiscal methods than by handing over a quarter of a billion dollars in the first instance. It will certainly be a group very largely influenced by the mandarins around Parliament Hill. I think the private sector could have done these things. If they had not done them properly the Government, by changing its fiscal and company laws, could have solved some of the problems.

**Mr. Hemens:** It has taken us approximately 20 years to convince the Minister of Finance of the necessity for the interest provision in the budget.

**The Chairman:** That is right; the fiscal policy sometimes is a slow, tedious and persistent effort that culminates years later. I know for instance in 1948-1949, the spearhead being Senator Euler and his chief lieutenant the chairman of this committee, that we were fighting for two measures and were voted down in the Senate every time. We thought that the prohibition against the manufacture and sale of oleomargarine in Canada was wrong and invalid. We finally put an innocent motion on the Order Paper asking that the constitutionality of that

statute be referred to the Supreme Court of Canada. It was referred and declared invalid, the decision being upheld by the Privy Council.

The second effort that Senator Euler put forward was against a sales tax on margarine. He argued that there was no sales tax on butter and that therefore there should not be one on margarine. It is a nutritious item of food and serves a useful purpose. Now it comes in the budget this time, 20 years later. That fits right into the pattern.

Maybe that is one of the answers. If you want some immediate economic growth you just cannot afford to wait that long. You must try something in the meantime.

**Mr. Hemens:** That would be dangerous.

**The Chairman:** We will adjourn until 2.15 p.m.  
The committee adjourned.

—The committee resumed at 2.15 p.m.

**The Chairman:** Honourable senators, this afternoon we have before us representatives from the Department of Finance: Mr. W. A. Kennett, Director, Capital Markets Division; Mr. R. B. Love, Legal Advisor; and Mr. W. D. Lennox, Accounting Consultant. How many of them we will need to call on, in addition to Mr. Kennett, will depend on the nature of the questions. There has been a rather lengthy airing of the provisions of the bill. With that in mind, and without restricting your eloquence, Mr. Kennett, you can make an opening statement on this bill.

**Mr. W. A. Kennett, Director, Capital Markets Division, Department of Finance:** Mr. Chairman, thank you very much. Honourable senators, this bill was first introduced into the house last January. It has been much discussed. It has been in the public limelight off and on for something like eight years. You had an excellent presentation of the technical aspects of this bill in your chairman's aspects of this bill in your chairman's introduction of the bill in the Senate. There is very little, if anything, I can add to that technical presentation. It was very complete and it represented quite a remarkable grasp of this rather complicated legislation. At least, it is complicated from my point of view, not being a corporation lawyer.

A number of amendments were made in the House of Commons when the bill was before committee. Many of them were rather small, tidying up amendments.

**Senator Benidickson:** How are those amendments shown? I was saying this morning that usually there is an underlining in the final bill that is sent to the Senate, and we compare that with the bill as introduced for first reading. Then we have an idea as to what the amendments are. I checked this morning and I could not see any underlining or any explanatory notes to indicate what changes were made as a result of the discussion in the House of Commons Finance Committee.

**The Chairman:** I understand that the underlining is done where the amendments are amendments in relation to a basic act. This is the same bill and it underwent

some treatment in committee, but when it comes out of committee it comes out in the form in which it leaves the committee and there is no underlining in those circumstances. I checked with our Law Clerk and he tells me that is right. That is why there is no underlining here.

**Senator Benidickson:** Could we hear what amendments were made to the original bill as presented on first reading?

**Mr. Kennett:** Mr. Chairman, we do have a copy of the bill where the amendments are underlined.

**Senator Benidickson:** I went to Distribution and the copy of the bill they gave me is perfectly plain. There is nothing to indicate what changes were made between the first presentation of the bill, and the final passing at third reading stage.

**The Chairman:** For your comfort and information, Senator Benidickson, here is a special copy of the bill with such underlining shown.

**Senator Benidickson:** Thank you, Mr. Chairman. That is satisfactory. I see the underlining.

**Mr. Kennett:** You can flip through the pages, senator, and see what in fact was done. This will be better than going through these amendments, as many of them are highly technical.

**The Chairman:** Mr. Kennett, there are but one or two things I see that might require some explanation. I am thinking of the submission made by the Canadian Chamber of Commerce. They thought the duties and responsibilities of the directors were not specific enough. They thought the powers were too broadly stated. Those were two of the main points they made. The third one was the position of the Government as the major shareholder, influencing the decisions of the board. Have you any comment on those three points?

**Mr. Kennett:** My understanding is—and I am speaking as an official, I want that to be quite clear.

**The Chairman:** That is right. In the case of any question that smacks of policy, do not answer it.

**Mr. Kennett:** Thank you. My understanding is that the objects of the bill are intentionally broad. They are broad because this is a statutory corporation. They are broad because it is intended that this corporation will have a long life and will want to be able to act in changing circumstances. They are broad to give the board of directors the power it will need, through time, to act in response to particular situations. On the other hand, efforts have been made to make the objects sufficiently specific, in their philosophy, in the direction in which they go, to give some guidance to the board of directors.

It would be difficult to recruit the kind of directors that would be required to make this corporation a successful corporation, if they were confined and restrained unduly. To get the right kind of people, who will take the difficult kinds of decisions which were discussed in this committee this morning, it is necessary to give them

some flexibility in their operations. The general drift of this corporation is quite clear in the objects and powers of the corporation.

**Senator Cook:** The best thing for the Government would be to appoint the members of the Senate Committee on Banking, Trade and Commerce as the first directors, and then it would be sure to be successful!

**Senator Beaubien:** It cannot help but succeed then.

**The Chairman:** They have some experience in the responsibilities and also in the criticism.

**Senator Cook:** I do not think this is going to give the directors wisdom if they have not got it when they are appointed.

**The Chairman:** This is something we do not control.

**Senator Cook:** I hope I am not being too premature. I move that we report the bill without amendment.

**Senator Benidickson:** I want to indicate that I have lived with this bill for quite a little while. I was a member of the cabinet when the concept was first developed. At that time I think the emphasis was on buying back Canada, and it seemed to be a pretty substantial undertaking. This bill in little ways resembles that original concept. I still think it is riddled with ambiguities. I do not propose to ask these witnesses in detail about some of these points.

I think the timing is bad, because from the beginning, eight years ago, when I was associated with the concept, it had a very definite relationship with policy in respect to foreign ownership in Canada.

Before we dealt with this bill—which the Government did not consider too urgent for eight years—we should have had the Honourable Mr. Gray's report—he has been working on it for some time—as to Government policy on this matter of foreign investment and what to do about it.

Mr. Chairman, rather than go into detail on the clauses of the bill, I may have a few words to say on third reading in the chamber.

**The Chairman:** This bill has had ample study in the Senate, even before it came to this Committee. I am not saying that because I dealt with it as sponsor. We did elaborate and develop all the aspects of the bill, so I would say there is no feature that is not known.

**Senator Beaubien:** There is not much to add.

**The Chairman:** On the question of repatriation that you are speaking about.

**Senator Benidickson:** There is nothing on that here.

**The Chairman:** There is nothing in this bill which makes any declaration of policy with respect to repatriation.

**Senator Benidickson:** That is right.

**The Chairman:** I would say that the powers of investment are such that they could invest in shares of a



company which is non-resident owned. It is difficult to restrict investment policy. If the terms are national interest and profitability, there may be non-resident ownership of a Canadian enterprise that would be a very valuable thing to acquire.

**Senator Benidickson:** That is not presented by the bill.

**The Chairman:** No, it is not presented.

**Senator Benidickson:** I am saying that over the years it is no longer the main point of emphasis in the concept of the Canada Development Corporation.

**The Chairman:** That is right.

**Senator Croll:** I support this bill, but one thing did arise. There is a provision for directors to appoint directors.

**The Chairman:** It is the usual provision where, if there is a vacancy and as long as there is a quorum, the remaining directors may appoint directors.

**Senator Benidickson:** I was not sure in reading that section. That is page 8.

**Senator Croll:** That is not the normal corporate practice.

**The Chairman:** It is.

**Senator Beaubien:** During the year, yes. At the end of the year the shareholders elect a board of directors.

**Senator Croll:** I know.

**The Chairman:** Senator, the Canada Corporations Act uses the word "elect" where we heretofore used to talk about appointing for the balance of the term.

**Senator Croll:** That is right.

**The Chairman:** They use the word "elect", so you use the language of the statute.

**Senator Benidickson:** But there is no reference to "balance of term". It does sometimes happen that a director is appointed for the remaining portion of another director's term, and then the shareholders are the ones who elect the directors for the next term.

**The Chairman:** All it says, senator, on page 8, section 12(4) is:

The directors may from time to time appoint any other person as a director, either to fill a casual vacancy or as an addition to the Board, but the total number of directors, subject to section 41, shall not at any time exceed the maximum number fixed under section 11.

That is a minimum of 18 or a maximum of 21.

**Senator Beaubien:** They could only act, then if there was a vacancy either in the total number or if someone fell out who had already been appointed.

**The Chairman:** That is right.

**Senator Beaubien:** That is the normal practice in business. At the end of the year all the people who are directors would have to be re-elected or reappointed.

**The Chairman:** That is right. When you are elected a director you are only a director until your successor is appointed.

**Senator Croll:** All right.

**The Chairman:** Senator Cook, do you have any other questions?

**Senator Cook:** No.

**The Chairman:** I have noted what your motion is, Senator Gélinas?

**Senator Gélinas:** I support the bill.

**The Chairman:** Senator Carter?

**Senator Carter:** No.

**The Chairman:** Senator Sullivan?

**Senator Sullivan:** No questions.

**Senator Benidickson:** Mr. Chairman...

**The Chairman:** We have heard from you.

**Senator Benidickson:** May I speak again?

**The Chairman:** Yes.

**Senator Benidickson:** What is the situation with respect to voting for preferred stock? It is optional, is it not, that the board can decide whether to allow voting privileges on the preferred stock or not allow voting privileges on the preferred stock?

**The Chairman:** That is put a little differently, senator. I think the provisions in the bill are that preferred shares may be issued in series. One series, if the directors so determine, may carry voting privileges in certain events, that is, if there is default in payment of dividends, et cetera; but they may also be issued without any voting rights. This depends on whatever the conditions are that are attached to them. Section 18(2) states:

In the absence of other provisions on that behalf in the by-laws, the preferred shares of the company do not carry voting rights.

But remember that a preferred share that carries a voting right in any circumstances is, for the purposes of this bill, a voting share. Regardless of whatever restriction and everything else in the bill, it is in the category of a voting share.

**Senator Croll:** Will you stop talking this bill out?

**The Chairman:** I am so anxious that each senator should fully understand that, when he asks a question, that I do not want him to feel that the chairman has been..

**Senator Benidickson:** We are very careful, Mr. Chairman. We do not often have the free benefit of your counsel.



**Senator Croll:** The emphasis was on the "free".

**The Chairman:** It is free in the sense that I do not get any more than the rest of you. Before I put this motion, Mr. Kennett, is there anything more that you wish to say?

**Mr. Kennett:** No, sir.

**The Chairman:** Mr. Love?

**Mr. Love:** No, sir.

**The Chairman:** Mr. Lennox?

**Mr. Lennox:** No.

**The Chairman:** We have a motion to report this bill without amendment. Those in favour? Contrary?

Motion carried.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

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No. 33

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WEDNESDAY, JUNE 23, 1971

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**Complete Proceedings on Bill C-239,**

intituled:

“An Act to amend the Prairie Grain Advance Payments Act”

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**REPORT OF THE COMMITTEE**

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Haig
Beaubien	Hayden
Benidickson	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Smith
Desruisseaux	Sullivan
Everett	Walker
Gélinas	Welch
Giguère	White
Grosart	Willis—(29).

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 23, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Argue, seconded by the Honourable Senator Lafond, for the second reading of the Bill C-239, intituled: "An Act to amend the Prairie Grain Advance Payments Act".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Argue moved, seconded by the Honourable Senator McNamara, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Tuesday, June 29, 1971.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider the following Bill:

Bill C-239 "An Act to amend the Prairie Grain Advance Payments Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Burchill, Giguère, Haig, Macnaughton and Molson—(8).

*Present, but not of the Committee:* The Honourable Senator Lafond—(1).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

## WITNESSES:

*Department of Industry, Trade and Commerce:*

Mr. W. E. Jarvis, Co-ordinator,  
Grains Group;

Mr. N. A. O'Connell, Executive Secretary,  
Grains Group.

Upon motion it was Resolved to report the said Bill without amendment.

At 10:10 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Tuesday, June 29, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-239, intituled: "An Act to amend the Prairie Grain Advance Payments Act", has in obedience to the order of reference of June 23, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Tuesday, June 29, 1971

[Text]

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-239, to amend the Prairie Grain Advance Payments Act, met this day at 9.30 a.m. to give consideration to the bill.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, this morning we are dealing with Bill C-239, and we have here to explain it Mr. W. E. Jarvis, Co-ordinator, and Mr. N. A. O'Connell, Executive Secretary, the Grains Group, Department of Industry, Trade and Commerce. Mr. Jarvis will make the opening statement.

**Mr. W. E. Jarvis, Co-ordinator, Grains Group, Department of Industry, Trade and Commerce:** Mr. Chairman and honourable senators, this bill contains relatively minor amendments to the Prairie Grain Advance Payments Act. The primary purpose of the act is to give producers the opportunity to receive advance payments at the beginning of the crop year, on grains which they will deliver to the Canadian Wheat Board. The amendments continue the pursuit of that objective, but some changes are involved.

The most important change is that wheat, oats and barley will be given more equal treatment. In the past the maximum loan was \$6,000—as it continues to be—but that maximum could only be had by taking an advance on wheat. With these amendments, if a producer has enough oats or barley and has sufficient quota and marketing opportunities available to him, he will be able to get a maximum on either oats or barley as well. The rate of advance per bushel is set in the statute now at \$1 for wheat, 70 cents for barley and 40 cents for oats. This bill provides for a rate to be established at the beginning of each crop year, but specifies that it must be in an amount approximately two-thirds of the initial price for the grade of grain which will be in the largest volume in the forthcoming year. So it is geared to adapt itself from year to year to the actual quality situation of the crop.

**The Chairman:** I notice that the bill is to come into force on August 1. That is a significant date, is it not?

**Mr. Jarvis:** Yes, that is the beginning of the crop year, and we are most anxious to have the bill in effect at that time, if possible.

**The Chairman:** Is the initial price you talked about the basis for determining the advance?

**Mr. Jarvis:** That is correct.

**The Chairman:** It is determined on that basis.

**Mr. Jarvis:** That is right. All the machinery for the new year comes into effect on that date.

With respect to repayment, rather than paying back an amount which is different from the rate of advance per bushel as it now is in the act, the new provisions will make the rate of repayment exactly the same as the rate of advance. Moreover, the amount of advance will be geared to an individual's marketing opportunity. He must have the quota opportunity available to him to get the advance. These two things combine to give much greater certainty that the advance which is given at the beginning of the crop year, shortly after August 1 in most cases, will be repaid completely during the year.

**The Chairman:** What is the rate of advance, for instance, for barley?

**Mr. Jarvis:** That will be set later, but it looks as though it will be in the area of 60 to 65 cents a bushel, as of August 1 this year; and then they can repay it at the same rate.

**The Chairman:** But you mentioned the figure of 70 cents for barley. What was that figure?

**Mr. Jarvis:** That is what is in the act now. This bill would have the effect of replacing it with an amount to be set each year.

**The Chairman:** The amount you mentioned, 60 to 65 cents, would be the total amount of advance in respect of barley, then.

**Mr. Jarvis:** Yes, it will be an amount per bushel determined at the beginning of the year, and it will also be determined by acre. If the quota opportunity for barley looks like 12 bushels and the man has been assigned 50 acres for the delivery of barley, then it is an arithmetical calculation of 50 acres, 12 bushels and 60 cents, if that is the figure, so long as he has the grain on hand.

**The Chairman:** Is this advance paid by instalments? That is what I had in mind when I asked the question about rates.

**Mr. Jarvis:** Normally, producers come in at the beginning of the year to take out advances. Although an increasing proportion of the producers come in, only a certain proportion take out advances. Those who do normally take the advance in one action. There is nothing to prevent their coming back, and some do take advances

early in the year and then come back for more a little later.

I should like to comment briefly on two other points. Two situations are dealt with in this bill which previously had been left to separate legislation. The first is in respect of advances for the drying of grain in years of very difficult harvesting conditions, when there is a lot of grain to dry. There has been legislation from time to time to provide advances against the cost of drying. These are included in the bill on the basis of a provision for Governor-in-Council action. The second is that there is a similar provision for advances in an unharvested year. Both these depend on the Governor in Council taking action in a year in which these kinds of measures are required.

Mr. Chairman, in summary those are the main provisions of Bill C-239.

**Senator Macnaughton:** Mr. Jarvis, who has the right to fix the rate?

**Mr. Jarvis:** The Governor in Council finally sets it each year, prior to August 1.

**Senator Macnaughton:** Which means, in effect, the Wheat Board.

**Mr. Jarvis:** Well, the Wheat Board administers it so they will certainly be involved in recommendations and will certainly give their advice as to what is going to be the largest volume grade associated with it, but then the cabinet would decide on the actual rate.

**The Chairman:** Which minister who made the recommendation?

**Mr. Jarvis:** I am not sure, just at the moment.

**Senator Haig:** It would be the minister who answers for the Canadian Wheat Board, surely.

**Mr. Jarvis:** That is the practice, yes.

**Senator Haig:** The Wheat Board will have to give you the mechanics of this whole thing, the quota system and what the producers intend to produce. They will set what they think will be the ceiling price of that grain.

**Mr. Jarvis:** That is right. Indeed, they administer it.

**Senator Smith:** This bill does not spell that out, though. It is in the act which this bill amends.

**Mr. Jarvis:** That is right, except that the act does not say that the Canadian Wheat Board shall administer it. That is by arrangement. That is the machinery we use.

**Senator Burchill:** What is the basis of the price on which the advance is made?

**Mr. Jarvis:** The price is the initial price which is set for the total of the crop year on the basis of the Lakehead price or the price at Vancouver. For example, in the forthcoming year it has been indicated that the initial price on No. 1 C.W. wheat at the Lakehead will be \$1.46. This bill provides that the cash advance shall be in an

amount approximating two-thirds of the initial price and relating to the largest volume grade. We anticipate that No. 1 C.W. will be the largest. Therefore, approximately two-thirds of \$1.46 will be the rate for wheat.

**Senator Burchill:** But this advance is available before seeding.

**Mr. Jarvis:** No. It is renewed as of August 1. So far as this bill and the Canadian Wheat Board are concerned, the new year starts on August 1.

**Senator Burchill:** Then the initial price is fixed before that.

**Mr. Jarvis:** Yes. The initial price is set before August 1 for that crop year.

**Senator Smith:** It is a forecast arrangement made to the best of the knowledge of the Wheat Board and other advisers. It is a kind of determination of what they think the price is going to be. They make that and call it the initial price. Then, as the crop year progresses, they make a final settlement. I know that in many years when there has been more they have paid that extra final price, but has there ever been a crop year in which the initial price was more than the final settlement?

**Mr. Jarvis:** That has happened on two or three occasions, but it has been a rare occurrence. There was a pool on oats early in the 1960s when that happened. There was a pool on wheat in 1968-69, when there was a loss, and I believe in that same year there was a loss in barley.

**Senator Smith:** What happens to the particular farmer, if there is a loss, in relationship to the Wheat Board?

**Mr. Jarvis:** Well, he has received his initial payment and the Canadian Wheat Board has provided over the years that the Government picks up any losses on pools.

**Senator Smith:** This does not happen very often?

**Mr. Jarvis:** It has not happened very often.

**Senator Smith:** Just once in a while. In parts of the country where they are not familiar with or very well informed about western agriculture, the general feeling is that the farmers have been heavily subsidized over the years.

**The Chairman:** I notice that when the question arose as to who the minister was, you referred us to the original act. In that act, section 15 reads as follows:

15. As soon as practicable after receiving requests therefor from the Board, the Minister of Finance shall out of the Consolidated Revenue Fund pay to the Board

(a) interest charges paid or payable by the Board with respect to money borrowed by it or advanced on its behalf for the purposes of this Act, and

(b) amounts of advance payments outstanding at the time of default, to the extent that the Board has not been reimbursed therefor after default.



"The Board" there is the Wheat Board, so, in connection with the financing arrangements, first of all you have to go to the Minister of Finance and then he has to go to the Consolidated Revenue Fund.

**Mr. Jarvis:** This is an important provision in this bill because these are interest-free cash advances, and unless a loan goes into default, as the bill provides, there is no interest charge. Also if he pays in cash rather than in grain, the bill provides that he shall pay interest.

**The Chairman:** The Wheat Board handles the wheat, barley and oats?

**Mr. Jarvis:** That is right.

**The Chairman:** And it is the vehicle through which the sales are made?

**Mr. Jarvis:** That is right.

**The Chairman:** Therefore, the Wheat Board can receive the proceeds of the sale, and all it has to do is look at the ledger and see if "John Jones", for whom they have sold and whom they have credited with a

certain quantity of wheat, oats or barley, owes so much in respect of advances. So they can do all the arithmetic themselves, can they not?

**Mr. Jarvis:** Yes, Mr. Chairman, it is a very straightforward mechanism in the sense that every producer has a permit book and, if he gets an advance, it is recorded in this book, and with every delivery there is an offset against that. It is a very straightforward method.

**The Chairman:** He would never get more than a net amount of money. It would always be less what he owes?

**Mr. Jarvis:** That is correct.

**The Chairman:** Are there any other questions?

**Senator Beaubien:** Mr. Chairman, I move that we report the bill without amendment.

**The Chairman:** Is the committee satisfied with the explanations we have had?

Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 34

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WEDNESDAY, SEPTEMBER 15, 1971

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First Proceedings on Bill S-22,

intituled:

"An Act to incorporate United Bank of Canada"

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(Witnesses—See Minutes of Proceedings)





THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Haig
Beaubien	Hayden
Benidickson	Hays
Burchill	Isnor
Carter	Kinley
Choquette	Lang
Connolly ( <i>Ottawa West</i> )	Macnaughton
Cook	Molson
Croll	Smith
Desruisseaux	Sullivan
Everett	Walker
Gélinas	Welch
Giguère	White
Grosart	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 15, 1971:

"Pursuant to the Order of the Day, the Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Macnaughton, P.C., that the Bill S-22, intituled: "An Act to incorporate United Bank of Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Macnaughton, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, September 15, 1971.

(38)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider the following Bill:

Bill S-22, "An Act to incorporate United Bank of Canada".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Everett, Haig Lang, Molson, Smith, Sullivan, Walker and Welch—(16).

*Present, but not of the Committee:* The Honourable Senators Laird and Robichaud—(2).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Director of Committees, Assistant Law Clerk and Parliamentary Counsel.

Upon motion of the Honourable Senator Molson it was Resolved that, unless and until otherwise ordered by the Committee, 800 copies in English and 300 copies in French of all proceedings of this Committee be printed.

*WITNESSES:*

Mr. B. V. Levinter, Q.C., Counsel,  
United Bank of Canada;

Mr. W. E. Scott,  
Inspector General of Banks;

Mr. A. S. Goldberg, Counsel,  
United Trust Company.

At 11:10 a.m. the Committee deferred consideration of Bill S-22 to a later date and then proceeded *in camera*.

At 11:50 a.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, September 15, 1971.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-22, to incorporate United Bank of Canada, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. We have before us this morning Bill S-22, an Act to incorporate United Bank of Canada.

I suggest that before we proceed with the hearing on this bill we pass a general resolution to print all proceedings of this committee, unless in a particular case we decide not to. There seems to be some confusion, although I thought the understanding was clear that all proceedings would be printed unless we made the decision otherwise. A resolution in our *Minutes of Proceedings* of today would clarify the situation. Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** We have appearing before us those proposing the incorporation. Mr. B. V. Levinter, Q.C., is appearing as counsel, I believe. Also Mr. G. R. Dryden is appearing as counsel.

As I understand it, the provisional directors are also present, and I expect that counsel for the applicants will introduce them.

The United Trust Company is also appearing, I think on the point of protesting against the name; and we expect the Inspector General of banks to be here.

Mr. Levinter and Mr. Dryden, both of you are appearing as counsel. Who is going to make the initial presentation?

**Mr. B. V. Levinter, Q.C., Counsel:** I am, Mr. Chairman.

**Mr. G. R. Dryden, Counsel:** I had not understood that I was appearing as counsel, senator.

**The Chairman:** Your name appears on the list as counsel; that is all I know, but I did not create the list.

Will you proceed, Mr. Levinter, and give us a summary of the purposes of this bill?

**Mr. B. V. Levinter:** Mr. Chairman and honourable senators, I come before you as the representative of the provisional Board of Directors of the proposed United Bank of Canada; and at the outset, may I thank you on behalf of the members of the provisional board for the opportunity of appearing before you. I know you have pressing problems constantly before you, so vital to the wellbeing and interests of our nation.

You may ask how the idea for a new bank was first conceived. The idea was first engendered roughly a year ago, when the Honourable Walter Gordon addressed a group of Jewish people, suggesting to them that they had failed to take part in the field of banking in Canada, although they had been most active in every other aspect of Canadian life. I considered his remarks, for undoubtedly they were the truth; but his remarks applied equally to many other ethnic groups which represent a considerable and significant portion of the Canadian population.

Canada is a great country, made up of at least 23 different ethnic groups, including people of French origin, Anglo Saxon origin, and the many others who make up the rich mosaic of Canada today.

A cosmopolitan bank representative of all people in this country was thus conceived; a bank which at this crucial stage in our country's development would provide involvement, dialogue and communication with all people, and which would take into account the basic needs, and hopes, of people at all levels of Canadian society.

Meaningful involvement, dialogue and communication must start at the top—the Board of Directors—because it is here that every philosophy and direction of an organization is established. It is from the board that the organization is established. It is from the board that the organization acquires its character, its beliefs, its prejudices and approval in the business society. Thus, in this aspect it is our fervent desire to cope with the needs of all peoples in this country with the United Bank of Canada.

We believe a new chartered bank should come into being under a board representative of all Canadians and their growing needs. Ours will be such a board; ours will be such a bank. At the present time the provisional board is made up of a director from our French-Canadian community, a director from our Polish community, a director from our Italian community, and two directors from our Jewish community, namely, my father and myself. May I introduce to you our directors: Dr. Gerald LaSalle from Sherbrooke, Quebec; Mr. Zenon Gutkowski from Toronto; Mr. A. J. Pianosi from Sudbury; my father and myself.

Perhaps, honourable senators, I might give you a brief breakdown of the background of the various provisional directors. Firstly, may I mention Dr. Gerald LaSalle. In 1940 he obtained his MD at Laval University. In 1941 he went into the practice of general medicine at Ansonville in Ontario. In 1944 he was a member of the Royal Canadian Army Medical Corps. In 1946 he returned to the practice of general medicine, in Montreal. In 1952 he became the assistant medical director of the Royal Victoria Hospital in Montreal. In 1953 he became the director of Montreal University Hospital and a director of the Montreal Hospital Council. In 1955 he was the founder and director of the Superior Institute of

Hospital Administration at the University of Montreal and Professor of hospital administration at the University of Montreal. In 1956 he was the founder and first executive director of the Quebec Hospital Association. In 1961 he became the Registrar of the College of Physicians and Surgeons of the Province of Quebec. In 1963 he became a member of the Board of the Excellence Life Insurance Company, in Montreal. In 1964 he was the Dean of the faculty of medicine at the University of Sherbrooke and the executive director of the University Hospital, executive director of the Health Services Centre and a Governor of the College of Physicians and Surgeons of the Province of Quebec. In 1968 he became vice-president in charge of medical affairs at the University of Sherbrooke. In 1969 he became an honorary colonel in the 8th Medical Army Corps.

Mr. Pianosi is president of Norite Builders Limited in Sudbury and president of Pianosi Brothers Construction Company in Toronto. He has been active in Sudbury all his life, firstly in the groceteria business and then in the building and real estate business. He was born in Copper Cliff, where he has since resided. He was educated at Copper Cliff Public School, St. Michael's College School and served in the Canadian armed forces from 1941 to 1946. He is a life member of the Royal Canadian Legion. He serves on the Board of Regents of the University of Sudbury. He is a director of the Montessori Club of Sudbury; a director of the Sudbury & District Boys Home. He is a trustee of the Italian Society in Copper Cliff and a former Vice-president of the Sudbury District Progressive Conservative Party.

Mr. Gutkowski was born in Lodz, Poland, on August 22, 1930. He became a landed Canadian immigrant in 1949 and was granted Canadian citizenship in 1954. He became a chartered accountant in 1959 and from 1960 to 1963 successfully completed the course in Commerce and Finance at the University of Toronto. From 1960 to the present he has been a lecturer in accounting and auditing in the Certified General Accountants' Association of Ontario. From 1960 to 1966 he was an instructor with the chartered accountants course at Queen's University in the School of Business at Kingston. He was an instructor at the University of Toronto in the Department of Extension in 1960 and 1961. In 1961 and 1962 he was a class assistant in the faculty of commerce at the University of Toronto, in the Department of Political Economy. From 1959 to 1960 he was a business assessor for the Department of National Revenue. From 1957 to 1969 he was a director, the treasurer and the manager of the St. Stanislaus' Parish (Toronto) Credit Union Limited and increased their assets under his managership from \$950,000 to \$10 million when he retired. From 1969, when he retired as president, he has been a director and first vice-president of this credit union.

My father was born in October of 1898 and, as some of you may know, graduated from Osgoode Hall Law School in 1921, and has practised as a barrister and solicitor ever since. He was appointed Queen's Counsel in 1936; he has served three terms as a Bencher of the Law Society of Upper Canada, is presently a Life Bencher of the Law Society of Upper Canada and is a director of the International Academy of Trial Lawyers, of which there are only three members in Canada. He heads the firm of Levinter, Dryden, Bliss, Maxwell & Hart.

The last member of the board is myself. I am also a partner of the firm of Levinter, Dryden, Bliss, Maxwell & Hart. I was born in

Toronto and attended Upper Canada College, Weston and Oakwood Collegiates and the Ontario Agricultural College in Guelph, from which I graduated in 1947 with a Bachelor of Science in Agriculture (Animal Husbandry). I then attended Osgoode Hall, was called to the Bar in 1952 and joined the firm in which my father was a senior partner. I was subsequently appointed a Queen's Counsel. I am a member of the Advocates' Society and the International Academy of Trial Lawyers.

One of the best decisions I ever made was to marry the former Marion Fischer, granddaughter of the late T. Stewart Lyon, one-time editor of the *Globe*, and later chairman of Ontario Hydro. We have four marvellous children, of whom we are eminently proud.

At this time may I note that our banking system was modelled after that which developed and which was still developing in the middle 19th century, in England, then the greatest mercantile power in the world. The system was the branch system, the advantages of which were many. To mention a few: there was the ability to harness scarce resources so as to take deposits from one community for use in the development of another. There was the ability of an enterprise to attract persons of talent, develop specialist expertise, to go before the world with the implication that "We are a Canadian bank, we are a great bank, and we deal wherever in the world the business of banking and the business of Canada takes us."

The system was excellent, but the needs of Canada are changing. The provisional board has a regional concept. Our concept is to set up advisory boards within different areas of Canada. These boards will be composed of local people who are familiar with local needs. It is hoped that within guidelines and controls set up by the permanent board of the bank, and management, these boards will run their branches within their regions and be, to as great an extent as possible, autonomous.

A further concept relates to what has been said before as to how our banking industry grew; that is, by taking funds from one area of the country for the development of other areas within Canada. Our concept is that, as much as feasible, loans shall be made in areas in proportion to the deposits which the area has contributed, so that this money will be available for the development of areas in which these deposits have been made. This, of course, has its limitations. Firstly, there is the availability of proper loans in specific areas. Secondly, one must follow good business practice. Thirdly, one must practise good banking practice; and, fourthly, the welfare of the bank as a whole as management conceives it. This we believe merits your consideration with regard to our charter. That is our regional concept.

A further consideration for the granting of the charter is that we believe in further competition in the banking industry. The demand for financial services is increasing at a rapid rate. It is in the public interest that we have more competition in banking; another bank to service Canadians and Canadian business. The banking industry is well regulated and controlled by the Government by way of the Bank Act and the Inspector General of Banking. Depositors are protected by the Canadian Depositors Insurance Corporation.

Banking is a profitable industry now operating to full capacity. We are in fact asking for a charter to compete in an industry where demand exceeds supply. The average rate of return on equity after



tax has increased from 8.92 per cent in 1963 to 11.82 per cent in 1971, as calculated by the Canadian Bankers' Association.

A new well organized bank cannot help but stimulate the Canadian economy, if only through a new approach to solving financial problems. The bank sees as its major role that of solving customers' problems. It will establish and maintain leadership in this field through the following: firstly, a constant awareness and reassessment of consumer wants and needs; secondly, a continual reappraisal of all aspects of its operation with a view to improving performance; thirdly, an unbiased appraisal of any new technological developments that may be used to improve management efficiency; fourthly, a willingness to accept the problems which inevitably arise from a drive for growth and profits; fifthly, an approach that looks for opportunities rather than problems in any given situation; and, sixthly, and very important, a strong social commitment.

As regards financing for the new bank, our first move was to hire the firm of Chartec Limited to survey the investment community with respect to the raising of capital. Chartec was provided with four guidelines. Firstly, ownership of the bank was to be held as widely as possible by as many Canadians as possible. Secondly, the bank was to have an initial capital of at least \$20 million. Thirdly, the provincial directors were in no way to control the bank financially. And, fourthly, Chartec and its members were to have no financial interest in the actual sale of the shares.

**Senator Connolly (Ottawa West):** What is Chartec?

**Mr. B. V. Levinter:** Chartec is composed of Mr. Dennis Dwyer, Mr. Robert Wilson, and Mr. Bernard Charest. They are located in Montreal and are financial consultants. Mr. Dwyer has had a great deal of experience in the marketing of securities. Mr. Wilson has had a great deal of experience in institutional buying, and Mr. Charest has had a great deal of experience in management of investment funds. They came to us very highly recommended.

We are pleased to advise that on the basis of their investigations, which we have very closely examined, we are assured that upon receipt of the charter the bank will be able to raise at least \$20 million.

May I now discuss the topic of management? We admit that we were very concerned at first about our ability to attract bankers with the qualities, commitments and senior banking level expertise required to start and operate a bank on an on-going basis under our philosophy. Any doubts that we might have had have certainly been dispelled. To date we have had numerous inquiries at all levels regarding possible employment, and we are pleased to advise that we have a commitment from a senior Canadian banker to join our board and become president and chief executive officer if and when we are granted a charter. We have tentatively reviewed our manpower policies and requirements with him, and we can assure you that our organization will be manned with bankers who are wholly professional and wholly Canadian.

Our priorities during the first year will be to hire and train personnel, the establishment of uniform systems, methods and procedures, and formalization of the personnel, credit, administration and marketing functions. At the same time we will be laying

out the operating manuals—routine procedures and bank forms required to provide the day-to-day basis of the banking services available through chartered banks today.

Our prime objective is to develop a solid basis from which the bank can build and expand. This task will involve considerable detailed work in the areas of manpower planning, compensation, employment, training, public relations, accounting, management information systems, control, capital budgeting, profit planning and analysis, purchasing, premises, service mix, pricing, advertising, market research, liquidity management, consumer loans, commercial loans, et cetera, and in some stages will of necessity overlap with our branch expansion program.

We will establish branches as soon as it is practicable in the key commercial sectors of Canada. The exact locations and priorities are, of course, a decision for management. We are also aware of the tremendous role Canadian banks play in the international financial markets, and we intend to move in this direction from a solid Canadian base by establishing strong correspondent bank relationships, and thereby evolving a reputation for soundness and integrity in the international money market, and ultimately establish representative offices abroad and expand by whatever means are available and appropriate in the future.

Therefore, in summing up my submission may I say to you the following. It is in the public interest that this application to Parliament for the charter for the United Bank of Canada should be granted. The applicants have proceeded as carefully and as responsibly as they could with every aspect of the matter, and we shall continue to do so.

Enlarging to some extent on why I say it is in the public interest, may I say it is in the public interest that we have more competition in Canadian banking. Particularly, we should have a new national bank to compete with the others. It is in the public interest, quite apart from the aspect of competition, that we have another bank to serve Canadians and Canadian business, by broadening the credit-granting base; that is, taking money into financial institutions to broaden the credit base.

**Senator Beaubien:** Mr. Chairman, may I ask the witness a question? Do you know any country that has more banks to serve its population than Canada? Though you do not seem to think this committee knows very much about banking, we have gone into this subject quite fully, I believe, and I do not think there is a committee in this country that knows more about banking than this one. When you talk of broadening the base, do you know any country that has anything like as many banks that serve the population as this country?

**Mr. B. V. Levinter:** Senator, if you are referring to branches, that is one thing. When it comes to banks, there are many.

**Senator Beaubien:** What serves the public? It is the branches. If you are in any town in Canada there may be four different banks you can go to. They may be branches, but they are there.

**Mr. B. V. Levinter:** With respect, I submit that there are nine banks in this country.



**Senator Beaubien:** How many branches, and how many branches per bank?

**Mr. B. V. Levinter:** There are a great number of branches, but you have nine banks competing with one another. There are many branches.

**The Chairman:** I am wondering why you draw the distinction between banks and branches. The branches are the tools, are they not?

**Mr. B. V. Levinter:** Yes, sir.

**The Chairman:** You are proposing to have branches?

**Mr. B. V. Levinter:** Yes, of course.

**The Chairman:** Therefore, there must be some virtue and some need in order to operate a bank in having branches to serve people.

**Mr. B. V. Levinter:** Unquestionably. Of course, I agree with the branch system completely. It is the same as with car manufacturers. If there are five manufacturers of cars, they may have thousands of dealerships, but the fact remains that there are only five makes of cars competing with one another. That is my only point.

**The Chairman:** But all the banks have the same product, do they not—that is, money?

**Mr. B. V. Levinter:** That is very true, sir.

**Senator Molson:** The head office, I presume, will be Toronto?

**Mr. B. V. Levinter:** Yes, sir.

**Senator Molson:** I suppose the first branch would be in Toronto. How many branches is it contemplated to open initially?

**Mr. B. V. Levinter:** Establishing branches is expensive.

**Senator Molson:** I know that very well. I just want to know what your plans are initially. Are you going to start with one branch, five branches, ten branches? What is the contemplated number?

**Mr. B. V. Levinter:** What I, as a member of the board, would like to see is five branches opened—in Montreal, Toronto, Winnipeg, Calgary and Vancouver. I would think the first priorities would be Toronto and Montreal, and I would hope they would open almost simultaneously. Then, as management considers it advisable—and we must rely on our experienced management—I would like to see branches open in these other centres as quickly as is reasonable.

**Senator Molson:** You are talking of raising \$20 million. How much of that would be capital and how much would be paid-in surplus?

**Mr. B. V. Levinter:** We anticipate forming shares at \$5 a share. Subject again to what our investment counsellors and the people who will be marketing the stock advise, we are now working with a tentative figure of \$25 per share, which would leave a \$20 spread. This would be subject again to advice from the experts.

**The Chairman:** Mr. Levinter, at the beginning of your remarks you stressed the racial origins in connection with the establishment of this bank. In operation is it proposed that there be any direction

of policy for loaning, for soliciting deposits, and so forth, on the basis of racial origins of people? What was the purpose of stressing racial origins in connection with this application?

**Mr. B. V. Levinter:** This is not stressed. It is no more important than any other of the aspects I have mentioned. It is submitted that various ethnic groups have not taken part in banking. I believe it is an acknowledged fact. This is one of the things that we want to accomplish, to give all people—and I stress all people—the opportunity to participate in banking at all levels. If one asks whether the purpose of the bank is only to look after specific European ethnic groups, the answer is no. The answer is that this bank is a bank of Canadians. We are all Canadians. I do not care what our ethnic background is, we are all Canadians. However, as banking has developed, many Canadians of various ethnic backgrounds have not had the opportunity to take part in, or they have not in any event taken an active part in, banking, so we conceived that this would create the vehicle.

**Senator Connolly:** Do you think the Scots have had the monopoly so far?

**Mr. B. V. Levinter:** I would prefer not to make any comment on that, senator.

**The Chairman:** Do you know how many of the various ethnic groups are presently shareholders of existing banks?

**Mr. B. V. Levinter:** No, sir, I do not.

**The Chairman:** So when you make the statement that they are not taking part, it is at best a surmise?

**Mr. B. V. Levinter:** Well, sir, it depends on the area of “taking part” we are discussing. I have no doubt that there are a number of ethnic groups that have investments in banks. For instance, I might have in my portfolio, as I did have, a certain amount of money in banks. What I am talking about in referring to “taking part” is being on the board, taking an active part in management, and in the operations of the bank. I am not talking about the investment sector.

**The Chairman:** Are there any other questions?

**Senator Carter:** In establishing this new bank are you trying to fill any gap that is not being filled by the present banking system, the nine banks? Will you have a different policy? Are your objectives in any way different from those of the existing banks?

**Mr. B. V. Levinter:** Our first and primary objective is to have a successful bank. Our second objective is related to social conscience. We cannot deal with the largest accounts, because we will not have enough money. We want to try to encourage and develop smaller businesses. Yes, I think that we will try to look at small business with more understanding, knowing the problems that small business has in getting operating capital to expand.

**Senator Connolly:** How would you have that kind of expertise of knowing what small business requirements are? Is this going to result from training?

**Mr. B. V. Levinter:** I am sorry, I did not hear the complete question.

**Senator Connolly (Ottawa West):** I will repeat it. You said that what you intended to do was look after the requirements primarily of small business, at least at the beginning. To do this you must have some expertise as to the requirements, the legitimate and reasonable requirements of small business. Where will you get that expertise? By Training?

**Mr. B. V. Levinter:** From training and from existing banking institutions. Our personnel will of necessity come from existing banking institutions. Our personnel will be trained but, yes, also in a training program we will also train in this direction, because this is the policy of the board, to look after small business and we will direct management to train themselves and become acquainted and make this a certain part of their service mix.

**Senator Connolly (Ottawa West):** Apart from the social aspects of this, are you satisfied that giving priority to the requirements of small business is going to be a good practice for a national bank in Canada to proceed upon? You will have to look for larger accounts and bigger businesses.

**Mr. B. V. Levinter:** Of course, sir, everything is relative. When I think of bigger accounts, I think of one groceries chain that has a standing bank loan of \$25 million. That is a groceries chain. A thing like this is completely out of our realm. When I am talking of small business, I am talking of loans up to \$100,000 or \$125,000. May I please make this clear? I will not be taking part in the management. This will be left up to management. I have learned a lot about banking in the last year and I have learned a lot about mixes, and that you have to have a certain amount of money in one direction, a certain amount in another and a certain amount in another; but basically this has to be left up to them. They will have to have the proper mixes, the proper expertise, to follow through with our concepts. I believe that our management is so alert, so vital and so vigorous that they will accomplish this. I am very excited about management.

**The Chairman:** Mr. Levinter, at or about the time the present Bank Act was before Parliament, we had a rash of applications for bank charters. There were, possibly, four. Only one of them survived to the stage of getting into operation. I remember sitting here as chairman, with all the provisional directors of this bank sitting here, including the premier of the province, who undertook to answer all the questions that were asked of him. He prefaced each answer by saying, "That is a very important question and I am very glad you asked it," and then we would get a political speech. I can remember Wallace McCutcheon, who was a senator and a member of the committee and knowledgeable in banking, indicating the capital that was proposed for this bank in relation to the capital of existing banks, and the thing seemed to be at a fantastic level. However, it did get its feet on the ground and it did get an amount of capital and it is operating successfully, but in an area that is not as elevated as was pictured to us.

Now, of four, only one made the grade. Have you made any analysis as to why? Was the competition too strong? Was the difficulty of getting money too great?

**Mr. B. V. Levinter:** Sir, I have already been perhaps castigated once with regard to making certain statements which perhaps this committee already knows. Firstly, I know this committee is more intimate with the problems that made these various banks fail. I know that I would not be so presumptuous as to try to tell you these reasons. But, yes, we have made a study of them. I have my own very real views as to why these banks did not get off the ground. I have my views as to why the Bank of British Columbia only raised \$13½ million. But I do not think that any one of them had our concepts, or that any one of them went into the project the way we have done.

If you would like me to expand on the reason why I think the Bank of Western Canada failed and why—Is Laurentide one of these you are referring to?

**The Chairman:** Yes, I think they did not pursue their application beyond the first time round.

**Mr. B. V. Levinter:** Yes, sir.

**The Chairman:** I think we have our own judgment on this, but there is a big difference between the hundreds of millions of dollars that, for instance, the Bank of Western Canada was going to establish as capital, and the amount they actually got.

**Mr. B. V. Levinter:** That is why I have said \$20 million. I did not say forty, fifty or sixty million dollars. I would love to have forty or fifty million dollars. We have surveyed the market, and if you are interested in my expanding on the financial aspects of this to some extent, I will be delighted to do so. I also have Mr. Dwyer to tell you what we have done to survey the market. In view of our surveys, I think that we are being reasonably conservative in saying \$20 million.

**The Chairman:** I do not think we need that, because there is a provision in the Bank Act, as honourable senators know, that even though a charter is granted, before the bank can start to operate it must get the consent of the Governor in Council. At that time, they must give an indication of the quantity of money they have subscribed for it, and if they have less than their authorized capital, then there is provision in the statute for reducing the amount of the authorized capital. So we can feel certain that the Governor in Council will not give consent unless he is satisfied at the time of application that it is a going concern. We have the Inspector General here, and we will hear from him on that.

**Senator Cook:** On that point, do I understand the witness to say that the bank will be selling shares for \$25, \$5 par value and \$20 surplus? Is there talk about raising it to \$100?

**Mr. B. V. Levinter:** No, sir, because all we would do is, perhaps, issue one million for \$25. No, we would not. We would issue less than one million shares of stock; we would just take down from the treasury less than a million shares and the balance of the shares would remain in the treasury.

**Senator Cook:** Then the authorized capital would be only \$5 million and the surplus would be \$20 million?

**Mr. B. V. Levinter:** Yes.



**Senator Carter:** I would like to clear up something. I may have misunderstood the witness. His references seemed to imply that he had a concept of banking which is somewhat different from that of the present banks. Is that a correct interpretation?

**Mr. B. V. Levinter:** Our provisional board of management has, I think, a somewhat different concept. If I may just reiterate, it is the regional concept. In other words, we have considered that if deposits are made in, let us say, Nova Scotia, the money raised in Nova Scotia by way of deposit should first be made available—again, within guidelines—to people who need loans there and for the development of the Province of Nova Scotia, instead of bringing it down here for the development only of Ontario or only of Quebec.

**Senator Carter:** So that each branch bank will be, in effect, a sort of regional bank? Is that what you are saying?

**Mr. B. V. Levinter:** That is right. Subject, of course, to overall control and management at home. One cannot let it go hog wild.

**Senator Molson:** In that connection, the board of directors has certain responsibilities which they cannot delegate.

**The Chairman:** That is right. The directors of this bank will be dealing with money that has been invested by shareholders. Do you subscribe to the principle that they should follow the regional theory of investment, even though investment opportunities and earning capacity are greater in another area than where the money was raised?

**Mr. B. V. Levinter:** No, sir. I was talking strictly about deposits. We must remember that the overall concept must be the success of our bank. It has to be successful or otherwise every great concept and every social concept that we have will fail. Above all, we must make sure that our bank is strong. At the beginning it will be tough sledding. We will have to look for the very best areas in which to put the money. We owe a social duty to various regions, to help or facilitate the financing of industry in specific areas. I believe it is one of our social duties.

**Senator Cook:** I think the history of banking will show that most banks that tried the regional theory either failed or merged.

**Mr. B. V. Levinter:** That is the reason why we have a national concept. We have a national concept unquestionably. When we think of this bank, we think of Canada as a whole. As a matter of fact, I might say that the world is our market. We cannot even confine ourselves to Canada in looking at the prospects for the bank. We must look to the wellbeing of the bank anywhere in the world.

**The Chairman:** Except that in the beginning and for some time you would be a long way from the international markets.

**Mr. B. V. Levinter:** I am afraid so.

**Senator Molson:** Might I ask whether it is proposed in your by-laws, or through any other way, to limit the ethnic makeup of your board or management? How do you expect to perpetuate this situation which you are now starting with a provisional board, which no one can quarrel with? How do you expect that it will continue? Where do you think you will be in five or ten years, or in the future? Do you think you will be able to continue in this way?

**Mr. B. V. Levinter:** I do, from a practical point of view. Firstly, our goal is to have mass distribution of stock so that nobody has control of the bank.

**Senator Molson:** That is, on the market, at some stage?

**Mr. B. V. Levinter:** That is right. With vast control, and with nobody being able to control the bank, proxies generally will come to either the president or to the chairman of the board. The chairman of the board and the directors who have our concept now can guide the bank in the future.

There are so many things with which we will be faced. I appreciate that this is a problem, but we hope to be able to cope with it. I can only say "hope". That is our ambition.

**Senator Molson:** Presumably your board will be wider than the provisional board? Is it your idea that you would go to further ethnic groups, to try to make this as broad as possible?

**Mr. B. V. Levinter:** Yes. Not only ethnically. There should also be representation from both sexes, and from all age groups, so that the philosophies of all Canadians could be transmitted to the bank, that they may look after all segments of our population, the young and the old and the in between, the female and the male, the ethnic groups, everybody. That is our concept—Canada.

**The Chairman:** You would not forego the basic concept that applies to banking as well as to any other business, which is making money?

**Mr. B. V. Levinter:** I have tried to make it clear that, with all the idealism and with the greatest social conscience, if the bank does not make money it is all for naught. That is our primary goal.

**The Chairman:** How do you propose to assure yourself that there is not a movement at some time to take over the shares in the market? I do not mean a legitimate takeover. I mean the other kind of takeover that we read about. What in the way of checks or controls do you see are possible and practicable?

**Mr. B. V. Levinter:** Firstly, we have the Bank Act which, of course, limits ownership. In the first instance we are going to limit the amount of shares to be held by anybody. We are planning that an affidavit will be taken by subscribers of shares setting out in the affidavit the number of shares they hold on their own behalf or on behalf of others, and the bank, in the initial issue, will be able to control the amount that anyone holds in the first instance. With very widespread distribution, this is one check. But I suppose that other than the Bank Act there is really nothing that anybody can do.

**The Chairman:** Except that the big banks that exist today would not be as vulnerable to that situation, because it would take too much money. But in certain instances it might be very valuable to have an identifiable entity. If it does not cost too much money it might be very attractive at some stage.

**Mr. B. V. Levinter:** That is a very valid point. In the first instance I ran into a situation where I saw that a group was trying to use the Bank as a vehicle for its own purposes. I was very trusting. It took me about three weeks to catch on to what was going on, but it



took me about twenty minutes to solve the problem, which was to completely disassociate myself from the group. I know that we will be vexed with these problems. What you say is a very real fact. We cannot start any bigger. I do not know what else we can do. We can simply appreciate the situation and try to meet it when it occurs.

**Senator Desruisseaux:** Mr. Chairman, on a very minor point I have noted that the venerable father of the speaker for the group was born in 1891.

**Mr. I. Levinter, Q.C., Provisional Director:** Senator, I was born in 1898. I am not quite that ancient.

**The Chairman:** Senator Desruisseaux, I can tell you Mr. Levinter is still very alert.

**Senator Desruisseaux:** He was born in 1898, so that makes him 73. I had wondered whether the Bank Act would prohibit him, since we are following the Bank Act on the age limit of 75.

**The Chairman:** Yes, the limit is 75. There is a statutory prohibition at that time.

**Senator Carter:** Mr. Chairman, Mr. Levinter mentioned that one of the objectives of the new bank would be to help the small businessman in the various regions in which the new bank would have branches.

**Mr. Levinter,** I asked you earlier if you were trying to fill any special need or any gap that you felt existed in the present system. I think there is a gap, and the gap has to do with the small businessman you referred to. From my experience, the greatest need of the small businessman has been a need for working capital. He has not been very successful in getting it from the established banks. As a result he has had to fall back on government, but government is very reluctant to set up an agency for that purpose, because government does not wish to interfere with the free enterprise system or with the present banking system.

Have you any special ideas on how you are going to help these people? Do you expect to be more lenient with respect to working capital for small businessmen than the present banks are?

**Mr. B. V. Levinter:** Sir, I agree with everything that you have said. I do not think it is a question of leniency. It is a question of investigating situations and making decisions. It is far easier for a manager to say to Domtar, "Yes, you can have another million dollars," because, basically, that is not a decision. They get the million dollars. Head office is going to clap. The manager gets his interest rate and there is very little risk. But if this same manager has to put out 20 \$50,000 loans to small businessmen, he has to make 40 different decisions. He is going to have to work. He is going to have to investigate and he is going to have to stand by his decisions.

**The Chairman:** Plus one more thing: he has to study his mix.

**Mr. B. V. Levinter:** Of course. I see, Mr. Chairman, you are very intimate with banking.

That is all true, Senator Carter, but we propose to deal with it in this way: we will make our managers work and we will make them make decisions. That is the point.

**Senator Walker:** Mr. Chairman, may I ask Mr. Levinter, whom I know very well and whose father is one of the greatest members of the bar in Ontario, whether in connection with his bank any capital commitments have been made so far?

**Mr. B. V. Levinter:** Well, sir, we have all as a matter of course qualified, but that is all we have done. We have qualified with the Bank Act.

**Senator Walker:** You have qualified with the Bank Act, but outside that there is no capital commitment?

**Mr. B. V. Levinter:** No, sir, not until the charter is obtained. We have surveyed a market, but when you say "actual commitments", we did not look for actual commitments. We wanted to come before you and know we could raise it.

**Senator Walker:** Have you any profit and loss projections made by your experts or by yourselves in conjunction with your experts?

**Mr. B. V. Levinter:** Yes, sir, I do. I do not have them with me today, but, from memory, the experts anticipate a dividend within about three years. Again, much will depend on how much money is raised and on how a thing like this snowballs. Maybe it will go to more than \$20 million, but with \$20 million we anticipate a dividend within about three years. Moreover, considering international financing, et cetera, and that will not be big for the first five years, we are hoping for around \$400 million in assets.

That is about all that I can say. They have worked it out very carefully and have worked out their opening expenses, operating expenses, and training expenses and it is very expensive from the point of view that we have a high upper echelon, a high cost for administration, because we have to have all of the top people but yet few branches. So that, in the first instance, we are kind of top heavy, as a new bank would have to be, but our experts anticipate \$400 million in assets in five years and to declare a dividend in three.

**The Chairman:** Mr. Levinter, I assume that you are familiar with section 10 as to the qualification that provisional directors must acquire in the way of subscribing for shares in their own right.

**Mr. B. V. Levinter:** Oh, yes, of course.

**The Chairman:** I would expect at some stage that would be satisfied before you would expect to get a charter.

**Mr. B. V. Levinter:** Oh, of course.

**The Chairman:** Yes.

**Mr. B. V. Levinter:** I can advise the committee that we have complied with the section for the subscription of shares as required under the Bank Act, and I would be glad to show anyone the subscriptions.

**Senator Burchill:** Mr. Levinter, I am bothered with one aspect of the regional concept you were discussing with Senator Carter. As an illustration, at one point you mentioned the province of Nova Scotia. You said that the outlay of loans in, say, one province would be governed to some extent at least by the deposits that came from that province. Is that what your idea was?

**Mr. B. V. Levinter:** No, sir. What I am saying is that it is not the outlay of loans on an overall concept, but that we think the province or region that has made deposits should have first call on their deposits for good industrial loans. I am only talking about deposits. I am not suggesting that if, in Nova Scotia, a good loan on the overall concept was available to the bank that the bank would not walk in and try to facilitate it. Of course it would.

**Senator Burchill:** Regardless of where the deposits came from?

**Mr. B. V. Levinter:** That is right, sir. In other words, it can only be done with a certain percentage of the funds. We want to do this as much as is feasible, but we must never overlook the overall concept of the bank as a whole. We must consider it as a bank—one bank.

**Senator Lang:** Mr. Levinter, did I understand you to say that you anticipate assets under administration of over \$400 million within five years?

**Mr. B. V. Levinter:** That is what our proposed management has calculated.

**Senator Lang:** In other words, you anticipate taking \$80 million a year on average on deposits.

**Mr. B. V. Levinter:** I do not know what type of progression they used, senator. I think the first year is going to be really rough, but they used a certain progression by studying statistics of banks that have opened with certain capital in the first instance, and then assuming reasonable growth they assumed that with our concepts, certain loyalties which we hope to establish in Canada among Canadians, that this was a reasonable anticipation.

**Senator Lang:** At \$400 million what sort of capitalization would you have?

**Mr. B. V. Levinter:** Capitalization? Do you mean investor equity?

**Senator Lang:** Yes.

**Mr. B. V. Levinter:** We were anticipating at that time \$20 million.

**Senator Lang:** With \$400 million in assets?

**Mr. B. V. Levinter:** Now, of course, that does not necessarily mean deposits. When I talk assets I am talking overall money available. This can be from international markets or it can be from any place.

**Senator Lang:** What ratio does that give you in your assets to your capital?

**Mr. B. V. Levinter:** Twenty to one.

**Senator Lang:** Twenty to one?

**Mr. B. V. Levinter:** I think that that is pretty well in line with the present banks.

**The Chairman:** Are there any other questions?

**Senator Molson:** Mr. Levinter, have you or any of your people consulted with the Bank of British Columbia as to what their progress and problems have been in their brief history? I should think that would be very useful information.

**Mr. B. V. Levinter:** Management, no; financial consultants, yes.

**Senator Molson:** What about directors?

**Mr. B. V. Levinter:** No, not yet. We consider that the first thing we must do is to get a charter, and then, as the Chairman has indicated, the Inspector General of Banks and the Governor in Council will have to approve our operation. When we originally contemplated this bank we said the first thing to do was to obtain a charter and then the next thing would be to obtain management. Then the next thing we have to have is financing, and we have been taking it step by step.

**Senator Connolly (Ottawa West):** Can you get the second without the third?

**Mr. B. V. Levinter:** I do not think that one can get financing without the management. That is why we took it in that order.

**Senator Connolly (Ottawa West):** Who is going to finance the operation while it is under construction?

**Mr. B. V. Levinter:** I am.

**The Chairman:** Are there any other questions?

Thank you, Mr. Levinter. Do you have anybody else with you who wishes to make representations?

**Mr. B. V. Levinter:** No, sir.

**The Chairman:** Thank you very much.

Mr. Scott, would you please come forward?

Honourable senators, I do not need to introduce Mr. Scott who is the Inspector General of Banks. We have had him before us previously and now we will get the benefit of his views in relation to this application for a bank charter.

Mr. Scott, you have heard the evidence which has been given, and perhaps at the outset you would tell us what your function is and what your responsibility is in relation to getting the consent of the Governor in Council even after a charter has been approved. What requirements would you have to look for and be satisfied about?

**Mr. W. E. Scott, Inspector General of Banks:** The Bank Act itself sets forth certain specific requirements which must be met before the approval of the Governor in Council may be given. Now while it is not specifically provided for in the Act, presumably there is an opportunity to advise the Minister whether in the opinion of the Inspector General the project looks like a reasonable starter, and the Governor in Council is not obliged to give a certificate to commence business even though the specific requirements may have been met. There is what I might describe as a grey area there.

**The Chairman:** We have heard something about the philosophy behind this bank and something about its regional concept, but underneath it all they do have a concept which you would expect



every institution to have—that is to do the best they can so as to make money. Now you say the Governor in Council would look at—and this might rest on your advice to some extent—the feasibility of the operation in the light of what the people who are going to control and operate the bank have to say as to their plans. How far would you develop your study of that phase?

**Mr. Scott:** I am not sure I can be specific, Mr. Chairman. If one were of the opinion that at the contemplated date of opening for business there simply was not competent management, presumably one would express an opinion to that effect and then it would be up to the Governor in Council to decide whether to take the chance on whether that management would be forthcoming.

**The Chairman:** So you would take a look at the competence of the management?

**Mr. Scott:** Yes.

**The Chairman:** Anything else?

**Mr. Scott:** I do not think so.

**The Chairman:** You would endeavour to satisfy the statutory requirements?

**Mr. Scott:** Quite.

**The Chairman:** Now are you in a position to tell us or have you acquired the information in such a way that you cannot tell us what has been the annual rate of deposit received by the Bank of British Columbia since it started to operate?

**Mr. Scott:** It has now been open to the public for a little more than three years, and the last financial statement shows that its total resources are now slightly more than \$150 million. It started with a capital slightly less than \$13 million.

**The Chairman:** And as to its deposits, do you recall what they amount to?

**Mr. Scott:** The total deposits would be \$150 million less \$13 million which would be roughly \$135 million or \$137 million.

**The Chairman:** If you average that progressively, it means that they have been taking in about \$35 million per year in deposits?

**Mr. Scott:** Yes, or perhaps a little more.

**Senator Beaubien:** Mr. Scott, how much capital do you think a new bank would have to raise before you could recommend to the Governor in Council to give them an operating certificate?

**Mr. Scott:** The Bank Act contains a minimum of \$1 million subscribed. Presumably if Parliament had felt that some much larger amount was essential in all cases, a much higher figure would have been stipulated in the Act. But conceivably one might have a situation where if the capital raised had been set at a lower point and the plans of the bank were quite out of proportion to the capital, this would become a factor, but I do not think that one can rule out a bank with small capital provided the requirements of the Act have been met with if their plans are consistent with that capital. I would not want to at any rate.

**The Chairman:** Well, you would not expect plans leading to the establishment of a substantial number of branches and thinking in terms of the international money market as being a relevant consideration in relation to a capital of \$1 million.

**Mr. Scott:** I agree with what Mr. Levinter said this morning that branch openings are expensive. If one were to contemplate a number of them within a limited period, it might erode a fair amount of the initial capital before the bank was paying its way.

**Senator Connolly (Ottawa West):** In other words you think it is prudent to proceed slowly.

**Mr. Scott:** Yes, although the rate might be influenced by the extent of capital raised. If you raise a lot of capital you can start more ambitiously than if you have a small amount of capital.

**Senator Lang:** Mr. Scott, are banks covered by the Canada Deposit Insurance?

**Mr. Scott:** Yes, they are automatically.

**The Chairman:** Under the Canada Deposit Insurance Corporation Act the depositor is protected in a limited way to \$20,000.

**Mr. Scott:** Twenty thousand dollars per account, per institution.

**Senator Connolly (Ottawa West):** And the bank pays the premium, which is geared to the deposits.

**The Chairman:** It is not related to its capital.

**Mr. Scott:** It is related to the amount of deposits in the area which is insured, namely up to \$20,000.

**Senator Lang:** Does that apply to branches? Could there be \$20,000 coverage in a head office and \$20,000 in a branch, for a total of \$40,000?

**Mr. Scott:** No; the limit is effective on the total deposits in one institution. It does not matter if it is spread between a number of offices; there can be \$20,000 in each institution.

**Senator Lang:** One bank would only have \$20,000, no matter how many branches there were?

**The Chairman:** It is cumulative, up to \$20,000.

**Senator Connolly (Ottawa West):** Mr. Chairman, there is always a problem for this committee and for any committee of Parliament in respect of applications such as this, because any Canadian can come here and make an application for a bank charter. Relying on what we hear from the witnesses, the applicants and the Inspector General of Banks. . .

**The Chairman:** But we can still say yes or no. The statute does not compel us to say yes.

**Senator Connolly (Ottawa West):** No, of course not; we have to use our judgment. Is it unfair to ask Mr. Scott, "Does the application in this case appear to be reasonable?"

**Mr. Scott:** At this point, Senator Connolly, it is very difficult for me to say that.



**Senator Connolly (Ottawa West):** Could I perhaps be a little more precise? At this point is it possible for anyone to say that any application is a reasonable application?

**Mr. Scott:** I think it is possible to say that people are proceeding in a reasonable fashion. I do not believe anyone can say in advance whether the outcome will be financially successful.

**The Chairman:** I do not think you can expect guarantees that the project will be successful.

**Senator Connolly (Ottawa West):** No, and I think the experience of this committee in respect of the four banks referred to earlier by the chairman was a good experience.

**The Chairman:** Yes.

**Senator Connolly (Ottawa West):** Those applications were only 25 per cent successful.

**Mr. Scott:** Of course, only one of them had a run at it.

**Senator Molson:** What about the Bank of Western Canada?

**Mr. Scott:** It never opened its doors.

**Senator Molson:** No, but it tried pretty hard for a while, did it not?

**Mr. Scott:** It was not a failure to generate business or operate successfully that caused it to cease.

**Senator Walker:** They were in a hurdle race. However, is this not a unique bank application, inasmuch as it is appealing to the ethnic groups, which are very powerful in Canada now? I believe there are approximately 300,000 or more Italians in Toronto. They like to have a say in their own banks and would like to have Italian directors and other persons interested in them. No one can say that the Jewish community is not very powerful financially and in population. The other ethnic groups must also be taken into consideration.

Is it not a harbinger of success if they could obtain the backing of these very large ethnic groups which, as I understand Mr. Levinter, they have in mind?

**Senator Cook:** Another way of putting it would be: Is there any reason to prevent this group from endeavouring to form the bank at the present moment?

**Mr. Scott:** From my point of view I do not care where they get the money, so long as they get enough to be successful.

**Senator Molson:** May I ask the Inspector General whether he agrees that there is a need, or a place for a bank such as the one proposed?

**The Chairman:** He may or may not wish to answer that question.

**Senator Molson:** I think the question as to a place for one is fair. If there is not a place, he could not possibly recommend the application. There must be a place; maybe not a need.

**The Chairman:** That would be an element for his consideration in advising his minister or the Governor in Council as to the

feasibility. Maybe he will consider this in that sense; if there is not a place, it is not feasible.

**Senator Molson:** That is my point. I would like to ask him if he agrees that there is a place for another bank such as that proposed.

**Mr. Scott:** I might just mention, Senator Molson, that this Government and, I think, preceding governments have stated that it is government policy to encourage the formation of new banks. Therefore it would be inappropriate for me to suggest that that was wrong.

**Senator Connolly (Ottawa West):** We cannot ask you to comment on government policy.

**Senator Molson:** I do not ask for a comment on government policy but, as Inspector General of Banks and charged with the supervision of the banking system, I do not think it is an unfair question to ask him if there is a place in Canada for another bank. I think this committee takes the same view as the Government, that there is a place for properly set up banks. That was the view years ago when, as the chairman has said, one out of the four who came here was successful, two did not pursue it any further and the third raised the money, then backed away.

**Senator Cook:** One answer is that there is always room to talk.

**The Chairman:** It depends on who is pushing it. Senator Molson, maybe the witness can protect himself, but your question bothers me, as it puts him on the spot to answer by virtue of his position as Inspector General of Banks as to whether there is or is not a place for another bank.

**Senator Lang:** It is a question rather in the nature of public convenience and necessity, Mr. Chairman.

**The Chairman:** I am just giving the opportunity. You may not feel that you wish to answer that question, in which event I will not pursue it.

**Mr. Scott:** I am not sure of all the implications of the question. For example, is it to say that there is room for another bank and imply criticism in some way of the operations of the existing banks?

**Senator Carter:** Can we put it this way: one of the objectives of the Bank Act revision, as I recall it, is to increase competition among the existing nine banks. If competition is a good thing and we want more of it among the existing nine, is there any reason that there should not be ten, which would improve it further?

**Mr. Scott:** There have been ten.

**The Chairman:** We have had more than ten at times and they saw fit to merge.

**Senator Molson:** I think my question has now been answered.

**Senator Connolly (Ottawa West):** Under the provisions of the Bank Act it is open to a group of Canadians to apply for a charter regardless of the existing institutions. It is the right of a Canadian to do this and this group is exercising that right. They assumed a great deal of responsibility, but I suppose they take that risk when they

come to Parliament with their application. We do not necessarily endeavour to protect them, except within the four corners of the Bank Act.

**The Chairman:** What you are not looking at, senator, is that banking is quite different from an industrial company. In an industrial company the people who want to get going on it put their money into it, but when you are establishing a bank you are dealing with depositors' money.

**Senator Connolly (Ottawa West):** That is precisely the point I was coming to, and perhaps this is a proper question to ask the Inspector General: Is there danger for the public here? In other words, by approving an application for a charter are we putting risks before the public that are unwarranted and undue? Is it in the public interest to consider a further application for a bank, and in particular in this case are the circumstances described by the applicants such as to warrant a conclusion that it is a reasonable risk to allow the public to assume? There are some protections. The Canada Deposit Insurance Corporation is protection for the depositors. The investor takes chances the same way the applicants would take their chances.

**Mr. Scott:** I am not sure how to answer your question. Under our system, of course, Parliament does accept a large measure of the initial responsibility in its judgment of the persons involved and their capacity to carry out their intention. There are countries where this decision is made by officials, perhaps equivalent to Letters Patent. It does not go through Parliament or Congress, or whatever. Under our system the initial responsibility lies with Parliament after it has informed itself as far as possible as to the capacity of the people to carry out their intention.

**Senator Lang:** Are banks the only charters left to Parliament now? Am I correct in that assumption?

**The Chairman:** Railways, telephones.

**Senator Lang:** We no longer have any other financial institutions such as life insurance companies, trust companies?

**The Chairman:** No. May I change the subject for a minute? The great concern I have, which I raised with Mr. Levinter and I was wondering how it concerns you, is the matter of security. We read a great deal nowadays about the establishment of fronts for operations that are not legal. There is no such suggestion in what I have said in relation to this application, but if we assume that a charter is granted and they commence to operate and there has been a very wide distribution of the shares, and the capital involved to move into the market and acquire those shares or control of them would be much less than of any other banking institution in Canada, is it part of your job to be on the alert to see if there is any such movement or would you look for it?

**Mr. Scott:** Yes, it is, and it was particularly with a view to the possibility of new bank proposals coming forward that the 10 per cent limitation on any one shareholder and his associates was written into the act in 1967. It is theoretically possible for people who are not associated in any way to get together and gain control of the stock of a bank, no one of them having more than 10 per cent, but if they are associated in any other common project such as

being directors or officers, or whatnot, of any other corporation, then their holdings are pooled and they would run into the 10 per cent limitation. We would really have to worry about a group not associated in any other way, but combining for the first time in going after the stock of a bank. As the chairman has said, this danger is greater the smaller the amount of stock involved. We do watch the records. We get regular returns of the major shareholders in banks and we watch for possible associations.

**The Chairman:** I think it is almost impossible to lay down a line that you could follow with assurance that you would catch such a situation. You just have to keep checking.

Are there any other questions?

**Senator Connolly (Ottawa West):** How long has it been since there has been a bank failure in Canada?

**Mr. Scott:** The Home Bank in 1923.

**Senator Connolly (Ottawa West):** And have the safeguards which have been built into the Bank Act mitigated against the possibility of failure in your view?

**Mr. Scott:** Yes. For example, the setting up of the office of Inspector General of Banks, following the Home Bank failure, and also the provisions concerning the auditors of banks were greatly stiffened at that time.

**The Chairman:** I learned how not to run a bank when the Home Bank failed. One of my first duties in law was working with the man who was prosecuting the directors of the Home Bank. I am not sure that I ever learned how to run a bank, but I certainly learned how not to run a bank.

**Senator Walker:** Was that Mr. Tilley?

**The Chairman:** No, Mr. McCarthy.

Are there any other questions? I wanted to ask Mr. Scott a further question as to whether he sees any objection to the name United Bank, since we are about to hear from a person representing the United Trust Company in opposition to the use of that name.

**Mr. Scott:** There is no objection on the part of the Government to the name.

**The Chairman:** Thank you.

We now have Mr. Goldberg who is appearing on behalf of the United Trust Company.

**Mr. A. S. Goldberg, Counsel, United Trust Company:** Mr. Chairman, honourable senators, I am appearing on behalf of the United Trust Company which is an Ontario trust company having 30 branches in Ontario and approximately 30,000 depositors. The name of the company was changed to the United Trust Company as of September 1, 1970, and the company since that time has spent a great deal of money in expensive radio and newspaper advertising. We have no objection to the incorporation or the granting of a charter to the United Bank. Our objection to the proposed bill, however, is that the name United Bank may be confused with the name of United Trust Company.



**Senator Connolly (Ottawa West):** What is the exact name of your company?

**Mr. Goldberg:** United Trust Company.

**Senator Connolly (Ottawa West):** Of Canada?

**Mr. Goldberg:** No, just United Trust Company.

**Senator Connolly (Ottawa West):** And the name of the bank?

**Mr. Goldberg:** I believe it is the United Bank of Canada.

**Senator Connolly (Ottawa West):** We have the United Trust Company on the one hand, and you are in the trust company business which is aligned to banking, and on the other hand we have the United Bank of Canada, and you feel these two names will be confused.

**Mr. Goldberg:** Yes, I do, senator. Our submission is that if you look at the two names on two separate pieces of paper they may not look alike, but when you get into the question of advertising for depositors, the names United Trust and United Bank will be used. I cannot see the advertising geniuses at work trying to use the full names in each case. They use the catchiest phrase available, and our submission is that the public will likely be confused by the fact that the two names are so similar. It is unlike the case where you have the Bank of Montreal and the Montreal Trust Company, and other names like that, which I submit are just as confusing, but at that time the trust companies were not competing as directly with the banks for depositors as they are today. At the present time the banks are advertising for depositors and the trust companies are doing the same thing. They each announce different rates of interest and different chequing privileges. My submission is that if they use the name United Bank it will create confusion in the minds of the customers, and particularly so if one considers that the first branch of the United Bank is expected to be in Toronto and that the United Trust Company does have 15 branches there.

The problems have been foreseen by Parliament in terms of other matters, particularly in terms of the Trade Marks Act, section 7(b) of which says that no person:

—shall direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his wares, services or business and the wares, services or business of another;

My submission is that the two names are likely to cause confusion. People have gone to court over similar names. I do not want to cite a whole series of cases, but there have been several cases dealing with names that are similar, particularly where companies are not competing directly but are in very closely allied lines, in which the courts have held that the names are so similar that the public would be confused. The whole purpose of section 7(b) is to avoid confusion of the public, and our problem is that we are very concerned that the public will be confused, that depositors will come into the United Bank and say, "You advertized 8 per cent credit on savings accounts, and yet you are only giving 7 per cent", and vice versa, they will come into the United Trust and be upset because of the United Bank's advertising.

**Senator Haig:** They would not make a deposit in the bank.

**Mr. Goldberg:** That is true. The problem is that at that time he has already been confused and has gone to the length of going into the bank.

**The Chairman:** He would still be looking for his 8 per cent, would he not?

**Mr. Goldberg:** Yes, he would.

**The Chairman:** So he would not leave his money with the bank.

**Mr. Goldberg:** That is true. My submission is that he would at least be enough confused to walk into the wrong place, and that is the problem we face and that we are concerned about. We are not saying we will end up on the losing side; maybe the United Bank advertising will do well for us.

**The Chairman:** He would quickly be unconfused if he were not going to get 8 per cent, would he not?

**Mr. Goldberg:** He would be. The problem is that he was confused by even having to go to the bank. I submit at that stage of the game he will be upset with perhaps both the United Bank and the United Trust. Mr. Levinter indicated to me earlier today that he had given deep consideration to the name. I submit that the name is not so unique or distinctive that it cannot be changed without hurting the bank, and I submit that the name should be changed.

**The Chairman:** Suppose they were using symbols and the United Bank had the symbol UB, following the lettering that the CNR is favouring now, and suppose the United Trust used the letters UT. Do you say that in that context there would be confusion?

**Mr. Goldberg:** Only if the symbols were very similar. If the symbols were similar, then the fact that they are two separate letters would not, I submit, unconfuse the public. This is what the courts have held.

**The Chairman:** Except that you are addressing yourself to confusion in the name.

**Mr. Goldberg:** Yes.

**The Chairman:** When you are talking about symbols, if the bank produced a symbol that would lead the public to think it was a trust company you would have an action quite independently, would you not?

**Mr. Goldberg:** Perhaps we might. What we are trying to do is head off the possibility of getting involved in that kind of action.

**Senator Connolly (Ottawa West):** Do you really think there is that kind of confusion in these days of mass advertising, between trust companies and banks? Take the Royal Trust and the Royal Bank. Does anybody confuse the facilities and the work of the Royal Bank with that of the Royal Trust?

**The Chairman:** I do not think so.

**Senator Connolly (Ottawa West):** Perhaps there was a day when that happened. When I think of a trust company I think of something altogether different from a bank.



**Senator Burchill:** There is the Montreal Trust and the Bank of Montreal.

**Senator Connolly (Ottawa West):** The witness used that as an example, and it is a good example.

**Mr. Goldberg:** I quite agree that you, senator, perhaps do not have any risk of confusion between trust companies and banks. I am talking about the common depositor who does not associate a trust company with the old trust facilities of looking after estates and real estate, but who looks at a trust company as a house where he can deposit his money. If you walk down Sparks Street, for instance, and take a look at the new Toronto-Dominion Bank and the new Montreal Trust, from outside one looks the same as the other. The names are different, but certainly in appearance each one looks like the other. The banks are starting to look more like the trust companies.

**Senator Connolly (Ottawa West):** Some banks look like steeples, but people do not go into them to go to church.

**Senator Lang:** Do the applicants have any other name that they would just as soon have as "United", like "Home"?

**The Chairman:** I do not feel strongly enough that there can be any confusion, and I therefore did not ask them the question, but if any senator wants to ask about it, that is perfectly all right.

**Senator Walker:** It is in the interests of each of them to keep themselves distinct, is it not?

**Mr. Goldberg:** It is. I am not suggesting that we are going to get any advantage, or that they are. My submission is that it will be confusing.

**Senator Walker:** Your symbols will be distinct too, so there would not be any opportunity for confusion, would there?

**Mr. Goldberg:** I think there is.

**Senator Walker:** Do you?

**Mr. Goldberg:** In terms of looking at the kinds of advertising that banks and trust companies do at the present time, particularly in looking for deposits, and with respect to other facilities, I can foresee the public just saying "United" for the United Bank or the United Trust, and I submit that for the unsophisticated members of the public there is a risk of confusion.

**The Chairman:** Are there any other questions?

**Senator Lang:** Mr. Chairman, may I, through you, direct a question to the applicants and ask them if there is any other name they would be equally happy with?

**Mr. B. V. Levinter:** When the name "United Bank" was formulated, we were familiar with the fact that back in 1970 the company of Mann & Martel had a company the United Trust. We were completely cognisant of what a bank is. There is a distinction between a bank and a trust company. We considered the name because we anticipate being national. The name "United" is a uniting of all communities. It was very important to our concept that all people would be together in a cosmopolitan way, and we would be a united Canada. I do not see how anyone could ever mistake a trust company for a bank. If someone is sufficiently sophisticated that they know they can get 8 per cent on a deposit, they are surely sufficiently sophisticated to know where to go to get it.

**The Chairman:** The only question at the moment is whether you have been thinking in terms of an alternative name. Your answer can be "Yes" or "No."

**Mr. B. V. Levinter:** No, sir.

**Senator Desruisseaux:** You mentioned that you were going to operate in the Province of Quebec. I see you have incorporated only one name.

**The Chairman:** No, two names. There are two names in clause 5 of the bill.

**Mr. B. V. Levinter:** Banque Unie du Canada.

**The Chairman:** If there are no further questions there are certain determinations we should make. We may want to have a discussion. When the witnesses have retired we can discuss our views on this. Then I want to detain the committee perhaps for five or ten minutes, but no more, for an *in camera* discussion on Bill C-259, and the tax summary, just to tell you where we are at. Is that agreeable to the committee?

**Hon. Senators:** Agreed.

*(The committee hearing continued in camera).*

The committee adjourned.





THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 35

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WEDNESDAY, SEPTEMBER 29, 1971

THURSDAY, SEPTEMBER 30, 1971

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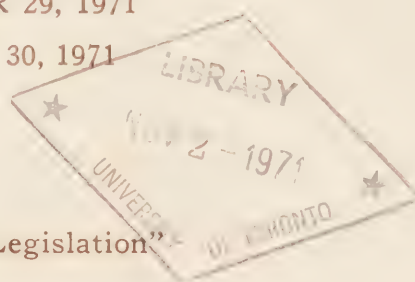
First Proceedings on:

"Summary of 1971 Tax Reform Legislation"

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(Witnesses—See Minutes of Proceedings)





THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Blois	Hayden
Benidickson	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

# Minutes of Proceedings

Wednesday, September 29, 1971.  
(39)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider: "Summary of 1971 Tax Reform Legislation".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Flynn, Gélinas, Haig, Lang, Macnaughton, Molson, Sullivan and Walker—(17).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Mr. Alan J. Irving, Legal Advisor.

## WITNESSES:

Mr. Arthur A. R. Scace, partner, law firm of McCarthy and McCarthy.

Mr. Stephen C. Smith, partner, law firm of McCarthy and McCarthy.

At 12:25 the Committee adjourned.

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2:15 p.m.  
(40)

At 2:15 the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Flynn, Gélinas, Haig, Lang, Macnaughton, Molson, Sullivan and Walker—(17).

*Present, but not of the Committee:* The Honourable Senator Laird—(1).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Mr. Alan J. Irving, Legal Advisor.

## WITNESSES:

Mr. Arthur A. R. Scace;

Mr. Stephen C. Smith.

At 5:00 p.m. the Committee adjourned until Thursday, 30th September at 9:30 a.m.

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Thursday, September 30, 1971.  
(41)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further consider:

"Summary of 1971 Tax Reform Legislation".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Choquette, Connolly (*Ottawa West*), Cook, Gélinas, Haig, Lang, Macnaughton, Molson, Smith, Sullivan and Walker—(18).

*In attendance:* The Hon. Lazarus Phillips, Chief Counsel; E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Mr. Alan J. Irving, Legal Advisor.

## WITNESSES:

Mr. Arthur A. R. Scace;

Mr. Stephen C. Smith.

Upon motion of the Honourable Senator Macnaughton, it was Resolved that the Leader of the Government in the Senate, on behalf of the Committee, request the Minister of Finance to submit to the Committee a list of the proposed amendments to be submitted by his Department respecting Bill C-259.

At 12:15 p.m. the Committee adjourned to the call of the Chairman.

## ATTEST:

F. A. Jackson,  
*Clerk of the Senate.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, September 29, 1971.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. As you know, our purpose this morning is to commence the study of Bill C-259 and to indulge in a little of what I call the educational process of getting some background and understanding of it.

We have two gentlemen here to help us on our way in that regard. I will tell you briefly about them, and then I would like them to amplify on it.

A course of lectures was prepared at the request of and for the Law Society of Upper Canada, and you are looking at the gentlemen who did most of the work on that. A series of lectures was delivered to the members of the Law Society. I do not know how many were in attendance—perhaps 500 or so—and these are the men who did the major portion of the work in that regard. I feel this is the way we should begin in order to get some understanding of this bill. You are certainly not going to master all its details in one or two days, but at least when we go back over parts of it, when the briefs come in, you may be more familiar with and have a somewhat better understanding of it. That is the idea of these discussions.

I should tell you the allocation of headings today. We are going to start with the changes in personal tax, with which Mr. Stephen Smith will deal. Then we are going to consider capital gains, which is a very important subject and which has a great many ramifications. Mr. Arthur Scace is going to deal with that. We have an agenda beyond that, but capital gains is bound to take some time.

**Senator Beaubien:** We are going to sit this afternoon?

**The Chairman:** Yes, this afternoon and tomorrow morning. For those who might like to know when Lazarus Phillips is going to be here, I can tell you that he will be present in the morning. He said he would not miss these hearings for anything in the world. He is going to be chief counsel for the committee.

**Senator Connolly:** Mr. Chairman, this is a matter we will have to deal with only once, to make the procedures completely regular. What I note is that the two topics which we will be discussing this morning—namely, personal tax and capital gains—are the first two items in the Summary of 1971 Tax Reform Legislation, which was the basis of your

motion in the Senate, and from there you go on to the legislation arising therefrom.

**The Chairman:** Yes, the selection is just coincidental, not deliberate. That is the order in which they appear in the summary.

**Senator Connolly:** They happen to be the first and second chapters of the summary.

**The Chairman:** Yes. The other thing I should say is that so far as questions are concerned, our two witnesses are prepared to accept questions at any time. That is the only way we can deal with it. We cannot just go ahead with a lecture for half an hour, or something like that, because there may be a question, the answer to which would help you right at the beginning to understand, so you are free to ask questions at any time.

Mr. Scace, is there a short statement you would like to make before Stephen Smith proceeds?

**Mr. Arthur R. A. Scace, partner in the law firm of McCarthy & McCarthy:** I think you have covered it very well, Mr. Chairman. We are certainly prepared to accept questions, but I do not give any undertaking that we can answer them. I think at this time, even three or four months after the bill has been introduced, nobody in the country has all the answers, and we are all struggling to try to get them.

I think you will all be aware that this is probably the most difficult piece of legislation that has ever been placed before Parliament. I am not an expert in these matters, and you may be able to find something that you think ranks with it. It is very complex, and necessarily so. As soon as a capital gains tax is imposed the ramifications of it necessarily involve a complex tax statute. You have probably heard a lot of criticism in the press and from various associations about its complexity, with people saying they cannot understand it. It is difficult, but I believe a lot of practitioners have now come to the conclusion that it may not be complex enough; that there are gaps, that there are things that should be in there and that are not. I believe it will get worse before it gets better.

If I may refer to the order in which we are dealing with the different subjects, I think it was fortuitous that personal taxation came first and then capital gains. We just wanted to give you an initial rundown on the important but fairly minor changes in the personal field. Capital gains came next, because it is the keystone of the system.

With that, I would like to turn you over to Mr. Smith.

**Mr. Stephen C. Smith, partner in the law firm of McCarthy & McCarthy:** The remarks I have to make on the taxation of individuals and families are really just a brief summary of those areas. They are not a lecture that we prepared for

the Law Society, because we felt it was something people could read for themselves. These remarks are intended as a survey of the matters dealt with in chapter 1 of the Government's summary of Bill C-259, and put the other topics, which are much more important, in context.

Mr. Benson said that the changes in the bill as they affect individuals and families—and I am talking about individuals apart from their capacities as investors; I am not talking about their capital gains or their dividend incomes, but basically their employment incomes—the changes in those areas were intended, he said, to significantly reduce the tax burden on lower-income Canadians. This is done, first, by changes in the progressive rates; secondly, by higher personal exemptions; thirdly, by broader deductions for wage earners; fourthly, by the general income averaging provisions; and lastly, by broadening the tax base to include a number of types of receipts that have not before been included in income.

I will deal with the last point first, the ways in which the tax base has been enlarged. Arthur Scace will deal with the treatment of capital gains, but that is the first obvious enlargement of the tax base, the inclusion of one half of your capital gains in income.

Secondly, the dividend tax credit has been revised to require the inclusion in income of the credit—the gross-up and credit system—which is really intended to make that credit as progressive as the tax rates themselves.

The third major enlargement of the tax base is the requirement that fellowships, scholarships and bursaries be included in income. A \$500 exemption applies there. Research grants are included where they exceed the expenses of doing the research incurred by the researcher (sections 56(1)(n) & (o)).

The fourth area that has been added is medicare contributions. The amount contributed on an employee's behalf to a public medicare plan by his employer is to be included in the employee's income (section 6(1)(d)). The same thing applies to adult training allowances, including benefits which may be paid under special programs to assist the textile and automotive industries, although the automotive industry one may be redundant by now (sections 56(1)(m) 56(1)(a)(vi) & 56(1)(a)(v)).

Another area is unemployment insurance benefits. They now have to be included in income, but the employee is given the right to deduct his contributions to the plan (section 56(1)(a)(iv) & section 8(1)(k)).

Payments received under income maintenance are to be included where the plan is one to which the employer has contributed, but it is only the excess over the employee's own contributions that is taxed, not the total of the employer's and the employee's contributions.

**Senator Connolly:** Is that latter done separately? In other words, do you get the deduction as a deduction from general income, or do you get it in a specific category, in which you report the payments you get and then deduct from that? It may not matter.

**Mr. Smith:** It is clause 6(1)(f) of the bill.

**Senator Connolly:** It may be a detail we can deal with later.

**Mr. Smith:** As the clause reads, the amount that is to be included is the amount he is paid as a benefit out of the plan, but then he deducts what he has contributed from that benefit to get the portion of it that is taxable.

**The Chairman:** He reports the net, in other words.

**Senator Connolly:** It is sort of dealt with as a class benefit, a categorical benefit. I am sorry, I should not have asked that at this point.

**Mr. Smith:** The last inclusion in income that is new is really just a refinement of something that has been going on all along. That is the personal use of a company car. Under the present act the department has ascertained how much use of a car was in fact personal, what percentage of the use might be attributed to personal use, and has required the inclusion in income of that portion of the cost of providing the car. Under the tax reform bill, in clause 6(1) (e) and clause 6(2), there is a minimum taxable value set out. At least 1 per cent per month of the original cost of the car will be deemed to be a benefit to the employee, or one-third of the rental that the employer pays for the car if he leases it. That is the minimum. Nobody can report less than that amount of personal use as income. But it still leaves it open for the department to say that it should be half or 100 per cent, depending on the facts.

Incidentally, if on any of these points you would like the clause references, I have them in my notes. I do not know whether you want to be bothered with them all, but any that you would like to have I can give.

**Senator Carter:** If you would not mind reporting that, it could go on record. It might be useful to have later on.

**Mr. Smith:** I will see that the record has the references for the comments already made.

**The Chairman:** The comments that have already been made and are not annotated in that way will be dealt with when we get the typescript and they can be included before the final printing.

**Mr. Smith:** The second category of changes I would like to deal with is the deductions in computing income that are new deductions or exclusions from income, which really amounts to the same thing. The first area is child care expenses, which is dealt with in section 63. This permits a taxpayer, usually the wife, to claim up to \$500 per child who is under the age of 14, up to a maximum of \$2,000 per family. The wife ordinarily claims it, but if the husband is a widower or divorced or separated and he has custody of the children, the husband can claim it. It can only be taken when the child care that is provided is necessary for the taxpayer to earn employment or business income. It can cover ordinary baby-sitting costs, day nursery care and limited amounts of board where it is paid to a school or camp, up to \$15 per week per child for board.

Another limitation is that it cannot exceed two-thirds of the earned income of the parent who is making the deduction.

The second area is employment expenses. Every taxpayer who is employed will be entitled to a deduction of 3 per



cent of his employment income, up to \$150 per year. That is introduced by section 8(1) (a). The thing to note is that the employee does not have to provide any receipts of expenses. It is like the standard medical deduction. He just claims it.

**Senator Connolly:** That is, every person receiving wages or salary is entitled to \$150, whether he is in business or in the public service or in education?

**Mr. Smith:** It would not apply to somebody who is in business personally on his own account. It is intended to cover employees.

**Senator Connolly:** Employees in business, but it does cover public servants too?

**Senator Benidickson:** Not necessarily an architect; it could be a schoolteacher.

**Mr. Smith:** It is not available to salesmen who could otherwise claim expenses under the act; and it is not available to a member of the Senate or of the House of Commons.

**The Chairman:** And it is not available to a director, as a director.

**Mr. Smith:** That is right, because he would not be considered as being employed.

**Senator Macnaughton:** Be sure to put the reference in.

**Mr. Smith:** It is section 8(1) (a).

**Senator Connolly:** Do you intend to give the rationale for these changes? I suppose that generally they are thinking about situations where a man has to incur heavy expense, say to get to his work from his home?

**Mr. Smith:** I think it was implicit in many of the briefs, and in the White Paper itself, that employees as a class have felt hard done by because they cannot claim deductions, except those that the act specifically permits them to claim. These were very ungenerous. This is an attempt now to give some recognition to the fact that an employee in many cases has to travel to his job, he has to buy clothes, he has to buy in some cases tools and other things like that, that his employer does not provide. The employer could deduct them, where they are necessary for the job and he provides them, but in many cases he does not.

**Senator Benidickson:** This has been previously very narrow. It started with railway men and then it widened a little.

**Senator Flynn:** When it is a deduction of only \$150 as a maximum, what about someone who earns a \$20,000 salary? He may have greater expenses of the nature you have described. As Senator Connolly says, if he has heavy expenses for going to work, the \$150 would not carry him very far.

**Senator Connolly:** From what I have seen a man who is in that category probably would have opportunities to get additional expense money. For example, if he had to take a trip out of Canada or out of his home city, this would be an expense against the firm. There would be things like

that. I think this is primarily intended for rather personal expenses incurred in the earning of money.

**Mr. Smith:** Yes. It really means that if the employer did pay for them, they would be considered as a benefit to the employee and would be taxed anyway. It is a general concession to employees.

**Mr. Scace:** Senators will note the revenue effect of the proposal. It is not broken down completely, but the employment expense allowance, moving expenses and other deductions which are being talked about, will come to somewhere between \$205 million and \$285 million.

**Mr. Smith:** There are a lot of employees.

**Senator Connolly:** It covers everyone in the country except the self-employed.

**Senator Molson:** It does not matter whether he is receiving some expense allowances as well?

**Senator Benidickson:** That is the same as the Charitable Donations Act.

**Senator Molson:** You do not have to give to get!

**The Chairman:** No, the hand is out. That is a starter.

**Senator Molson:** Yes.

**Mr. Smith:** Another new kind of deduction for individuals is moving expenses. That is provided for in section 62. This is made available as a deduction to employees, self-employed persons, and full-time students, who are not otherwise reimbursed by someone for making a move. It is available as a deduction in the year of the move or the next following one. One limitation is that the new place of residence must be at least 25 miles closer to the new job location. Obviously, one does not want people moving from one side of Toronto to the other claiming that as a moving expense.

**The Chairman:** Or moving from one side of the street to the other.

**Senator Beaubien:** What about senators moving from Newfoundland to Ottawa?

**The Chairman:** You are dealing with a special category, senator.

**Mr. Smith:** The expenses defined include the cost of travel of the taxpayer and members of his household, their board and lodging while they are travelling, transportation and storage costs of their personal effects, the cost of cancelling a lease and the selling cost of their old residence. That is all in section 62(3).

**Senator Molson:** There is no limit on that?

**Mr. Smith:** No. Another category of expense deduction is not really a deduction but rather an exclusion from income. Ordinarily expenses of transportation, board and lodging may be required to be included in income. They broadened the scope of the deduction available to employees to cover employees who leave their ordinary residence for at least 36 hours for purposes of their work. The work site that they move to is to be a temporary one



where they could not reasonably be expected to maintain an establishment for their family and from which they could not reasonably be expected to return home every night.

Where your employer does reimburse you for, say, moving to a temporary assignment some distance away, ordinarily those personal expenses would be an inclusion in your income. He would pay you for your meals and board and you would ordinarily have to put that into your income. Section 6(6) provides that you do not have to include these amounts in your income. It is excluded from your income even though he has reimbursed you for them.

**Senator Connolly:** What is the check on that, in the event of employers absorbing inflated amounts on these items?

**Mr. Smith:** There is an overall check in the act on the employer trying to deduct unreasonable expenses. The other check is the purpose for which they are paid. They do not attempt to prescribe how luxurious a motel you put your employee up in.

**Senator Benidickson:** This is a loop-hole for a small corporation that is dominated by one individual. He could inflate his moving expenses as an employee of what is really his own corporation, could he not?

**The Chairman:** Except that even at the present time, under the existing law, the employer, if he pays out expenses of this kind, would be making a deduction, and he would have to support that deduction as being a reasonable amount. That still exists. The point is that under the bill the employee does not have to include the amount of money that he is paid. That is excluded from his income. Heretofore it had to be included in his income on the theory of the income tax department that if there is a deduction or exclusion then somewhere else the person who gets it will have to take it as income and pay taxes.

**Senator Burchill:** Under the existing law, does not the individual, if he includes that in his income, put an expense item on the other side to counteract it?

**The Chairman:** But he would not have an expense item relating to that particular thing, because the money would have been provided by his employer.

**Mr. Smith:** The employer would deduct the expense.

**Senator Flynn:** There is a difference between travelling and living expenses. Travelling expenses for other persons and employees could be deducted before. Is the living allowance to be included?

**Senator Carter:** I am not quite clear on that. Is that not a double exclusion, because a company writes it off as an expense and the receiver does not include it in income?

**The Chairman:** Is it not a kind of benefit that should be counted as income in the hands of the employee?

**Senator Connolly:** Obviously not.

**Senator Beaubien:** The receiver has to pay it out.

**Senator Benidickson:** It should not be, unless it is padded.

**Mr. Smith:** The evil they are trying to get at is the employee who perhaps can live modestly while he is in his

own home, but all of a sudden he is sent off to a distant job site and he is put up in a hotel and eats all his meals in a restaurant. That is much more expensive living than when he is at home. Yet that benefit would have to be included in his income, and he would be left with less after-tax income than he would have had he just stayed at home.

**Senator Connolly:** Yes. It is quite an administrative load for the department to carry, but they have been carrying it up until now. I suppose they have their ways of dealing with it.

**Mr. Smith:** There are limitations on it. He cannot be expected to set up his own household in another place for as long as he is there, and he cannot be expected to return to his home. So they are thinking of job sites that are out in the bush, and that sort of thing.

**Senator Molson:** Before we completely get away from moving expenses, section 62(3), I see that item (e) includes the selling costs in respect of the sale of his old residence. How would you define that? Would that be his loss or only commission?

**Senator Connolly:** Commission.

**Senator Molson:** What about his loss?

**Mr. Smith:** I think that is the cost of selling the house, the agent's commission, legal fees, and that sort of thing.

**Senator Connolly:** And any survey, if he has to provide it.

**Senator Molson:** Is that defined? Could the selling costs include the loss on the house where an employee has been married for 12 months and then moved again? He certainly sustains a loss.

**Mr. Scace:** Generally now, and under the bill, that is a personal loss. Under the bill it will probably be the principal residence.

**Senator Molson:** And any capital gains.

**Mr. Scace:** That is right. There is provision, both in the jurisprudence and the interpretation bulletin published by the Department of National Revenue, where you have employers who enter into arrangements with their employees to reimburse them for any loss up to a fair market value, and so on. That is not considered to be a gain if they are reimbursed when they are forced to move. It must be assumed that will continue, but generally a loss on your house is a non-deductible capital loss.

**Senator Cook:** In theory, you have lost whether you have sold it or not. When you have sold it you have established a loss.

**Mr. Smith:** That is right.

**The Chairman:** But they could not directly allow a loss on the sale of a principal residence when they are not taxing the gain.

**Senator Flynn:** They can. That all depends. If you sell because you want to live in an apartment, that is not the same thing as if you move to another location where you have to work. There is a distinction there. I am not too sure that a capital loss on a person's residence, resulting

from the obligation to move for reasons of employment, should not be a deductible expense. If he makes a gain, then that may be taxable; I do not know. Can you do it as often as you want?

**The Chairman:** There is a limit. You cannot get yourself in the business of acquiring and selling principal residences, so-called.

**Senator Flynn:** If he makes a capital loss, one has to remember that the department would have to offset his moving and other expenses, such as the commission to the agent, legal fees, and so on. You would consider the whole transaction.

**The Chairman:** Senator Flynn, there is some relief recognized at the present time, because usually, certainly in the larger corporations, when an employee is asked to move as a term of his employment and he owns a house, then, if he cannot sell it readily, his employer will take his house over and pay the employee the fair market value. Then, if the employer makes any more on the subsequent sale of the house, the employer will pay the employee that additional amount.

**Senator Flynn:** I am merely suggesting that the wording may be wide enough to allow the inclusion of that kind of loss, and, if there is a gain, it would have to be diminished by the other expenses applicable, such as moving expenses, legal fees and so on.

**The Chairman:** In my opinion the wording in section 62(3) of the bill is not broad enough in its reference to the selling cost in respect of the sale of the old residence. If you wanted to cover that, I think you would have to do it specifically.

**Senator Connolly:** It would be a little different from the scheme of the act, if it were done, because of the treatment in respect of capital gains in connection with principal residences.

**The Chairman:** That is right.

**Senator Flynn:** It is not the same thing.

**Senator Molson:** In my opinion the wording in subparagraph (d) is different in that it would suggest that the selling cost there is a narrow definition of commissions, fees, and so on. The other refers to the cost to him.

**The Chairman:** Of cancelling the lease?

**Senator Molson:** Yes. They would probably have worded it differently. If there had been any intention regarding a loss on the house it probably would have been the cost to him in respect of the sale.

**Senator Flynn:** Can we not note that there is a difference and, possibly, that the act should make it between the case where you are forced to sell for reasons of employment and the other case where you sell because you want to?

**The Chairman:** That is a point we might very well note, and it is now noted in the record. When we come to the stage of questioning witnesses or departmental representatives this point will come up and it will arise again when you are considering your summation. The point is made now.

**Senator Beaubien:** Agreed.

**Mr. Smith:** If I may move on to the next major change, it concerns retirement plans of various sorts. As you know, there are registered pension plans to which the employer contributes and the employees may contribute, depending upon the plan. There are deferred profit-sharing plans to which the employer contributes. Then there are registered retirement savings plans to which individuals may contribute, where each individual has his own plan.

The upper limits on the deductible contributions to those plans have been substantially increased. In the case of registered pension plans the upper limit was \$1,500 by the employer and \$1,500 by the employee. Those limits have been increased to \$2,500. In the case of deferred profit-sharing plans, to which the employer contributes, the limit there has likewise been increased to \$2,500. Contributions by individuals to registered retirement savings plans have been boosted from \$2,500 to \$4,000.

Any taxpayer who has accumulated funds in an existing plan may still apply the old section 36 averaging provisions to remove his contributions. After the new system starts, any payments out of such plans out of post 1971 contributions will be treated under the new averaging provisions, which I will come to in a few moments.

In the case of registered retirement savings plans, in section 146 the new act repeals the previous flat rate of 15 per cent which applied to amounts paid upon the death of the individual. These payments are now going to be treated as a return of premiums and will be included in the taxpayer's income unless he elects to purchase an income averaging annuity with the money he receives out of the plan or unless he elects to transfer the payment to another plan or to a registered pension plan.

**The Chairman:** If he just takes the money, then it is income.

**Mr. Smith:** That is right.

**Senator Connolly:** In that year?

**Mr. Smith:** Oh, yes.

**Senator Connolly:** The year in which he gets it.

**Mr. Smith:** The general averaging provisions would apply, but they, of course, are not as broad as the purchase of an income averaging annuity which, virtually, defers the whole thing. Neither are they as broad as putting it into another plan, which has the same effect.

**Senator Connolly:** You are talking about registered plans, generally, here.

**Mr. Smith:** Yes.

**Senator Connolly:** Is there any change in the opportunity that is available to a professional individual, for example, in respect of his retirement savings plan?

**Mr. Smith:** That is what I was just referring to.

**Senator Connolly:** That is included in all of this?

**Mr. Smith:** I was referring specifically to registered retirement savings plans.



**Senator Connolly:** I see.

**Mr. Smith:** In that case you enter into an agreement with a trust company or an insurance company, or an organization such as that, and that organization usually effects the registration for you.

**Senator Connolly:** And the limit there was formerly \$2,500 but has now been increased to \$4,000.

**Mr. Smith:** Yes.

**Senator Connolly:** Under the present system, if you belong to a plan other than a registered retirement savings plan, about which we are talking, by how much is the total contribution reduced?

**Mr. Smith:** It is reduced by \$1,500. All they have done in this respect is to increase the upper limits on contributions. Otherwise they have left the schemes of the various registered plans exactly the same.

**Senator Haig:** It is taken as a deduction.

**Mr. Smith:** Yes.

**Senator Connolly:** If you invest it, it becomes a deduction from your income that year.

**Mr. Smith:** Yes. You have to pay it to the plan.

**Senator Connolly:** Part of my interest in this stems from the fact that this whole matter has come up a number of times in the past. I remember that Senator Beaubien referred to this particularly in connection with the retirement plan of senators. We had quite a discussion on the whole question.

**The Chairman:** Senator Beaubien, you are being accused of something here!

**Mr. Smith:** They have also applied new investment restrictions. I believe the department discovered that many taxpayers were perhaps taking unfair advantage of the contributions, particularly to registered retirement savings plans, by investing the, for example, in the preferred shares of their own company. As a result, in the future there will be restrictions on the types of investment that such a plan may allow for, and most notable in that regard is a restriction on the foreign investments that they may make. There used to be no restrictions on retirement savings plans. They are now brought under the same sort of restrictions the registered pension plans are under. The foreign investment restriction which used to apply to registered pension plans has been changed. It used to be based on the percentage of foreign income rather than the cost of the investments. It is now going to be not more than 10 per cent of the cost base of your investments which may be foreign investments.

Mr. Benson issued a press release on that subject early in July. That release helped to explain the provisions in the act. Incidentally, they are set out in sections 205 and 207.

**Senator Connolly:** Mr. Chairman, this is going to be a very complicated part of the bill. Perhaps Mr. Smith could give us comparative examples in respect of the present act and the proposed measure. Perhaps he could give us an exam-

ple of what would happen under the present act and an example of what will apply under the proposed bill.

**The Chairman:** In relation to what?

**Senator Connolly:** In relation to the very point he has just been talking about.

**The Chairman:** Yes.

**Mr. Smith:** What pension plans could do under the present act was to invest a very large percentage of the funds paid into the plan in foreign investments, provided that those foreign investments as a total did not produce more than 10 per cent of their total income. Now it would be very easy to buy American growth equities which paid little or no dividends, the type that sell at a very high multiple and provide a very low yield.

**The Chairman:** Reaching for a capital gain?

**Mr. Smith:** Yes, and put those into a plan and perhaps have 50 per cent of your assets producing less than 10 per cent of your income. Now you are going to be limited to 10 per cent of the value going into the plan, the original cost of the investments. So you will not have the opportunity to put such a large percentage of your funds in foreign investments.

**The Chairman:** I wonder whether they are not missing an opportunity for capital gain in those situations now that they are bringing in a capital gains tax. The idea of stopping this in the first place I presume was because untaxed capital gains were being made. But now since they are being taxed, what is the reason for making the change?

**Senator Beaubien:** To keep the money in Canada.

**Senator Connolly:** I think Senator Beaubien has put his finger on the point. Probably the rationale behind this is to encourage investment in Canada.

**Mr. Smith:** Not only that, but having increased the upper limits there would now be a lot more money going into these plans and the effect would be quite substantial if it all flowed out of the country.

**Senator Connolly:** What do you mean by "increasing the upper limits"? Is it simply because the plans have more money?

**Mr. Smith:** No. An individual can now contribute \$1,500 more per year to such plans, and similarly for registered pension plans.

**Senator Connolly:** It suggests a trend towards nationalism in investment.

**Mr. Smith:** The next major topic deals with changes in the deductions allowed from income to compute taxable income. The first group deals with changes in personal exemptions. A single taxpayer under clause 109(1)(c) will be able to deduct \$1,500, instead of the \$1,000 which he can deduct at the present time. In the case of a married taxpayer the exemption will be increased from \$2,000 to \$2,850. But where the wife's income is over \$250 per year, the husband has to reduce his exemption for her—which in fact amounts to \$1,350—by \$1 for every \$1 of her



income. So if she had an income of \$1,600 or more, he would lose the exemption.

**The Chairman:** He would be a single man for tax purposes?

**Mr. Smith:** Yes. The people who are to be treated as married for the purposes of getting this exemptions have been expanded to a widow or widower where such person is supporting a brother, a child or other relative of that sort living in his house. But he does not get the exemption for a dependent child at the same time. He gets one or the other.

**Senator Connolly:** Is the relationship the test, or is the fact of living in the house the test?

**Mr. Smith:** Both.

**Senator Connolly:** Is there any legislation on the relationship? For example, what is the situation in the case of a grandfather or an aged aunt or an aged uncle? Perhaps, Mr. Chairman, it is unnecessary to ask these questions.

**Mr. Smith:** It would be somebody who was wholly dependent for support and who was connected through blood relationship, marriage or adoption with the taxpayer.

**Senator Connolly:** That is almost the whole scope of relationship, is it not?

**Mr. Smith:** In the same way the married exemption is reduced for the wife's income, so the exemption here would be reduced by the dependant's income. The present exemptions for dependent children are retained at their present amounts, that is \$300 for children under 16 and \$550 for a child 16 years and over. The income of the dependant is treated in a similar fashion to the income of a spouse in that it reduces the exemption gradually. There is a \$1 reduction for every \$2 of the dependant's income in excess of \$1,000, and where you are entitled to the \$550 exemption, it is one for one. Furthermore there is an increased exemption for certain taxpayers over the age of 65, or for people who are blind or who are confined to a wheelchair. The exemption is increased to \$650. The guaranteed income supplement under clause 110(1)(f) is going to be exempt as well.

**Senator Connolly:** That is exempt from tax; it is not a deduction. These are anomalies we should take note of, Mr. Chairman. It is strange that they should be exempt when they include unemployment insurance benefits and things of that sort. In this case they are going to exclude payments made for guaranteed income supplement.

**Senator Cook:** But they would not be liable for tax if they were going to get the guaranteed supplement anyway. They have to prove need to get the supplement so I do not see how it could be regarded as taxable anyway.

**The Chairman:** But while proving the need and even while there might be need it could be that the income would still be up to the limit of the exemptions.

**Senator Cook:** But surely that would be very small.

**Mr. Scace:** If you had the old age security of \$950 or \$1,000, or whatever it is, but your point is that it would

have to be up around \$500 before you would become taxable as a single person.

**Senator Cook:** But when you get to age 65 you get another \$500 there.

**Mr. Smith:** There have also been changes in the treatment of charitable deductions. The maximum deduction has been increased from 10 per cent to 20 per cent of income. The one-year carry forward of charitable deductions is retained and the existing \$100 standard deduction in lieu of providing receipts is retained as well.

**The Chairman:** That is clause 110(1)(a).

**Senator Connolly:** Is that a percentage of net rather than gross income?

**Mr. Smith:** That is income.

**Senator Connolly:** Taxable income?

**Senator Molson:** Income of the taxpayer.

**Mr. Smith:** It is a deduction in computing your income, so you would be talking about income before these deductions.

**Senator Molson:** Are not some of these provisions wider, such as those for amateur athletic associations and the United Nations agencies?

**Mr. Smith:** Yes. Clause 110(8)(b) is the national amateur athletic associations. They are treated as a charity for the first time. Various Olympic organizations have been set up to support Olympic sport. Up to now they have not been qualified under the usual legal definition of "charity."

**Senator Flynn:** Should not political parties be treated as charitable organizations?

**Senator Cook:** Educational.

**Senator Molson:** Welfare.

**Mr. Smith:** The old treatment of medical expenses has been retained with certain exceptions. The contributions of an employer to a public medical care plan have been included in the employee's income. Medical expenses are defined to include the care of the taxpayer and his family, anything paid to an institution for the physically or medically handicapped. That is clause 110(1)(c)(vi).

**Senator Connolly:** Mr. Smith, in connection with charitable donations, does the department under the new bill still retain the right to rule what type of organization qualifies?

**Mr. Smith:** Oh, yes.

**Senator Connolly:** That is undisturbed?

**Mr. Smith:** Yes. The only real change is to bring in this category of amateur athletic associations.

**Senator Connolly:** They still have to register.

**Mr. Smith:** They still have to qualify under one of the various categories.

**Mr. Scace:** In the case of revocation of registration of a charity there are administrative provisions for appeal which were not in the previous act.

**Senator Flynn:** I wish to mention that I was not exactly joking when I referred to political parties. The Chamber of Commerce, meeting now in Quebec, has recommended that contributions to political parties be allowed as deductions from income.

**The Chairman:** Senator Flynn, you will be able to raise that question personally with the Chamber of Commerce here next Wednesday.

**Senator Flynn:** Now that everyone is covered by Medicare, I understand that expenses which are not covered will be deductible from income, but is there a certain percentage that has to be attained before the deduction applies?

**Mr. Smith:** Yes; it is the same system.

**Senator Flynn:** Three per cent?

**Mr. Smith:** Yes.

**Senator Flynn:** How will the taxpayer with Medicare ever reach 3 per cent?

**Mr. Smith:** Well, that is right. If he pays premiums to a private health service plan which applies in addition to Medicare, those are deemed to be medical expenses which he could deduct. However, he is not entitled to deduct any kind of medical expenses for which he is reimbursed by any plan.

**Senator Connolly:** He does not receive it twice.

**Mr. Smith:** No, that is right.

**Senator Flynn:** Previously, even if he received payment from a private insurance company, he could deduct?

**Mr. Smith:** He could deduct the premiums. He pays, but he cannot deduct the benefits they pay for him, the indemnity.

**Senator Flynn:** So that this provision is now more or less insignificant.

**Mr. Smith:** I suppose the rationale for it is that the Government is picking up most of the Medicare expense, or a large portion of it, so they do not want to double up on it.

**Senator Flynn:** I suggest that the minimum should not be applicable with the new system. Any amount spent above what is paid by Medicare or any additional insurance that a taxpayer has should be deductible directly.

**The Chairman:** Do you mean that you spend and there is no reimbursement?

**Senator Flynn:** Yes.

**Senator Gelinas:** Dental treatments are included, so that you can exceed that 3 per cent.

**Senator Flynn:** Occasionally; not very often.

**Mr. Smith:** Another major change is the whole field of income averaging. There was a considerable amount of criticism in various briefs to the effect that taxpayers should be given generous averaging provisions to spread income where they have peak earnings years followed by lower earnings years. There are two kinds of averaging.

One is usually termed general averaging. It applies to all taxpayers automatically and applies each year. It will be assessed by the Government's computer facilities, so the taxpayer does not have to worry about it in his return. He reports his income and they run his return through their program. If it shows that he is entitled to a refund because of this averaging provision, then he is given a credit. That applies where income in a particular year is 20 per cent more than the average of the preceding four years and 10 per cent more than the immediately preceding year. There are provisions to cover those who are just entering the labour force to give them an averaging base and so on.

**Senator Lang:** What clause is that?

**The Chairman:** That is clause 118. That is what you term the automatic?

**Mr. Smith:** That is the automatic general averaging. The more interesting one, really, is what is usually termed forward averaging. That is the provision in clause 61, which will be of most help to taxpayers who have a very high income in one year. Clause 61 permits the taxpayer to spread his income by taking any amount of his income and buying an income-averaging annuity from an institution. He is given a deduction for the premium he pays for the annuity under certain limitations. To qualify he must purchase that annuity within 60 days of the end of the year.

The annuity can be issued by any company authorized to carry on that business, either federally or provincially. It must be issued for a single lump sum premium, and the first annuity payment must commence within 10 months of the purchase of the contract, so that it will be in the year following the year for which the deduction is claimed at the latest. The contract must provide at least one annual payment; it could be any number during the year. The annuity must be for life and with or without a guaranteed term, which cannot exceed 15 years. It could be simply for a guaranteed term not in excess of 15 years. In any case, the guaranteed term cannot go beyond the individual's 85th birthday, but there is no limit on how short a term the annuity must have. It could, for example, be three annual payments, if you like.

**The Chairman:** The taxpayer settles the amount of money that would otherwise be income, he wants to use this to buy an income annuity and then he gets it back when the income annuity starts paying off. He can really call the tune on that, and he gets a deduction for the premium that he pays, the lump sum in one year, is that right?

**Mr. Smith:** That is right.

**Senator Connolly:** In the year in which he pays it, but in that year he will also get an annuity payment.

**Mr. Smith:** That is right.

**The Chairman:** Well, the income he gets on that income annuity will be income.

**Senator Beaubien:** It will be taxable.

**Senator Connolly:** Would an example of this be an artist or an athlete who all of a sudden receives a terrific windfall in the way of either an increase in salary or proceeds from the sale of some pictures, or something of that nature?



**Mr. Smith:** I will give you an example. They are set out in section 61. I have a list here of all the different things that would qualify: Taxable capital gains minus your allowable capital losses; income from the production of a literary, dramatic, musical or artistic work; income from activities as an athlete, musician or public entertainer; a single payment received from a superannuation or pension plan, such as a return of contributions or payment on death; a payment on retirement in recognition of long service; a single payment out of a deferred profit-sharing plan on retirement or withdrawal or death; a payment under a death benefit plan for employees; return of premiums from a retirement savings plan upon the death of the annuitant; proceeds from the disposition of depreciable property. That is an important one. A taxpayer who owns a building individually, and who would suffer recapture or a depreciation on the sale, can in effect use his recapture, which would otherwise be income, to purchase the annuity. Then there are the proceeds of the sale of the goodwill of a business; proceeds from the sale of inventory or accounts receivable on termination of a business; and the benefits under a stock option plan.

All of the averaging provisions in the act that used to apply to those types of payments are washed out completely in favour of this income averaging annuity. For example, the treatment of stock option profits in section 85A is repealed in favour of this. There are transitional provisions which allow people to pick up their present options under Section 85A, but after the transitional period is over they will have to use the stock option profits to purchase income averaging annuities in order to avoid being taxed on them.

**The Chairman:** The attraction of a stock option as such was watered down considerably a few years ago. Before that it was quite beneficial, and now there is really some reinstatement here if you want to use the income that would otherwise be taxable to generate an income annuity.

**Mr. Smith:** The averaging is perhaps more generous. You can spread it further into the future than you could under the old section 85A: that is, looking at your previous three years average tax rate.

**Senator Molson:** In the case of a stock option the profit is not realized by the individual. He would have some difficulty paying for the annuity unless he took up the stock and sold it.

**The Chairman:** He would have to sell it, yes.

**Mr. Smith:** It is not until he exercises the option that he is taxed.

**Senator Molson:** He would have to sell it right away.

**Mr. Smith:** Yes.

**Senator Connolly:** And if he did not sell it, it would be considered as part of his income.

**Mr. Smith:** He would have to sell enough of the stock to get an amount equal to what otherwise would be taxable. He would still have some stock left.

**Senator Molson:** It takes away some of the general purposes of stock options.

**The Chairman:** You mean the acquisition and the holding?

**Senator Molson:** Yes.

**Senator Beaubien:** It is better than it was.

**The Chairman:** Yes.

**Senator Connolly:** Mr. Chairman, could we consider that a little further? Senator Molson has raised some good points. Suppose, for the sake of argument, a man becomes entitled to, say, 10,000 shares of stock which is worth, say, \$2 a share, and he is given the certificates and he holds the 10,000 shares; he does not liquidate anything. Is he allowed to hold those shares in his portfolio as a capital asset to be disposed of in due course?

**Mr. Smith:** Well, say the value of the stock, when he exercises his option and buys it from the company, is the \$2 a share, as you mentioned, but his option price was \$1, which means on 10,000 shares he has a \$10,000 stock option profit which the act would require him to include in his income, now he can pay the tax on that or he can buy a \$10,000 income averaging annuity and spread it into the future. Where he gets the cash to buy the income averaging annuity is his problem, but obviously if he does not have the cash he will have to sell part of the stock.

**Senator Connolly:** That is a good explanation to have on the record. The other question I would like to ask is this: I notice that some of these payments or realizations that you mentioned occur on death and they become income. Normally, I think, under the Succession Duty Act or the Estate Tax Act on death, say, a lump sum payment out of an annuity arrangement would be a capital asset for the purposes of the estate or succession duty tax. I take it it is because the estate tax is being done away with that it now becomes income. Is that so?

**Mr. Smith:** No; it was always income subject to the averaging provisions that were in Section 36 of the act. Those averaging provisions are now being repealed in favour of these averaging provisions which are, in the case of the income averaging annuity, perhaps more flexible than section 36 was, but as far as inclusion in the estate is concerned, it would be the net estate after debts, including the income taxes payable by the deceased up to the date of death, that would be subject to estate tax.

**Senator Connolly:** I am just wondering what happens in the case of a widow whose husband's estate, as a result of his death, is entitled to a lump sum payment, say, of \$20,000. That has heretofore been an asset of the estate which became taxable for succession duty purposes. I am right so far, am I?

**Mr. Smith:** Yes.

**Senator Connolly:** It was never considered to have been part of his income for the year in which he died. I think you pay succession duty on it and it is a death benefit. It just adds to the capital value of the estate.

**Senator Flynn:** If it is in respect of an insurance policy, I agree with you. Suppose it was as a result of an annuity.

**Mr. Smith:** Well, what happened under the present act was that you had an exemption from income tax for cer-



tain death benefits up to \$10,000, and the balance of the benefit would be taxed to the estate, and that income tax would be a debt of the estate which would be deductible in computing the taxable value of the estate for estate tax purposes, so that whatever estate tax might apply on the estate would apply in that aspect as well. There are in the Estate Tax Act quite extensive exemptions for benefits for the surviving spouse, either outright or by way of a life interest or annuity, so that there was a fair amount of scope for deferring tax until the wife's or husband's death, as the case may be.

**Mr. Scace:** What you are thinking of, senator, might be that if you have an annual pension, they would capitalize that pension. That would clearly be an asset of the estate.

**Senator Connolly:** Yes, they do that.

**Mr. Scace:** But the other situation, I think, is the net amount after you pay the income tax liability.

**Senator Molson:** In the case of an artist or athlete, and so on, he can get it spread over 15 years.

**Mr. Smith:** Or his lifetime.

**Senator Molson:** Or the difference between?

**Mr. Smith:** The maximum term would be an annuity for life with a guaranteed term of 15 years.

**Senator Molson:** Not less than 15 years.

**Mr. Smith:** I am just talking about a guarantee, but it can be a life annuity, if you like.

**Senator Molson:** Presumably he has a career, whether as a musician or an athlete, of some years, so in fact year by year he could continue this process. Supposing you took the minimum time of 15 years, and say he had a 15-year career, he could in fact have an annuity spread out in the end over 30 years, could he not?

**Mr. Smith:** The maximum term would be an annuity spread over his entire life, if he survived the maximum guarantee period.

**Senator Molson:** But a minimum of 30 years in that case, if he did it year by year for 15 years?

**Mr. Smith:** Yes.

**Senator Molson:** And he could avoid the tax other than the annuity all the way through. The amount he received as an annuity when the payment started is what he would be paying tax on.

**The Chairman:** That is right.

**Senator Molson:** That, of course, would be increasing as he kept on buying new ones.

**The Chairman:** Of course, you must remember that it would then be a carry, the incidence of tax would be levied on what his overall income was in that year, and it might be that when he stops earning the high income that hockey players and musicians may earn his rate would be less and he would pay less tax.

**Senator Haig:** He gets the premium as a deduction.

**The Chairman:** He gets the premium as a deduction.

**Senator Haig:** In the year in which he buys the annuity.

**The Chairman:** That is right.

**Senator Haig:** And when the annuity payment is made it is income, and he pays tax on it.

**The Chairman:** That is right.

**Senator Connolly:** It is spread, so it is reduced.

**Senator Molson:** I was worrying about some of these little chaps like Bobby Orr, and so on, and wondering how they were going to make ends meet.

**Senator Flynn:** You should know something about that.

**Senator Molson:** Not Bobby Orr, unfortunately.

**Senator Flynn:** What about winning a sweepstake? That would be a capital gain.

**Senator Beaubien:** That is a windfall.

**Mr. Smith:** I think that is treated as a windfall.

**The Chairman:** That is treated as a prize, I think, in the language used in the statute, is it not?

**Mr. Smith:** They exempt the gain on a prize won in a lottery. I guess a sweepstake is a lottery.

**Senator Gelinas:** No tax at all.

**Senator Molson:** What about grants from the Canada Council and other bodies of that sort?

**Mr. Smith:** Earlier I mentioned scholarships, fellowships and research grants.

**Senator Molson:** I referred to grants. You see, you have been specific so far. Are grants in general included? Prizes?

**Mr. Smith:** Not unless they can be tied to—

**Senator Molson:** There is a bank that gives \$50,000 every year in prizes. Is that taxable?

**Mr. Smith:** The Nobel Prize, for example, is not, I think, covered.

**Senator Beaubien:** That would not be taxable?

**Mr. Smith:** I do not think so; not the Nobel Prize or something of that sort.

**Senator Connolly:** The \$50,000 Royal Bank award every year is never given to the same person twice.

**The Chairman:** What is the basis for it? An educational grant?

**Senator Connolly:** Eminence generally, excellence.

**Senator Beaubien:** Cardinal Léger got it one year.

**Senator Molson:** There are several of that sort.

**Mr. Smith:** I think paragraphs (o) and (n) of clause 56(1) are relevant.

**Senator Molson:** "—research or any similar work". That is specific again.

**Mr. Smith:** Clause 56(1)(n) though says "in a field of endeavour ordinarily carried on by the taxpayer".

**Senator Molson:** No.

**The Chairman:** "—or a prize for achievement in a field of endeavour".

**Mr. Scace:** This comes into the capital gains area, but really what you have with the new bill are three categories. First there are items which are clearly income, and always were income. Then there are items which are entitled to capital gains treatment. Then there seems to be a third category which is exempt. It seems to be exempt because in order to have a capital gain there must be a disposition, so if an amount is received that does not arise by a disposition, it seems to go completely untaxed. One example I can think of is a gambling gain. In some cases gambling gains were income under the old act, but generally they were not.

**Mr. Smith:** Casual gambling.

**Mr. Scace:** Casual gambling. It seems to me that there might be that kind of thing in that exempt category. Certainly it has to be interpreted.

**Senator Connolly:** There is no specific provision for windfalls in either the old act or the new bill.

**Mr. Scace:** That is right.

**Mr. Smith:** Before we get on to capital gains, which is far more interesting than these topics, I will make one or two comments about the changes in the rate structure. Basically, they have made it one rate instead of all the bits and pieces that we have now. The old age security tax, social development tax, the three per cent surtax, the tax on foreign investment income, and so on are all swept into one rate structure. The way provincial taxes are calculated has been changed too. Under the present act there is a deduction in respect of provincial taxes. Now provincial taxes will be calculated as a percentage of the total federal tax instead of by the abatement from the basic tax system. The standard rate of provincial tax will be 30 per cent of total federal tax, but I think any province has the freedom to raise that. The result of the new rate schedule would be a combined federal and provincial rate that peaks at 61.1 per cent on income over \$60,000. That should be compared with the net present peak rate of 82.4 per cent which cut in at \$400,000.

**Senator Connolly:** Perhaps I might ask a question here about the 30 per cent provincial tax. This is not a taxation question. Is it proposed that that 30 per cent will be paid out of the federal treasury to the provinces?

**Mr. Smith:** Oh yes, I think the federal Government will still be the collecting agent.

**Senator Connolly:** It will be the collecting agent for that 30 per cent?

**Mr. Smith:** Yes.

**Senator Connolly:** Which will be refunded to the province.

**Mr. Smith:** One thing to keep in mind is that the rate structure set out in the bill is just the federal rate. To get the true rate 30 per cent of the federal rate has to be tacked on to that.

**The Chairman:** So your overall would be whatever the rate in the bill produces plus 30 per cent of that.

**Senator Beaubien:** Quebec gets 50 per cent now.

**The Chairman:** The provinces can add any amount to that; that is their privilege.

**Senator Cook:** There are certain advantages in being a hippie!

**Mr. Scace:** On that last question I think the bill is confusing, because if you look at the rates under the present act and go to, say, \$24,000 or \$25,000, the marginal rate there is 50 per cent. If you go to the bill, the marginal rate is 39 per cent. We have really got a nice reduction in tax and what you have to do is—

**Senator Beaubien:** Add on a third.

**Mr. Scace:** Yes, 30 per cent is added to the 39 and produces 50.7 per cent. That is your rate at the margin for a province levying a 30 per cent tax. But it is not clear, looking just at the rates in the bill.

**The Chairman:** But if you take that 61 per cent rate in the bill, there may be some deception in that rate, because if you want to get the overall rate—

**Mr. Scace:** The top rate in the bill is 47 per cent and if you take 30 per cent of that it gets you up to the 61.1 per cent.

**The Chairman:** Yes. Are there any other questions you wish to ask on this subject before we change?

**Senator Connolly:** Mr. Chairman, there is one idea which occurs to me. For the first time this morning we have had the introduction of the term "marginal rate". This is going to come up very often in our hearings. I wonder whether Mr. Smith would like to give a definition, for the record, of a "marginal rate", so that we will know clearly what we are talking about?

**Mr. Smith:** As you know, the act, in setting out the rates, starts with the level of income. For example, if you turn to the act, section 117(1)(a) starts off by saying that the tax is 17 per cent of the amount taxable if the amount taxable does not exceed \$500. Then in (b) it moves on and says that the tax is \$85 plus 18 per cent of the amount by which the amount taxable exceeds \$500 and does not exceed \$1,000. The marginal rate at that level is the 18 per cent that applies between \$500 and \$1,000. If you step up to, say, someone earning in excess of \$24,000, once he has hit \$24,000 his marginal rate becomes the rate that applies on the next bracket, and that bracket is between \$24,000 and \$39,000 and the rate set there is 39 per cent plus 30 per cent provincial tax.

**Senator Connolly:** In other words, in the table the tax on \$24,000 is specifically set out?

**Mr. Scace:** Right.



**Senator Connolly:** Then, when he gets over that, into the other bracket, the percentage of the other bracket is the marginal rate?

**Mr. Scace:** Yes.

**Senator Connolly:** That is what I wanted to see on the record.

**Mr. Scace:** If someone says he is at a marginal rate of, say, 50 per cent, that means he is earning between \$24,000 and \$39,000.

**Senator Lang:** Are the rules with respect to general averaging confined to income, or are there averaging provisions with respect to capital gains?

**Mr. Smith:** The forward averaging provisions apply to capital gains as well. Half of your taxable capital gains, half of your gross gains, which would otherwise be included in your income—that can be used to purchase an income averaging annuity.

**The Chairman:** Because that part of it is income.

**Senator Lang:** Is there some place in this bill that says that part is income?

**Mr. Smith:** I think that is a good place for Mr. Scace to start.

**The Chairman:** Honourable senators, we move now into the area of capital gains. Mr. Scace is going to develop that subject. It is a subject that will take some time and it is important, so we should make sure we understand it as we go along.

First, there will be a brief recess, ten minutes.

*(A short recess)*

**The Chairman:** Honourable senators, we shall now consider the second heading, which is capital gains. Mr. Arthur Scace will take us through that. It will be fairly lengthy. It is the keystone of the bill and I think it is important that we should get as good a grasp of it as we can.

**Senator Beaubien:** Do you expect to sit this afternoon?

**The Chairman:** Yes. In checking with some of the senators during the break, I reached the opinion that we should adjourn at 12.30 and come back at 2.15. I thought we might go through until 5 o'clock in the afternoon. I now call upon Mr. Scace.

**Mr. Scace:** Capital gains is reasonably complex. I would like to start out by giving a very brief summary of the main aspects of the legislation and we will then go into the details.

Senators, you are probably familiar with most of the main aspects. The basic proposition is that one-half of all capital gains will be included in income and taxed at normal personal or corporate rates depending upon whether they are received by an individual or by a corporation. Conversely one-half of any capital loss will become deductible and the basic rule is that it is deductible against one-half of capital gains.

The half inclusion of a capital gain is called the taxable capital gain, and the deductible portion of a capital loss is called the allowable capital loss. We will be using those words throughout.

In addition to being able to deduct an allowable capital loss against taxable capital gains during a year, an individual, and only an individual, can deduct \$1,000 of allowable capital losses against his other income in the year.

In addition to this, there will be a one-year carry-back and an unlimited carry-forward of allowable capital losses against taxable capital gains; and in the case of an individual you also get the \$1,000 deduction against other income.

Generally, capital gains will become taxable and losses deductible upon the sale of an asset or the disposition of an asset—we will talk about that a little later; it is a very lengthy definition—upon emigration from Canada, ceasing to be a resident of Canada, and upon the making of a gift or at death. Those are the principal ways that gains and losses are realized.

In certain instances there is a tax-free roll-over or exemption from capital gains tax. The main one, I suggest, is the exemption on gift and bequests between spouses, provided that you qualify within the rules.

There are also certain other exemptions, in particular amalgamations, the incorporation of a company, the transfer of assets to a partnership, or partnership assets to a company, and so on. We will touch on these later on.

There is an exemption for principal residence. This has been given quite a bit of press coverage. The exemption is for the principal residence plus up to one acre of subjacent and adjacent land.

Personal property will not be taxed unless the sale price of the property exceeds \$1,000.

Another rule is that assets which would have been taxable in full under the old act will continue to be taxable in full under the new act and will not be entitled to capital gains treatment. One senator was mentioning this at the break. The most common instance would probably be land. In most cases now, if you dispose of land, unless there has been a very lengthy period of retention or it has been an income-producing property, most people seem to get taxed on the gain. If you are taxed under the present act, you will continue to be taxed under the new act at full rates, and you will not be entitled to capital gains treatment.

Finally—and we will deal with this at some length—there are special rules for determining the cost of an asset both before and after valuation day, specifically to get us into the new system and over the transition.

Very briefly, that is the summary of the main elements of the bill. We would now like to show you how these come out in practice, explain what the detailed legislation says, and perhaps draw your attention to certain anomalies or short-falls in the bill which we hope will be corrected. The Department of Finance is aware of many of these short-falls and we suspect that they will be dealt with in the amending legislation. However, we will touch on this.



The starting point for capital gains, and for calculating all income under the act, is section 3. Perhaps we could go through section 3. The income of a taxpayer for the taxation year is the income determined by the following rules:

Subparagraph (a) says that you calculate the amount of your income from employment, business and property, other than a taxable capital gain. Essentially that is the rule that we have now.

You do not get to capital gains until you reach paragraph (b), which is reasonably complicated. It says that you determine the amount, if any, of the aggregate of taxable capital gains—that is one-half of the gain—for the year from dispositions of property other than listed personal property—that gets special treatment—plus the taxable net gain from dispositions of listed personal property.

There you bring in taxable capital gains plus the taxable net gain from listed personal property.

Section (b) also says that you take your capital gains plus the taxable net gain and subtract the allowable capital losses.

Subparagraph (c) then permits you to make certain deductions. Subparagraph (d) goes on to permit various losses from an office, employment, business or property.

We then pick up capital gains again in subparagraph (e). Subparagraph (e) basically gives you the deduction, in the case of an individual, of \$1,000 against other income.

It says that you determine the amount if any by which the remainder calculated to that point exceeds the lesser of either the difference between allowable capital losses and capital gains where you are in a loss position, or \$1,000 if you are an individual, and that is your income.

To show you how this works out, we have put this diagram on the board.

Coming down this column here—E.I. means employment income. This means taxable capital gains and allowable capital losses. 3(b) is the net amount, that is, the amount by which taxable capital gains exceeds allowable capital losses.

3(e) is the additional deduction equal to the lesser of either your loss position on capital transactions or \$1,000.

So we come to No. 1. Let us take a man who has employment income of \$10,000, taxable capital gains of \$5,000, and allowable capital losses of \$2,000. Under 3(b) you determine the net amount of your gain, which is \$5,000 minus \$2,000. So the inclusion under subparagraph (b) is \$3,000.

You then go down to (e), which says that you can deduct the lesser of the amount by which your losses exceed your gains, which is zero, or \$1,000. So you get a nil deduction under 3(e) because you are in a positive position. So you end up with income of \$13,000.

Coming down here, it is slightly different. The taxable capital gains are \$2,000, the allowable capital losses are \$5,000. Therefore under subparagraph (b) you do not have a positive amount. Therefore there is nothing included. Your losses exceed your gains.

You come down to subparagraph (e) which says the lesser of losses, which would be the net losses, which would be \$3,000 or \$1,000. So you get your \$1,000, or an income of \$9,000.

**Senator Beaubien:** To go back to No. 1, is half your capital gain taxable on this?

**Mr. Scace:** That is right. By definition the taxable capital gain is half the amount of the gain. We would have had a capital gain of \$10,000; and similarly on losses—the losses would have been \$4,000.

**Senator Aird:** Would you go to column 2 again and describe the application of 3(e) as related to the negative factor of a \$3,000 loss?

**Mr. Scace:** We have a situation here where allowable capital losses have exceeded our taxable capital gains by \$3,000. The basic rule is that allowable capital losses can be deducted against taxable capital gains, so that gives us a net amount of \$3,000. We have really taken \$2,000 off there. The second rule is that where you are in that sort of negative capital position, \$1,000 in any year of allowable capital losses can be applied against other income. That is what 3(e) says. You can deduct the lesser of either your loss position of \$3,000, which was not applied against taxable gains, or \$1,000. So it is the lesser of the \$3,000 or the \$1,000. We take the \$1,000 and we end up with \$9,000.

**Senator Carter:** What about the other \$2,000? Do you deduct that in subsequent years?

**Mr. Scace:** We will come to that a little later. We will complicate it in order to show you how it works. You have a net of \$3,000 on losses. You take \$1,000 off. You now have \$2,000 still that has not been deducted. We will show you how that gets deducted in future years. That is running ahead a little bit at this moment, however.

Now, columns (3) and (4) do not add a great deal. Here you can see \$4,000 taxable capital gains; \$5,000 of losses; you are in a net \$1,000 loss position. There is no inclusion under 3(b) because of that. Here it is the lesser of your loss position of one or \$1,000, so you end up with \$9,000.

**The Chairman:** Mr. Scace, I think we had better have that chart to which you are referring included as part of the record. It would simplify following what you have been saying.

**Mr. Scace:** Yes, and we could simply refer to these columns (1), (2), (3) and (4).

(The table follows)

	(1)	(2)	(3)	(4)
E.I.	\$10,000	\$10,000	\$10,000	\$10,000
T.C.G.	5,000	2,000	4,000	4,500
A.C.L.	2,000	5,000	5,000	5,000
3 (b)	3,000	nil	nil	nil
3 (e)	nil	1,000	1,000	500
I.	\$13,000	\$ 9,000	\$ 9,000	\$ 9,500

**Mr. Scace:** Now, in column (4), just as a slight wrinkle on what we have said, here you have taxable capital gains worth \$4,500. You have an allowable capital loss of \$5,000. The net loss position would be \$500, and there would be no inclusion because of the loss. How much do you deduct? It

is the lesser of your net loss position of \$500 or \$1,000 and you get your \$500 deduction and you come out with \$9,500.

So in case (4) and in case (3) you have used up your net loss position all in the same year.

Very briefly and basically that is all section 3 says. It is relatively simple. There is one problem from a technical point of view which has been brought to the attention of the Department. I do not know whether they are going to do anything about it, but some of the language in section 3 is a bit vague and could do with some clarification. For example, section 3 uses the words "determine the amount by which the remainder, determined under" previous paragraphs exceeds this and that. I think it is reasonably clear what they are intending, namely, that you add various things and then you deduct various things. But the use of the language is vague. "Determine the amount by which the remainder" and so on does not make it entirely clear. It seems to some of us that it might be open to some misinterpretation.

**The Chairman:** The same word is being used in different contexts and with different connotations, I agree. For example, the word "determine" is being tossed around in different contexts and with different meanings. It would appear that there would be an editing job done on the language.

**Mr. Scace:** It is not serious, but some clarification might be helpful.

**The Chairman:** Yes.

**Mr. Scace:** Leaving section 3, we go on to subdivision (c), which starts with section 38 and then goes on to section 55. Subject to a few exceptions, most of the law on capital gains is found in sections 38 to 55. Now, to determine what a capital gain or a capital loss is for the purpose of the act, you start with section 39. If I may paraphrase it, section 39 says that a capital gain is something that would not have been taxed either under the old act. The same applies to capital losses. So the net result is that a capital gain is something that was entitled to a capital gains treatment—that is, no tax under the old act. Again the same applies to a capital loss.

As one senator remarked, this has the result that all of the old law and the old distinctions, very imprecise as they were, between what was capital and what was income still stay with us and we will be litigating them for the next ten years, or until we get tax reform again. The only difference is that rather than fighting about no tax versus full tax we are now talking about half tax versus full tax. So the differential has been reduced.

Another aspect which was raised very briefly this morning is the possibility that certain things may be exempt.

**Senator Connolly:** Do you mind my interrupting, Mr. Scace? On the last point, have you any suggestion to make which would clarify the position that you criticize? I take it that the burden of the criticism—and it seems to me justified—is that it brings into the new law the whole of the old law on what was a capital gain and what was income.

**Mr. Scace:** I am not sure that I levelled that as a criticism, Senator Connolly. As a lawyer I think I am probably quite happy about it.

**Senator Lang:** Senator Connolly should be, too.

**Mr. Scace:** The cure for it seems to be unpalatable, however. That is to say, that any gain, from whatever source, should be considered income and fully taxed is not too palatable. As soon as you want to give some type of income—and here it is capital gains—preferential treatment, you have to distinguish, and this is probably as good a way as any. If you are complaining, you may be complaining of the imprecision of the old jurisprudence, but I have no cure apart from that.

**Senator Cook:** The practical effect of this is that in the future we will all be pleading capital gains.

**The Chairman:** Yes, in other words, you would try to identify whatever you have as a capital gain.

**Senator Cook:** Otherwise you pay the full tax. In the future we will be pleading capital gains whereas at the moment we are saying we do not want to plead capital gains.

**The Chairman:** You still measure the capital gain or not under whatever the jurisprudence is now.

**Senator Connolly:** All the old decisions are still going to be brought to bear.

**Senator Beaubien:** We just cannot get the lawyers out of business.

**The Chairman:** We need to do a little, you know.

**Mr. Scace:** Well, there is the possibility here that the national revenue may not be quite as severe as they were, in that previously they had to assess or they were not going to get any tax, whereas now they may say that if you accept the capital gains treatment they will not push you on and try to get the full inclusion. Similarly, the courts, to the extent that they do not have to follow precedent, may back away from some of the harsher decisions of previous years.

In order to have a capital gain, apart from what we have just talked about, you must have a disposition. It seems to us that there are certain types of receipts which are realized without a disposition. Earlier this morning I mentioned gambling gains. Perhaps Senator Molson's idea of the Nobel Prizes or the Royal Bank awards and things of that sort would come in here.

**The Chairman:** And grants.

**Senator Beaubien:** When you say "disposition", do you mean a sale?

**Mr. Scace:** the word "disposition" is defined at great length. It certainly includes sales, but it includes a great many other things as well. We will come to that later.

**Senator Beaubien:** So long as you get rid of it somehow. That is the point.

**Mr. Scace:** So long as you get rid of it somehow, that is right.

**The Chairman:** Yes.



**Mr. Scace:** That is what a capital gain is. You then go to section 38 which defines the taxable capital gain as being one-half of the amount and the allowable capital loss as being one-half of any loss.

In addition there are certain items of property which are excluded from the capital gains provisions. There are three of these. The first one is eligible capital property. We will be talking about that later today or tomorrow. Basically, eligible capital property is goodwill or other nothings. I think you are all aware that there was a class of expenses which were not currently deductible and were not entitled to capital cost allowance treatment and they became known as nothings. They are now called eligible capital property and get special treatment.

The second exclusion from capital gains are amounts receivable for resource properties, and the third one is life insurance policies. Capital gains tax will not apply to life insurance policies.

In the case of a capital loss, those three exclusions are equally applicable, and in addition you cannot get a capital loss from the sale of depreciable property. That is explicable because you already have in the act and will have in the bill provisions whereby if you sell depreciable property for less than your undepreciated capital cost you will get a terminal loss and therefore there is no need for capital loss treatment of depreciable property.

**The Chairman:** Terminal loss means that the sale would have to exhaust that class in order that you might have a terminal loss.

**Mr. Scace:** That is right. Let us take one asset—the senator is being more sophisticated than I am in talking about classes—but if you just take one item or if you purchase a depreciable asset for \$100, then you are entitled on a depreciable asset to take capital cost allowance on it, at a specific rate. Let us say it was a building, then you would be entitled to 5 per cent per year on a diminishing balance basis. So, after a number of years you could get down to where you had taken \$50 in capital cost allowance and at that point in time the remaining balance of \$50 which is called undepreciated capital cost—the remaining amount from which you can take capital cost—or is the UCC if we can use a short form.

If you then sell that asset for less than the undepreciated capital cost, you are entitled to what is called a terminal loss. Let us say you sold it for \$20, you would have a terminal loss of \$30, the rationale being that the depreciation rates or the capital cost allowance rates were not sufficiently generous to allow for the depreciation of the asset and therefore you would get a write-off when you actually sell it.

**Senator Connolly:** In that case when you sell it for \$20 you have taken a \$30 loss.

**Mr. Scace:** Yes.

**The Chairman:** Which you deduct.

**Senator Connolly:** Then that \$30 is an ACL, is it?

**Mr. Scace:** No; as I say under capital cost treatment it is not an allowable capital cost because you have specific provisions dealing with losses on depreciable property

called terminal losses where you sell for less than the undepreciated capital cost.

**The Chairman:** It is deducted from what might otherwise be income.

**Mr. Scace:** Yes.

**Senator Connolly:** That is right. You get credit for it.

**Mr. Scace:** That is right.

**Senator Connolly:** Do you mind if I use an example here. Let us suppose for the sake of argument that you buy a piece of equipment such as a computer where the time over which you depreciate it is 15 years and, in fact, it becomes obsolete in 5 years. Now let us say that following your example you have written it down to the \$50 level from \$100. Then it is sold for scrap. I take it then that the owner of that equipment who had to sell it for scrap does not complain about the fact that the depreciable life of that equipment was too short. He simply gets the benefit at the end in the form of a terminal loss.

**The Chairman:** The terminal loss provision scales up his write-off.

**Mr. Scace:** This works very fairly, and there is no complaint. The exemption from capital losses for depreciable property is quite legitimate and quite fair because of this rationale.

**Senator Lang:** This is the same as the law is now.

**Mr. Scace:** That is right. The only problem is that the terminal loss provisions are really found in the existing regulations and as I think you are very much aware we have not seen the regulations under the new bill, so we can only assume that they will be the same in this particular area. All indications are to that effect.

Now, in computing the gain, there is really no problem here. The computation of the gain is found in section 40 (1) of the bill, and basically what you do to calculate it is to take the proceeds of the disposition—that is a defined term—and in this case we can say you take your sale price and subtract from that your adjusted cost base plus your sales expenses.

Let me give you an example. If I have an asset which costs me \$50 and I sell it for \$100. Under the new bill you can say the \$50 is my cost. However, we will complicate it in a few minutes. They refer to the adjusted cost base which is a defined term and certain amounts must be added to and subtracted from your original cost to come up with the adjusted cost base. So, here is your sale price minus your adjusted cost base minus the expenses of sale, and let us say that those expenses amount to \$5. This would give you a net capital gain of \$45. To calculate your capital loss, you just reverse that procedure. If we take it here where you come up with a gain of \$45, of course the taxable capital gain is only one-half of that.

**Senator Lang:** So we do not need recapture any more.

**Mr. Scace:** Yes, we will need recapture and we will still have it.

**The Chairman:** You can have recapture and capital gain.



**Mr. Scace:** We are going to have recapture.

**Senator Lang:** One on top of the other?

**Mr. Scace:** That is right.

**Senator Molson:** We are going to have everything.

**The Chairman:** From soup to nuts.

**Mr. Scace:** Now, moving along, here you have an asset which you purchased for \$100 as original cost, and you depreciate it by \$50 of capital cost allowance over the years, and you then have an undepreciated capital cost of \$50.

You then go to the reverse of Senator Connolly's example in that we have an asset which has appreciated. In fact, you would wonder why it would be depreciable property. In any event you sell it for \$160 and in that case the difference between \$50 and \$100 will be recaptured and will be includable in income in full. The difference between \$100 and \$160 is \$60 which will be a capital gain, but it will be entitled to preferential treatment and only half of it will be included in income so you will pay on \$50 plus \$30 which is \$80.

**Senator Connolly:** It is very simple when you have an explanation, but try to read that in the act.

**The Chairman:** It may now be more intelligible when you read the act.

**Mr. Scace:** I think that is all we can hope to do. You have to study these provisions on your own, but if someone gives you an indication before you start of what they are trying to say it makes it a little easier.

**The Chairman:** You can only tell the judge also, but it helps.

**Senator Lang:** Are we certain that this act does exclude the difference between \$50 and \$100 from capital gains tax?

**Mr. Scace:** I am satisfied of that. It excludes it from capital gains tax because capital gain is measured as the difference between selling price or proceeds of disposition and adjusted cost base.

**Senator Lang:** So we are back at Section 3?

**Mr. Scace:** Yes. To get the doubling up which I think you have in mind the definition would have to say undepreciated capital cost.

**Senator Carter:** Is the present law different from that?

**Mr. Scace:** The present law is exactly the same for the \$50.

**Senator Carter:** But the capital gains is contained in the new law.

**Senator Flynn:** There is no change in what would otherwise be considered as capital gains but is presently taxable. Is this based on practice rather than the principle of the present legislation?

**Mr. Scace:** There is nothing in the present legislation. Section 3 of the current act provides that tax is paid on

income and, apart from certain specific items, it is not defined. We can only go to the cases in the jurisprudence, of which there are literally thousands.

**Senator Flynn:** Your conclusion is that the new text does not change this principle, even if it is implied in the present legislation?

**Mr. Scace:** If I understand your question correctly, yes.

**Senator Flynn:** I mean, it is not explicit that this kind of capital gain should be considered as income; the sale of houses is considered as having created an income, rather than a capital gain?

**Mr. Scace:** That is right.

**Senator Flynn:** And it goes on in the same way, which is why it will be taxed in its entirety and not subject to the 50 per cent deduction provided for the new capital gains taxed under the new legislation?

**Senator Beaubien:** There is a big difference between the present act and this, with depreciation allowance of \$60 and a sale for \$160, a full tax of \$110 is paid today.

**Senator Flynn:** Not necessarily.

**The Chairman:** No, if you are in a business, all of it is income; if it is a capital gain transaction under our present law, then the capital gain part of it would not be taxable.

**Senator Beaubien:** If I own a building for which I paid \$100,000 and depreciate it over the years by \$50,000 and sell it for \$160,000, which is the example there—

**The Chairman:** The recapture is only the depreciation which comes into the income.

**Mr. Scace:** You bring \$50 in; the \$60 would be a capital gain which is not taxable. The rationale is the same now, except now half of the \$60 becomes taxable.

**Senator Beaubien:** I see; I was wrong.

**Senator Flynn:** In other words, they do not want you to gain by having the new capital gains tax.

**Mr. Scace:** You will be worse off because of the capital gains tax system; there is no question about that.

**Senator Walker:** In other words, the actual capital gain is taxed at 50 per cent but the recaptured depreciation is taxed at 100 per cent.

**Mr. Scace:** That is right. There are a great many special rules in section 40. I do not intend to go through each and every one in detail. I would like to draw your attention to one or two of them, however. The first is that where the taxpayer is a corporation he cannot claim a capital loss, or an allowable capital loss, where the property is disposed of by the corporation to either a parent company, a subsidiary company or a sister corporation, if there is no loss on such a transfer.

Another rule is that no loss or gain results from the disposition of a chance to win a prize or a right to receive an amount as a prize in connection with a lottery. You might note that there is no definition of a lottery in the bill; I am not sure what a lottery is, to be honest about it. It might be helpful if such a definition were given.

**The Chairman:** Except that defining very often limits. If there the word "lottery" was undefined it would take on whatever the custom of the trade has been, and might have a broader meaning than would be written in by definition. We must think of that.

**Senator Molson:** I note the term "lottery scheme" is used, which sounds rather more sinister than just a lottery.

**The Chairman:** The word lottery would be broadened by stating any scheme which approximates a lottery.

Under paragraph (e) where the taxpayer is a corporation and cannot create a capital loss, how does that relate to the fair market value? If a corporation sold to another corporation that it controlled at the fair market value at the time of the sale and the fair market value was less than the cost?

**Mr. Scace:** So that even by doing it at fair market value there was a real loss?

**The Chairman:** Yes.

**Mr. Scace:** I think Section 40(2)(e) prevents the deduction of that loss.

**The Chairman:** That is right; certainly under the law as it is at the present time it was always safe to proceed on the basis of the fair market value.

**Mr. Scace:** That is right and we will come into this later, senator. However, one of the problems as we see it under the new bill is that in non-arm's length transactions the scope permitted for transferring assets, which may have very valid and legitimate business reasons, is very much diminished because they have to pass at fair market value. There are some exclusions, but they are much curtailed under the new act, so that will be a problem.

**Senator Lang:** Does "controlled" have the same definition as under the old act?

**Mr. Scace:** Yes sir; 50 per cent, plus one.

Another concept contained in Section 40(2)(g) is that of a superficial loss. It provides that there will be no deduction. That type of loss is defined in Section 54(i) as the loss from a disposition of a property in any case where the same or identical property—that "same or identical property" becomes "substituted property"—was acquired during the period beginning 30 days before the disposition and ending 30 days after the disposition by the taxpayer, his spouse or a corporation controlled by the taxpayer and at the end of the period the substituted property was still owned.

**The Chairman:** Does this situation not prevail in the United States, where tax losses are created at the end of December by sales and the property is repurchased in January?

**Mr. Scace:** That is correct. To take a very simple example, suppose I own 10 shares of ABC Company and my purchase price was \$100, and the market has declined to \$50. On the other hand, I have another asset which behaves in completely the reverse way. I have a purchase price again of \$100 but a current value of \$150. For good business reasons I sell this asset and make a \$50 capital

gain and a \$25 taxable capital gain—over here I am in a loss position. I do not want to pay tax on the \$25 gain, and I do not really want to get rid of that stock—I want to keep it in the family—so what I can do is transfer this asset to my wife at \$50 and that would show as a \$50 capital loss and an allowable capital loss of \$25.

**The Chairman:** Do you not mean an allowable taxable gain?

**Mr. Scace:** No, I have a loss on this side which, apart from the superficial loss rules, would be an offset and I would not pay any tax on that and this asset is still in the family.

**The Chairman:** That is an allowable taxable gain?

**Mr. Scace:** No, I had a loss on this side.

**Senator Beaubien:** But you would not get it back.

**Mr. Scace:** That is a wise observation. It is generally true of my wife.

**Senator Beaubien:** It would be a loss all right.

**The Chairman:** That is a personal loss.

**Senator Connolly:** So you neutralize the tax?

**Mr. Scace:** That is what you would be intending to do, but you cannot get a deduction for a superficial loss and, by the definition, that would include a sale to your wife. You do not get that \$25 allowable capital loss. You are stuck with the \$25 capital gain.

**Senator Connolly:** Even if you do not repurchase from your wife you do not get it?

**Mr. Scace:** Not if she owns it at the end of the period. That is the rationale. That is not too serious in most cases because what happens is that the wife has paid \$50 for it, and her adjusted cost base is increased by the amount of the loss so that, in effect, her cost base will be the \$50 that she paid to her husband plus the amount of the loss which gets her back up to the \$100. If she then sells it later on—a true disposition and not within the family, so to speak—for a loss she will get that loss.

**Senator Walker:** There is no point in doing it, then, is there?

**Mr. Scace:** No, there is no point with this definition. All countries imposing a capital gains tax have this type of provision. I have not done a thorough study on it, but the provision that we have in the bill is probably less severe than most other taxing statutes. For instance, you would seem to be able to avoid it possibly by selling to a child, or to a company owned by your wife.

**Senator Beaubien:** What would be the situation if you just sold it on the open market and bought it back on January 1?

**Mr. Scace:** That would be a problem too because you have this 60-day period—a 30-day period on either side. For example, if we take the day you sell it you cannot re-acquire it within a 30-day period. You are just rolling it over and they will not allow it.



**Senator Beaubien:** You would have to wait 31 days.

**Mr. Scace:** Yes, that is right, and that puts you at risk in the market.

**Senator Beaubien:** It is good for the broker.

**Mr. Scace:** These superficial loss rules will not apply in the case of an emigrating resident when a departure tax is imposed. It will not apply in the case of death; it will not apply to certain trusts and also in one or two other more specific situations.

There is a problem with the definition of a superficial loss, and it might be possible for the Senate to draw the department's attention to it. They may be aware of it, but it seems to us that you could have a problem where the saving of taxes was not an issue at all. In other words, you are just acting as a normal prudent investor or businessman.

Let us take an example. Suppose a taxpayer owns 100 shares of a company stock which he purchased at a price of \$50 each, and then subsequently the market price goes up to \$100, say, by December 4, and he then purchases another 100 shares at \$100. He now has 100 shares which he purchased at \$50 each, and another 100 shares which he purchased at \$100 each. Now, assume that during December the market collapses and the price declines from \$100 to \$20, and on December 26, which is within this 30-day period, he sells half of his shares, namely, 100 shares, at \$20—

**Senator Beaubien:** What a trader!

**Mr. Scace:** I do not know about that. It seems to me on the second transaction he has incurred a real loss of some amount. If it is his first purchase it is a real loss of at least \$30, and if it is the second purchase there would be a real loss of \$80. The act provides for averaging the cost, but apart from that situation he would seem to be within the definition of a superficial loss, and he would get no deduction for his loss. As we said, it is conceivable that if you sell to your wife she gets to add the amount of the loss to her purchase price, but it appears that in this particular situation he gets no deduction for his superficial loss and he cannot add it to anything either. You could get a true inequity in that particular instance.

**Senator Connolly:** There would be no correction for that under the draft act we now have except perhaps at the discretion of the official who would say: "This is a legitimate transaction which you have undertaken." The first example you gave was a devised operation.

**The Chairman:** There is one way of curing it, I suppose. If you establish a real loss, and if it is not recognized as an allowable capital loss, the act should go on to provide that in those circumstances you would be entitled to add it to your cost.

**Mr. Scace:** That is the intention of the legislation, Senator Hayden, but it just does not work in this one funny instance.

**The Chairman:** I think we should have a look at it.

**Senator Cook:** Just before you go on, Mr. Scace. I would like to go back to one of your earlier examples. The wife

got the depreciated stock at \$50 and then you worked out what she would pay. What was that again? I missed that.

**Mr. Scace:** The amount of the superficial loss incurred by the husband. We assumed this is an asset that he sold to his wife at a loss and the amount of his loss was \$50. He has sold the property at fair market value to his wife for \$50 and she has an acquisition cost of \$50, but the act goes on to provide that except in this one instance which I have just given you the amount of the superficial loss—that is, the \$50—can be added to the transferee's or the acquirer's cost base.

**The Chairman:** To the wife's cost base.

**Mr. Scace:** Yes, the wife's cost base in this example, so that would bring her up to a cost base of \$100 which is the same as what the husband had. In other words, there is no penalty. She is put right back in the same position as her husband was in, so it is eminently fair.

Another special rule is that you cannot get a deduction for a loss from the disposition of property where the proceeds are compensation for property unlawfully taken, or compensation for property destroyed, and any amounts payable under a policy of insurance in respect of loss or destruction. Probably the most important one here is the latter. There is no loss if the proceeds of insurance are not sufficient to cover the cost of the property. In other words, you cannot get a deduction for a casualty loss on insurance. I think the Government has just said that they are not going to be the insurers for private individuals, and on that basis it is a reasonable policy decision. On the other hand, you get some hardship where it is impossible to insure property for 100 per cent coverage.

**The Chairman:** Which section is that?

**Senator Flynn:** Suppose you make a gain out of the proceeds of the insurance? Suppose you have insurance for the increased value of the asset?

**Mr. Scace:** That can be a capital gain.

**Senator Flynn:** It could be a capital gain?

**Mr. Scace:** Yes, sir.

**Senator Flynn:** The other way it would not be a capital loss.

**Mr. Scace:** That is right.

**Senator Flynn:** That seems unreasonable.

**Mr. Scace:** You gentlemen are more experienced than I am about insurance. I am not wholly familiar with it. I think the problem usually is that you cannot get 100 per cent insurance.

**Senator Flynn:** Oh yes.

**Mr. Scace:** It is rarely that you get insurance in excess of 100 per cent.

**Senator Flynn:** Oh yes, you can certainly get insurance for more than your costs.

**Senator Connolly:** Yes.

**Senator Walker:** Not your loss.



**Senator Flynn:** If I pay \$25,000 for a house and it is worth \$50,000, I can get, if not \$50,000, certainly \$40,000 insurance on it.

**Senator Lang:** I think what Mr. Scace is referring to is the case where the insurer requires that the owner act as a co-insurer.

**Senator Flynn:** Let us forget about that. It seems unreasonable, if I get the proceeds of an insurance policy after a fire, that there is a capital gain, because there is a deemed realization I suppose in such a case, but if I lose by the same token, because I have not enough insurance or no insurance at all, I will not be able to deduct that as a loss.

**Mr. Scace:** Let me just make two comments. First, if you receive more than the cost of the property—in other words, it is a capital gain—you do get an exempt roll-over if the insurance is used to buy another property. I agree with you in wondering, looking at it from the taxpayer's point of view, why there should be a capital gain with no loss. I guess it has to be looked at from the government's point of view, because they would in effect, from the tax point of view, become the insurer on every property where people fail to take out adequate insurance. I think that is what they are trying to avoid.

**Senator Lang:** I would think that is wrong. I do not think they become an insurer. They should have to ride with the success and with the failures of each one of us.

**Senator Flynn:** If I use the proceeds of the insurance policy to build a new house, am I still taxed on the increased value?

**Mr. Scace:** I was going to come later to the question of re-investing it, but I can do it now if you wish. If it is re-invested, you will not get taxed at that time.

**Senator Flynn:** But the cost of my new house will be the cost of my old house.

**Mr. Scace:** That is right, which is also pretty fair, I think. I seem to be defending the bill here, and I am not sure I want to be in that position.

Finally on the specific rules, you cannot get a deduction where the loss arose from the disposition of personal use property. We will tell you what personal use property is in a moment.

Now we come to specific definitions. I start off with the definition of "Proceeds of disposition". That is to be found in section 54(h). It is a very extensive definition. This answers one of the previous questions. It starts off as including the sale price of property that has been sold, and goes on to enumerate a number of other specific items. I think the one interesting feature of this, from a taxpayer's point of view, is that it is not an exhaustive definition. You find this throughout the bill. It uses the words "'proceeds of disposition' of property includes", and there are eight enumerated proceeds. There could be others that they have not thought about, which could still constitute proceeds of disposition. It becomes somewhat difficult in practice at times to figure out just what else might be included, apart from the enumerated items. There are some reasonably good battles over what is or is not included.

**Senator Walker:** I did not realize you were coming to that. Would a judgment for damages, for instance, in a tort action still be free of capital gains tax, supposing a person got a judgment of \$100,000? It has been free of tax to date.

**Mr. Scace:** That is right. That is a good example. I had not thought about it. If you go back to my original rationale, if it is a capital gain now it will be taxed as a capital gain under the new bill if there is a disposition. If you look at the definition of "disposition"—

**Senator Walker:** It is very difficult to determine.

**Mr. Scace:** I do not know.

**Senator Walker:** Usually a return in a damage action is supposed to be in any event, depending on the lawyer, equal return for equal loss.

**Senator Flynn:** Material loss. If a house is destroyed by fire, for instance, in the case you just mentioned, through the fault of a third party, I get judgment against the third party for the appraisal value of the house. In accordance with what you said before, this would be taxable. It could be a different story if I got an amount for bodily injuries, for instance. That would not be taxable.

**Senator Walker:** It has always been free so far.

**Mr. Scace:** I think that is a fascinating question; it is an item we have not thought about at all. I think you are right and it is an exempt item.

**Senator Walker:** Perhaps it would be a good idea to forget about it!

**The Chairman:** To be subject to tax you have to read on in the definition of "Proceeds of disposition".

**Mr. Scace:** That is right, of disposition.

**Senator Walker:** It is not covered here.

**Mr. Scace:** Not specifically. Again it says "includes", and I do not know what that means.

**Senator Beaubien:** It does not exclude.

**Mr. Scace:** It is not exhaustive.

**Senator Lang:** I do not think the ordinary meaning of the words "Proceeds of disposition" would include that sort of receipt.

**The Chairman:** You mean, to bring it in you would have to say the damages were the proceeds of the disposition, and that is the causing of the injury to you?

**Senator Lang:** Yes, it is going pretty far.

**Mr. E. Russell Hopkins (Law Clerk and Parliamentary Counsel):** What about 54(h)(iii), "compensation for property destroyed"?

**Senator Lang:** That is the one Senator Flynn mentioned.

**Mr. Scace:** Senator Flynn mentioned a personal injury action, in which you would be the property destroyed, if you want to say you are property.

**Senator Connolly:** Your arm or leg perhaps.

**Senator Walker:** That would be ridiculous. You are supposed to get a damage judgment according to the damage that you personally have suffered. When you are compensated for injuries to yourself, to have to take from yourself and pay a capital gains tax on only having yourself restored to normal does not seem right, does it?

**Mr. Scace:** It does not seem right.

**Senator Walker:** Perhaps that is why it is not included. It would be unjust to include it.

**Senator Flynn:** Especially if any human is depreciated.

**The Chairman:** I think we have dealt with that now.

**Mr. Scace:** We have taken a look at the definition of "Proceeds of disposition". There is then a very extensive definition of a disposition. Again the word "includes" is used. The opening item says that:

any transaction or event entitling a taxpayer to proceeds of disposition

is a disposition. They have you chasing your tail on that one. There are also a great many other things which in general would cover most commercial transactions.

There are a number of exclusions from the definition of a disposition, which are well set out in section 54(c). It does not include, for instance, the transfer of property as security for a loan. It does not include any transfer where there is no real change in the beneficial ownership. It does not include the issue of a bond, debenture by a corporation, or the issue of a share from the Treasury. All those things are excluded. But, generally, most others are caught.

While we are talking about dispositions, as defined, there are also certain deemed dispositions or deemed realizations. I referred to them very briefly in the summary.

The first one is what we call a departure tax. You find that in section 48 of the bill. Essentially, what that says is that a taxpayer, when he ceases to be a resident of Canada, is deemed to have disposed of his capital property at fair market value. In other words, the tax is imposed at that time. There is an exclusion for taxable capital gains, up to \$2,500. That means you can have a total capital gain of \$5,000. I will give you an example. If a man has assets worth \$100,000 and the value had gone up to \$200,000, and he is a resident of Canada, and decides to move to Bermuda or the Bahamas, when he gives up his Canadian residency there is a deemed realization fair market value. The difference between the \$200,000 and the \$100,000 would be brought into income. He can subtract \$5,000 from that and gets a total capital gain of \$95,000, and a taxable capital gain of \$47,500.

There is also a provision, which we will talk about later on. He need not pay tax on certain assets which are called taxable Canadian property. These are specifically defined in the bill; they are more or less permanent assets in Canada. Non-residents are subject to tax on such assets. So, even though he goes to another country, he will still remain liable for Canadian capital gains tax on those assets.

**Senator Walker:** Supposing he decides to come back from the West Indies, as some people are hoping to do, how will

he be taxed for capital gains tax? Supposing that most of the money is raised while he is in the West Indies?

**Mr. Scace:** When he comes in, when a person becomes a resident, there is a deemed acquisition at fair market value . . .

**Senator Walker:** As of that date?

**Senator Burchill:** To qualify, would a man have to renounce his Canadian citizenship?

**Mr. Scace:** No. Residency is not dependent on citizenship.

**The Chairman:** It is residence.

**Mr. Scace:** You can retain your Canadian citizenship, sir.

**Senator Aird:** How would they police this?

**Mr. Scace:** That is a real problem. What we are really talking about in policing is something other than that which is attached to Canadian properties. If you have real estate in Canada or something like that, you can get a lien on the real estate. For instance, on portfolio investments, you can have millions of dollars in portfolio investments and accrued gains, and I do not think there is any way we can police it, if somebody wants to be fraudulent or dishonest.

**Senator Flynn:** They would have to apprehend you were leaving the country.

**Mr. Scace:** That is right.

**The Chairman:** I think there is one way, if the transfer offices were in Canada, on your investments, and they learned about them.

**Senator Flynn:** You could have arranged for the transfer before leaving.

**Senator Walker:** You could have it in certificates.

**Mr. Scace:** It would be very difficult.

**The Chairman:** It would be very difficult, yes.

**Senator Lang:** It would be a question of giving up the residency.

**The Chairman:** You could mail the letter in Toronto, Montreal or Ottawa, and it might take that long to reach its destination.

**Mr. Scace:** I think this assumes that somebody wants to be honest. If anybody wants to go to the length of committing fraud, there is very little the government can do. For instance, as a resident, you could sell shares and realize a capital gain of a million dollars, and you do not have to report that until the following year. You then go out. If you want to be dishonest about it, you put the money in your pocket and leave.

**Senator Flynn:** There is a penalty of imprisonment for that?

**Mr. Scace:** There is a penalty of imprisonment, if you are in Canada.



**Senator Flynn:** I was thinking of when you would come back for a short visit. Can they arrest you then?

**Mr. Scace:** If you are going to do this kind of thing, I strongly suggest you do not come back.

**Senator Walker:** But you could not be extradited for that?

**Mr. Scace:** Other jurisdictions—and this is true of our own law—will not enforce the revenue statutes of another country. So really, under the current or existing law, you can do that with impunity.

**Senator Lang:** This concept must involve the imposition of some duty on a resident. For instance, if I were buying a house, would I have to find out that the person from whom I am buying it is still a resident of Canada, or something like that?

**Mr. Scace:** Yes, sir. This is a very difficult problem. I do not know whether we plan to touch on this. I think it is serious, but I do not know whether you want to deal with it now or later. For me, this would be quite a convenient point at which to stop.

**The Chairman:** If we postpone that question until we resume, this would be a good point at which to break. We will come back at 2.15 p.m., full of vim and vigour.

The committee adjourned.

Upon resuming at 2.15 p.m.

**The Chairman:** The hearing is resumed.

**Mr. Scace:** Before the adjournment we were talking about the departure tax under section 48. Two questions were raised, one before we adjourned, and then another one just before we recommenced.

I will deal with the latter one first. If I can draw your attention to section 48(2), the question was whether there was any provision for employees of multinational companies who get moved in and out of the country? A person may be a resident in Canada for awhile and may be transferred to another country for a short period of years and then return to Canada. I gather some of the briefs on the White Paper were concerned about that.

Section 48(2) is designed to cover that situation. It provides that if a taxpayer who is an individual so elects in a prescribed manner and within a prescribed time, and if he furnishes the minister with security of some sort or a charge on property, or somebody guarantees the potential tax, the departure tax will not apply to him. It goes on to say that he is really deemed to be a resident throughout his period of absence. I think that aspect of it is covered.

**Senator Haig:** If a bank, a trust company or a multinational company sends a man away for a period of three to five years, they would arrange his tax position with the department.

**The Chairman:** He is the one who has to make the election under this section.

**Senator Beaubien:** What happens if he changes his mind?

**The Chairman:** Well, the security is there for that purpose. He has to furnish the security.

**Mr. Scace:** There is a provision that says that you can do it by way of guarantee from another person. The company could guarantee it. Mr. Smith whispered in my ear, "What happens if the employee leaves the company when he is a non-resident? How does the company go after him?" You would probably have a law suit.

**Senator Beaubien:** The company would put up the guarantee.

**The Chairman:** They would have a problem in trying to pursue him in another jurisdiction.

**Mr. Scace:** The other question was on non-residence and capital gains tax. The taxing or the charging section is section 2(3). It says that a non-resident person who has disposed of taxable Canadian property is liable for capital gains tax.

Taxable Canadian properties are then defined in section 115(1)(b). There is a long list. It includes real property situated in Canada, or an interest therein. It refers to any other capital property used in carrying on a business in Canada, one share of capital stock in a private corporation and more than a 25 per cent interest in any other kind of company.

There are certain other things too. The way this is to be enforced creates a problem. If you assume that you have a non-resident vendor who is selling taxable Canadian property, section 116 is designed to enforce that.

If I can paraphrase almost two pages of the bill, as we understand them, firstly it is envisaged that a non-resident vendor intending to sell taxable Canadian property, say real estate, will write to the department giving a description of the property, the intended proceeds, the date of disposition, the cost of the property, and the amount of the gain, and put up either the tax or some security for the tax. If he does that, the department will issue a piece of paper called a "certificate limit." Any time a certificate limit has been issued the parties may go ahead and close their deal and there will be no problem.

**Senator Haig:** That applies to personal plus corporation?

**Mr. Scace:** That is right, it would.

**Senator Sullivan:** And real estate?

**Mr. Scace:** It would certainly apply to real estate and to shares of private corporations. If he does not tell about the intended sale, a subsequent provision says that once a sale has taken place within 10 days, he must give them some kind of information and pay the tax.

We then come down to the last subsection which is section 116(5). Essentially it says that where a certificate limit has not been issued the Canadian purchaser resident is liable for 15 per cent of the amount of the proceeds in excess of the certificate limit.

**Senator Haig:** Where does he get the certificate limit?

**Mr. Scace:** For example, say a non-resident has a property which cost him \$100 and he proposes to sell it to a Canadian purchaser for \$200. He would write into the department and they would issue him a certificate limit with respect to the \$100 gain. If as the transaction eventually went through the sale price turned out to be \$250



instead of \$200 as in our example, there would be a gain of \$150 with \$100 cost, and section 116(5) says that the Canadian purchaser is liable for 15 per cent of the excess, which, in our example, is \$50.

But as we read section 116(5) it seems to say that if the non-resident does not obtain the certificate limit, in other words, if he does not come forward and nothing is done, then the Canadian purchaser could be liable to pay tax equal to 15 per cent of the total purchase price, namely, \$250 as in our example.

**Senator Connolly:** You mean just the excess?

**Mr. Scace:** I think it is possible to read it—

**Senator Beaubien:** You can read it either way.

**Mr. Scace:** You can read it that if no certificate limit is obtained, then section 116(5) does not apply. However, we have talked about this matter on many occasions with a number of people, and a good many of them agree with the interpretation I am giving you.

**Senator Connolly:** What do you think the intention is? Is the intention merely to tax the \$150 as in the example?

**Mr. Scace:** When they set up this section 116(5) I do not think they ever thought that it could apply to the whole purchase price. I think it is one of those inadvertent situations.

**Senator Walker:** That is a terrible penalty for an innocent person to pay.

**Mr. Scace:** Yes, it is. The real problem is, if you are acting for a Canadian purchaser of real estate or shares, how do you determine the residence of the vendor? You could take an affidavit or receive representations, warranties and covenants, but if the man is fraudulent those things are not worth the paper they are printed on. Alternatively, you could escrow the funds. I am not a real estate lawyer, but it seems to me that if you were to go to the registry office and say that you were going to close but were intending to withhold 15 per cent of the purchase price in case the vendor was a non-resident, then you just would not have a deal.

**Senator Connolly:** No, they would not give you the deed.

**Mr. Scace:** It would seem that you would almost have to go to the Department of National Revenue on almost every transaction, unless you are sure.

**Senator Connolly:** In other words, anybody closing a real estate transaction has an additional search with the Department of National Revenue before he can advise his client that he can close. The client on his part may very well be liable for 15 per cent of the whole purchase price under the interpretation we have here.

**Senator Haig:** Unless, of course, the vendor has asked for a certificate limit.

**Mr. Scace:** If you have an honest vendor, or one who is going to comply with the act and has either got a certificate or, on that second branch, has gone and paid the tax, then there is no problem. Supposedly, in most situations, that is what will happen. However, if you are looking at

the bad situation, it could be very serious. Naturally, from the point of view of practice you obviously have to guard against the bad situations.

**The Chairman:** I think there would be another requisition on title, and that requisition would ask for evidence that the vendor is a resident of Canada.

**Senator Flynn:** You know, this may be pushing quite far into the province of civil rights. I realize this is ancillary, but this is getting mixed up into the problem of property rights.

**Senator Connolly:** That is right.

**Senator Walker:** This is really rough.

**Senator Flynn:** It is very serious.

**Senator Connolly:** It is just as much a factor as a sheriff's seizure. When you get a sheriff's certificate to the effect that a man has no executions against him you have to have one drawn from the registry.

**The Chairman:** What is it that you may accept as satisfying you, reasonably, that this man is a resident? What do you accept?

**Mr. Scace:** I think they could amend the section to make it clear so that it exempted a Canadian purchaser who exercised due care and diligence. It would then become a question of fact that he had. I expect representations, warranties, affidavits and whatever you want would suffice. If you have been careful about it, that should suffice.

**Senator Connolly:** Your success would depend very largely on where the onus lay. If the onus lay on the department to prove that the vendor was non-resident, that would be one thing, but if the onus were on the purchaser to prove that the vendor was a resident, then he might be up against a difficulty.

**The Chairman:** What you are interested in knowing, really, is whether the vendor is a resident. If he is a resident there are no penalties and no complications.

**Senator Molson:** Mr. Chairman, I find this very depressing. The number of transactions that can occur in any given period in this country will be reduced enormously. I am not sure whether any advantage will go to the public or to the government or to anybody as a result of this legislation. It just seems to me that everything we run into is so complex that the ordinary man with a camp in the country or something of that sort, who tries to sell it to somebody, will find it exceedingly difficult. By the time he finishes getting his certificate and getting in touch with the department, finding out this and finding out that, it will just have made his life extraordinarily difficult.

**Senator Benidickson:** He will probably just burn his camp for the insurance money.

**Senator Molson:** He might just do that.

**Senator Walker:** There would seem to be no relief at all from this. It is an enormous penalty.

**The Chairman:** The answer might be if he is able to satisfy himself.

**Senator Walker:** But he cannot satisfy himself.

**The Chairman:** On what Mr. Scace has suggested, he can.

**Senator Walker:** If you meet a vendor you do not necessarily know what his situation is. He may assure you that he is a resident. He may give you affidavits and you may get affidavits from his bank and he may still turn out to be a non-resident. If that happens you are it. It does not matter what steps you have taken.

**The Chairman:** That is right, and that is why I put the question earlier: what can you get that will satisfy this problem and upon which you can properly act.

**Senator Walker:** That is right. I thought that was a good question and that it should be incorporated.

**The Chairman:** I have made a note here and it will also be in the record of today's proceedings.

**Senator Lang:** Mr. Chairman, I assume that a non-resident who gets a certificate limit pays the tax in order to get that certificate limit.

**The Chairman:** Or he puts out a security for the tax.

**Senator Lang:** In other words, he has to put out this tax before his deal is closed.

**The Chairman:** No, he can put out the security. He does not have to pay.

**Senator Beaubien:** He gets the bank to guarantee that, if it is sold, he will pay it.

**The Chairman:** If the deal does not go through, then there is nothing.

**Senator Beaubien:** He pays the Receiver General of Canada, it says.

**Senator Haig:** The question I should like to raise is what is a resident or a non-resident? For example, what is the category of the chap who goes out to work for a multinational corporation for three or five years? Is he a permanent non-resident? And then if a real estate transaction goes through, what are you going to do with respect to him?

**Senator Lang:** If I may come back to my point, Mr. Chairman, as I see the mechanics of it, the non-resident would pay to the Receiver General of Canada the tax or the security for the tax. If the transaction thereafter does not close, that non-resident would have to go back to the department to get his money. In my experience it would be about one year later that he would get it.

**Senator Haig:** Two years.

**Senator Flynn:** You are an optimist.

**Senator Beaubien:** Is there any way we could put the onus on the department whereby the purchaser could go to the department and indicate that he is ready to buy and ask them to inform him whether the vendor is a resident or a non-resident.

**Senator Flynn:** This morning we were speaking about the difficulties of enforcing the payment of the tax on the

Canadian who decides to live elsewhere. The Government has not provided any remedy for that situation. But in this case they have found some kind of remedy by saying that the purchaser will be liable. To me that is nonsensical. It is penalizing someone who has nothing to do with the problem of payment of the tax. If they have not been able to find a way to enforce another provision, that does not justify trying to enforce it by forcing someone who is not responsible. You cannot find a reasonable solution that way. It seems to me completely unethical.

**The Chairman:** But it is taking the easy course.

**Senator Flynn:** I agree that it is. Of course it is. Nevertheless, I think we should object strongly to that.

**The Chairman:** Non-residence here, in this case, includes just what it says—a non-resident. It does not include only a person who decides to depart from Canada. It covers a person who may at all times have been a non-resident.

**Senator Lang:** Is it not an underlying concept of withholding tax that the imposition of liability to withhold is placed on the person who has control over the money flow? I think of the employer or the company paying dividends. In this case you are imposing a liability on an entirely different class of person to withhold a tax.

**Senator Beaubien:** The fellow who pays the money out.

**The Chairman:** The theory behind it is to impose a liability on somebody who is within the jurisdiction.

**Senator Lang:** Yes, but it is a withholding tax, really.

**Senator Flynn:** Would it be constitutional to provide that in any case the purchaser would be entitled to withhold 15 per cent of the price for, say, three years in order to give time to the department to find out whether the vendor is a resident or not?

**The Chairman:** The answer to that question is that we can make any suggestions to remedy that situation that we think are feasible.

**Senator Flynn:** We could make it even if it is absurd to show the absurdity of the solution provided herein.

**Senator Aird:** Mr. Chairman, I should like to ask the witnesses on this specific point if there has been any discussion in the seminars or have they heard any suggestions that would relate to the situation of companies inserting themselves into the middle of such a transaction and you could have an indemnification coming forward? It seems to me that this is perhaps one of the ways that this might be cured. It might be costing a little more money and might be creating a whole new area of business but it is a way of protecting the purchaser.

**The Chairman:** You are speaking of something in the nature of a company that might guarantee title?

**Senator Laird:** That is right.

**The Chairman:** Then you might find a company that would guarantee residence.

**Senator Flynn:** But that is in favour of the Government. That is entirely a new concept.



**The Chairman:** That is right.

**Senator Flynn:** And I do not agree with it at all. I think the Government should take its own risk and settle its own problems, and not ask a purchaser for a guarantee to pay the tax of a third party who might commit fraud.

**The Chairman:** This arises where you have a capital gains tax and everybody who makes a capital gain, with certain exceptions, is subject to pay tax no matter where he may live.

**Senator Flynn:** I know, but let them run after him if they want to do it. It is their own business and should not be the problem of the purchaser.

**Mr. Scace:** There is an interesting twist to this, Mr. Chairman, and to put it into perspective, most of our tax treaties now exempt capital gains, so what we are talking about right at this moment would only apply to non-residents of most countries with whom we do not have treaties. Of course, that is not entirely true because I do not think the Japan-Canada Convention exempts capital gains. I suppose Mr. Benson is going to amend all of our treaties so that they will permit taxation of capital gains.

But to take a situation which you might have now—and I give you this more or less tongue in cheek—say you have a resident of the United States selling taxable Canadian property to a Canadian purchaser. Under the present treaty there is no capital gains tax on the US vendor but it is conceivable that you might be able to read section 116 as saying that there is an additional tax on the Canadian purchaser even though the vendor was not liable for tax. It seems to me that is possible.

**Senator Walker:** But there would be no object in that.

**Mr. Scace:** Well, I cannot see it happening, but technically it is possible.

**The Chairman:** Well, I think we have it ticked.

**Mr. Scace:** If we have the same amount of trouble with the other deemed realizations as we had with that one, we will be here for quite some time.

The next one is the deemed realization on gifts. Basically when you make a gift *inter vivos* there is a deemed realization at fair market value. Let me give you an example; if I own a property which I bought for \$100 and it is now worth \$200 and I give it to my son, there is a realization of \$100 capital gain and a \$50 taxable capital gain.

**Senator Benidickson:** Payable by you?

**Senator Flynn:** Or by your son if you are a non-resident.

**Mr. Scace:** This is section 69. Similarly there is a deemed realization on death. With the abolition of estate tax, the substitution for that is a deemed realization on death under section 70 (5). Now basically so far as that deemed realization is concerned, if you are dealing with non-depreciable capital property, the deemed realization is at fair market value. If you are dealing with depreciable capital property, the deemed realization is at what has come to be called the midway point. That is the undepreciated capital cost plus one-half of the difference between fair market value and undepreciated capital cost. Let me give you two quick examples.

If I have non-depreciable capital property and I have a cost of \$100 and at my death it is worth \$200, it is deemed to be realized at the fair market value of \$200 and there will be a \$100 capital gain and a \$50 taxable capital gain. In the case of depreciable capital property, say I bought for \$100 and I depreciated it down to \$50 and on my death it is worth \$200, the midway point rule says that the deemed proceeds are undepreciated capital cost, which is \$50 here, plus one-half of the difference between fair market value at death which is \$200 and the \$50. That differential is \$150, and one-half of that is \$75. So the deemed realization price is \$125. Now in this example, if we can just take it out, we have \$100 plus \$50 UCC and a deemed realization price of \$125, we get a recapture of \$50 plus a capital gain of \$25 and half of that of course would be \$12.50. It becomes a little more complicated where you have a number of different assets in a class, but essentially that is the rule.

**Senator Benidickson:** Is this under the present law?

**Mr. Scace:** No, sir, this is under the proposed bill.

**The Chairman:** You have two elements of taxation there.

**Senator Flynn:** Would the \$50 be taxable in its entirety here?

**Mr. Scace:** That is right.

**Senator Flynn:** As if the law were not changed?

**Mr. Scace:** So then we have the situation that this \$50 recapture is fully included in income while this \$25 is a capital gain and therefore you only recognize one-half, so therefore it is half an income.

**Senator Beaubien:** Let us take the case of a man who died a few days after the value date, whenever that might be, then they would only recapture part of the captured depreciation. Would that not be the case?

**Mr. Scace:** We are going to get complicated here.

**Senator Haig:** What have we been doing all afternoon?

**Mr. Scace:** For example, take an item of non-depreciable capital property with a valuation day value of \$100. Who knows when valuation day is? If it is December 31 and the owner died on January 1, it is unlikely that the fair market value would be much more than \$100, so he has no problem.

Unfortunately, you get a different situation. Over here we have a cost of \$100 over a undepreciated capital cost of \$50; the asset has not gone up in value. In that case the midway point rule would say redeemed realization \$50, plus the difference between fair market value and undepreciated capital cost, which is \$100 minus \$50, or \$50. Half of that is \$25, so your realization price would be \$75, which would result in \$25 of recapture.

The interesting feature of this is, if you look at section 20(6)(d) of the current act, on death there is no recapture of capital cost allowance. The depreciable property goes to the beneficiary, if passed by will, at fair market value. He acquires at the fair market value and there is no recapture to the testator.



**Senator Benidickson:** That is why I asked the question as to the difference between the two.

**Mr. Scace:** You can say we are going to change the rules for the future; that would be fine, but I have given what could be a concrete example, what you are getting is retroactive recapture that you would not have had if you died before the system came in. If you died on December 31 you have estate tax, but you have no recapture. However, if you died on January 1, assuming those are the relevant dates, you would have retroactive recapture.

**Senator Benidickson:** Plus the fact that you may have provincial taxes by that time.

**Mr. Scace:** We have them in Ontario now. For those people who receive tax advice, there are ways of avoiding this retroactive recapture, but it is still there.

**Senator Beaubien:** Everybody would just have cash and when they die it would not have gone up or down.

**The Chairman:** Have you any suggestions?

**Mr. Scace:** I can tell you how to avoid it.

**The Chairman:** I know how to avoid it; you just do not have any property. That is a simple way of avoiding it, but the idea of this complication is because they want to get at two taxes, bring in recapture at full marginal rates and bring in capital gain and the capital gains tax.

**Senator Walker:** That is a double tax.

**The Chairman:** There are two taxes; we had this this morning with some other items. Perhaps they should draw a line on a time basis and recapture to the extent that depreciation has been taken before the date of death should remain where it is now; that is, it is nowhere. If I am disposing of property after this law comes in they should only deal with whatever depreciation has been taken in that period and against whatever my income might be. That would be subject to recapture and could well enter into this calculation. They should draw a line, and not go back into what I have accumulated in the way of write-offs quite innocently and subsequently find the position where they are taxable, which they are not at

**Senator Benidickson:** That is to avoid this retroactivity?

**The Chairman:** Yes; at least, that is my feeling at the moment.

**Senator Walker:** And that goes back indefinitely.

**Mr. Scace:** Let me try to put it into perspective. It has reference only to depreciable property, and I can only guess that most of it will have come down in value. Therefore perhaps the example is a little unrealistic, in that if you have an undepreciated capital cost of \$50, that may come pretty close to the fair market value, in which case there is no problem. Certainly to the extent you are in the position suggested by Senator Connolly this morning, where the asset may have gone up in value—and I guess there may be quite a few examples—you would encounter this retroactive recapture.

**Senator Benidickson:** Perhaps the property has gone down in real market value at the time of the death but, on

the other hand, it may not have done so, because of the inevitable inflation that we have been experiencing over such a long period. A property that normally would have gone into disrepair, or become not as attractive as a new property, has a market value due only to inflation, so you are taxing inflation.

**The Chairman:** You are arguing two ways. If there is not much of this occurring then it is certainly scraping the bottom of the barrel to try to deal specifically with it; if there is much of this, then the question is whether it is fair and equitable to deal with it in this manner.

I think perhaps we would have to take the latter course in deciding if there is anything we can do to catch that situation, but it does appear to be something that we should have a good look at. We are accumulating a few already.

**Senator Macnaughton:** The thing to do is not die.

**The Chairman:** I do not suppose you can do as is done here, where a deemed realization is made; you cannot be deemed to be still alive.

**Senator Walker:** Do it ahead of time, and get it settled up.

**Senator Carter:** Do you have to furnish proof?

**Mr. Scace:** The other side of the deemed realizations for gifts and death is that the transferee, or the person acquiring, obtains a cost base equal to the realization price. With non-depreciable property, if the cost was \$100 to the deceased, and the fair market value at death is \$200, then that is the deemed realization price and that \$200 becomes the cost base to the beneficiary.

Similarly with the midway point rule, it is the calculated proceeds. I might say, if you have a situation with depreciable capital property where the fair market value is less than undepreciated capital cost, then the rule is reversed. Fair market value is the base plus one-half of the difference between undepreciated capital cost and fair market value. However, that really does not cure the problem.

**The Chairman:** Is there an allowable capital loss for that circumstance?

**Mr. Scace:** You should get a terminal loss, sir, yes.

Going on to something that really gets extremely complex, and I do not know how extensively we can deal with it, we start off by saying that when you calculate a capital gain essentially it is the difference between your proceeds and your adjusted cost base. The adjusted cost base is a defined term, and it is found in section 54(a)(i) wherein it states:

where the property is depreciable property of the taxpayer, the capital cost to him of the property as of that time, and in any other case, the cost to the taxpayer of the property adjusted, as of that time, in accordance with section 53,—

So that with depreciable property there is no problem. With none depreciable property it is the cost as adjusted by section 53. If we just go on to the concluding words in the definition:

—except that in no case shall the adjusted cost base of any property at the time of its disposition by the taxpayer be less than nil;—

We will come back to those words in a minute. That is adjusted cost base, and the problems come with the adjustments to it, and you have to then turn to section 53. Section 53(1) contains a number of additions to the cost base. They go on for two and one-half pages with the subtractions. I only want to give you a few of the additions and subtractions, and I will try to do it briefly, if I can.

To understand the first one we have to go to section 40(3). Section 40(3) says that where you have a cost of property, and by section 53(2) if the subtractions from the cost take you below zero the amount that you go below zero is a gain. It might be better if I showed you that one on the board. Let us say you have a cost of property of \$100. Section 53(2) states that you have to adjust that cost by subtracting \$150 which results in a negative amount of \$50, and that minus \$50 is itself a capital gain.

The most likely way that this could result is where corporations have distributed dividends out of their 1971 surplus. As you probably know, the tax treatment of surplus in existence in a company at the time of implementation of the bill gets reasonably favourable tax treatment. It can be taken out at a minimal tax cost, but it comes out in the form of a non-taxable dividend, so that when the shareholder receives it he pays no tax on it, but he must reduce the cost base of his shares by the amount of the dividend. In other words, you could own shares in a company and receive \$150 in non-taxable dividends out of the 1971 surplus, or the surplus in existence upon implementation day, which would reduce you to a negative and that will become a capital gain.

**Senator Lang:** I have to go home. I have to get a company out of existence pretty quickly.

**Mr. Scace:** The first addition to the cost base is the amount of that gain. It states in section 53(1)(a) that you add that negative as a plus to the cost base. I am not sure what you add the negative to. Do you add it to the minus \$50 to come out at zero, or do you start at zero to come out at a plus \$50 as your cost base?

In the definition of adjusted cost base it states that in no case can the adjusted cost base at the time of disposition be less than nil. On the other hand, at this point in time you really do not have a disposition, so I think the correct result is that you add the \$50 to the minus \$50 and you come out at zero.

**Senator Benidickson:** Certainly that should be marked as something we should inquire about when we get the minister or his representative here.

**Senator Sullivan:** The trouble is he will not know.

**Senator Beaubien:** And he may change his mind afterwards.

**Mr. Scace:** There are a number of other additions which you must make to the cost base. These are generally beneficial to the taxpayer. These are certain types of dividends, and certain capital contributions made to a company. Mr. Smith will be talking about two areas of the law—

partnerships and international income—at some time. Very briefly, foreign accrual property income must be added to the cost base and similarly all partnership income must be added to the cost base, but you get a corresponding reduction when the income of the partnership is actually distributed.

Another aspect of this which we dealt with this morning is the superficial loss question. You will recall that when you get a superficial loss the transferee can add the amount of the superficial loss to the cost base, but I suggest we still have that gap that we mentioned this morning.

Still another aspect that becomes quite important, and I suspect you are going to get some briefs on it so you might want to take a serious look at it, arises from section 18(2). Section 18(2) disallows the deduction of interest of property taxes from other income with respect to vacant land.

To the extent that interest and property taxes on vacant land are disallowed they can be added to the cost base of the land, so you get a deferral of those taxes until you sell the property. On the other hand, a deferral of a deduction is a tax loss. You are paying taxes sooner rather than later and that is a disadvantage. I might say right here that where I think you are going to get a lot of queries in the briefs in relation to the exclusions under section 18(2).

That section does not apply apparently where land is included in the inventory of a business carried on by the taxpayer, or where it is otherwise used in or held in the course of carrying on a business, or held primarily for the purpose of gaining or producing income from the land. I can read those exclusions any number of times, and they do not become any clearer on subsequent readings. I have seen some correspondence with the department in which they come up with interpretations of the exclusions that I would not have made, and I think you are going to get a lot of discussion over the particular operation of section 18. In any event, for present purposes the only reason for mentioning it is that to the extent that the deduction is deferred you add it to the cost base of the property.

You then go on to section 53(2) deductions from the cost base, and I have already mentioned what is perhaps the main one, namely, dividends in the form of non-taxable dividends out of the 1971 corporate surplus.

**Senator Benidickson:** That means accumulated surplus up to 1971?

**Mr. Scace:** That is right, sir. It is technically defined, and we will get into it tomorrow. Currently under the existing act dividends between two Canadian companies are tax free. Inter-corporate dividends are tax free. However, if one Canadian company acquires the shares of another Canadian company the surplus on hand as of the end of the prior fiscal year is designated, and if a dividend is paid out of a designated surplus the inter-corporate exemption is lost. Essentially the law will be the same under the new bill. However, instead of losing the inter-corporate exemption, what you get is a penalty tax of 25 per cent of the amount of the dividend. As far as a deduction from the cost base is concerned, section 53(2) states that where a dividend is paid out of a designated surplus you must deduct from the cost base the amount of the dividend less the tax paid.



If there is a dividend out of designated surplus from company A going to company B in the amount of \$100, there would be a \$25 tax payable by company B, and \$100 minus the tax—the dividend minus the tax—or \$75, would be deducted from the tax base. There is a similar provision in the case of non-resident takeovers.

One very important provision, which I know was inadvertent on the part of the Department of Finance and which I think they will cure,—if they do not I hope somebody will—is section 80, which deals with an outstanding debt between two taxpayers being settled or extinguished, or in some way reduced without payment, or for a lesser amount than the principal amount. If there is a debt between A and B of \$100, A being the father and B the son, and the father says, “I forgive that debt of \$100”, section 80 provides that one of several things can happen. First, the amount of the forgiveness must be applied against certain losses, to reduce various types of losses that B might have. If that is not the case, if B does not have any losses, then the \$100 must be used to reduce the cost base of certain of B's assets.

**Senator Beaubien:** And if he has none?

**Mr. Scace:** If he has none he is in good shape! Let us say he owns two shares of Bell Telephone that are worth \$100.

**Senator Haig:** No, call it the ABC Company.

**Mr. Scace:** Suppose he owns two shares of ABC Company worth \$100. It is conceivable that the forgiveness of that liability is a subtraction from the cost base and the ends up with a cost base of zero, so if he ever sells the shares for \$100 there will be \$100 capital gain.

**Senator Molson:** What has his debt got to do with his owning some shares in the ABC Company? What is the relationship? That is what puzzles me.

**The Chairman:** If you forgive a debt there are certain consequences.

**Senator Molson:** How does he pick out what it applies to? That is what I really mean. Just anything?

**The Chairman:** Whatever he has, in a certain order.

**Mr. Scace:** Talking about losses first, the section says:

to the extent that the excess exceeds the portion thereof required to be applied as provided in paragraph (a)—

Which is the application to reduce losses.

—to reduce in prescribed manner the capital cost to the taxpayer of any depreciable property and the adjusted cost base to him of any capital property.

It would appear that the minister could take any property of B's that he wanted, and reduce the cost basis.

**Senator Beaubien:** If B had a house and that was the only asset he had, would that affect the house, or is the house exempt anyway?

**Mr. Scace:** If it is a principal residence it is exempt, so it would not really matter.

**Mr. Smith:** What they are obviously thinking of is the debt that arose on the purchase of the shares from the father, but the section is drafted in a broader fashion than that.

**Mr. Scace:** The Department of Finance did not intend that it should cover the normal situation, the most common of which would be if you had an estate freeze from father to son, where he transferred assets over to the son at fair market value and took back a note, which has been a common estate planning device. The normal thing was to forgive the note over a period of years. However, if you forgive the note you will get this result. It is fairly easily avoided if people have tax advice, because if gift tax is in fact abolished, which may not be the case, the father can give his son \$100 in cash, and then the son pays off the note and you are out of section 80. But if there is still gift tax there is still a penalty.

**Senator Cook:** Would it not be covered by saying “forgive a debt which was incurred in respect of”?

**Mr. Scace:** In certain transactions, yes, you could do it. Do not get me wrong here. The Department of Finance was not aware of it. It has been brought to their attention. I do not think they intended it should have this kind of application.

**The Chairman:** You are now talking about the Department of Finance in relation to section 80?

**Mr. Scace:** That is right.

**Senator Walker:** There is a lot they did not mean.

**The Chairman:** Well, this is what happens when you start rushing a job like this, and even taking a year is rushing it.

**Senator Haig:** Let us get down to the complicated sections!

**The Chairman:** We are coming to them.

**Senator Walker:** We have to get conditioned to them.

**Mr. Scace:** If you will give me one more moment, I will then get to the principal residence provisions, which will be a welcome relief.

**Senator Haig:** If a person lives in an apartment and has a summer cottage, or an estate, can he declare that summer cottage as his principal residence?

**Senator Beaubien:** He can declare anything. He has the choice.

**Mr. Scace:** I say no. I will answer that specifically when I go through the principal residence provisions. I think there is an easy answer to that, and I think it is no. Let me give you two slight complications and then I will get to the question of principal residences. Section 53(2)(k) provides for the deduction from the cost base of:

any grant, subsidy, or other assistance from a government, municipality or other public authority.

This is a fair provision. If you buy a property for \$100 and you have a \$50 governmental grant, your cost base will be the difference of \$50. The only reason I draw it to your attention is that we have had a comparable provision in the act for a number of years in relation to depreciable



property in the form of section 20(6)(h). That section has been carried forward into the present bill, but in addition to the things I have just read off it states that an amount paid under an appropriation act need not be deducted from the capital cost of depreciable property. We can only question why there is a divergence between the treatment of non-depreciable capital property and depreciable capital property.

One question I think you should ask the officials who appear before you is on section 53(2)(m), which provides for the deduction from the cost base of such part of the cost to the taxpayer of the property as was deductible—in computing the taxpayer's income for any taxation year commencing before that time. I have yet to meet anybody who knows what that means, or why it is there. One of our partners suggested it was there as a filler between section 53(2)(l) and section 53(2)(o), but unfortunately there is no section 53(2)(o), so that answer failed. We have no idea what it means.

**Senator Walker:** It could go back 30 years.

**Mr. Scace:** We now come to principal residences. Basically, principal residences will be exempt. There will be a pro-ratio if the residence has not been used during all of your ownership of it as a principal residence. In other words, if you bought it initially for rental and you had it as a rental property for ten years, and then you moved into it yourself for ten years, and then you sold it, one-half the gain would be exempt.

There is a difficulty with the bill in the way it is drafted now, that in setting up this pro-ratio, they are going to take into account years prior to 1972. This was not intended and I gather there is going to be an amendment to it. The pro-ratio will only be based on years after 1971. This can be beneficial or harmful to a taxpayer, depending on what the use was in the relevant years, so I do not know what the exact result will be.

**Senator Beaubien:** Mr. Scace, if you had only one property and it happened to be in the country, and you lived there part of the time but not all of the time, could you say that that was your principal place of residence?

**The Chairman:** I would say that if there you carry on a way of living that indicates that this is your chief residence—you have maintained it, furnished it, and it looks like a house—

**Senator Haig:** Mr. Chairman, let us get at an uncomplicated situation. I have a summer cottage which I use during May, June, July, August and September. And I live in an apartment. Can I declare that summer cottage as my principal place of residence?

**Mr. Scace:** The definition of principal residence is that it must be a housing unit "ordinarily inhabited" by you, the taxpayer. I do not know what "ordinarily inhabited" means. All I can suggest is that if for ten months of the year you live in an apartment, then that is the housing unit you ordinarily inhabit, not your summer cottage.

**Senator Haig:** Now you complicate it again. Some people have a residence in Toronto, Montreal, or one of the big cities, and they go away for six to eight months, to Florida

or the Bahamas. They have a principal place of residence in the city. Is that considered their principal place of residence?

**Mr. Scace:** Senator, I cannot tell you. It depends on what the meaning of "ordinarily inhabited" is. I suspect that, in that situation, probably they would be able to claim for the house in Canada that they have for four or five months a year.

**Senator Haig:** Rank discrimination.

**Mr. Scace:** Very good. I think all you can say is that there is going to be an immense amount of litigation on this particular subject.

**Senator Molson:** Actually, if the other house we are talking about, the secondary place, is outside of the country, it might be rather easier that if it were just a camp up in the country within Canada, because if it is outside the country at least his residence would have to be established. So there would be some indication, if he is a person who can have a house in Toronto and go to Florida for eight months, that it would have to be known whether he is a resident of Canada or Florida.

**The Chairman:** No, you can have a number of residences for tax purposes, but this must be the principal place of residence.

**Senator Haig:** I want to get the principal residence. I am thinking of an apartment dweller who has no real property except a summer cottage in Canada. Can he declare that as his principal residence?

**The Chairman:** Principal residence does not necessarily need to be real property. If he lives in an apartment, that can be his principal place of residence.

**Senator Haig:** It is capital gains I am talking about.

**Mr. Scace:** I do not know what the alternative is. I agree with you that there may be inequities. If the alternative is to try to set up specific rules, they may lead to even greater unfairness. I suspect that what is going to happen is that we will have lots of litigation and certain rough ground rules will get established. I cannot really give you any help on it. I do not know.

**Senator Molson:** Was there this complication in the background of previous legislation, showing a difficult situation in regard to residence and so on, or is this more or less a new one?

**Mr. Scace:** I think this is a new one for Canada, sir.

**Senator Beaubien:** What about the Americans? What do they do?

**Mr. Scace:** I am not sure how they deal with principal houses. Can you say, Mr. Smith?

**Mr. Smith:** No.

**Mr. Scace:** This is more in line with the U.K. Perhaps we could have a search done of the U.K. jurisprudence, to see what they came up with. I cannot answer that question offhand.

**Senator Beaubien:** It would be interesting to know about that.

**Senator Walker:** And what a socialist government does.

**Mr. Scace:** On the definition of principal residence, there appears to be a gap—which may be remedied. If the deceased person has set up a house trust, a trust holding a house for his spouse, that may not qualify within the definition of a principal residence. I understand that the Department of Finance is aware of that and it may be remedied.

Apart from that, the definition seems to be reasonably comprehensive. Some briefs have gone in concerning leasehold land. Apparently, that problem is very troublesome out in British Columbia, though not so much so in our part of the country.

**Senator Benidickson:** Are you thinking of resort land in Ontario?

**Mr. Scace:** Not so much. I gather that there are many properties in British Columbia which are more on the U.K. system where you enter into a lease for 99 years.

**Senator Haig:** Why are we turning so much to farmers' places?

**Senator Molson:** Why blame the farmers?

**Senator Beaubien:** If you have a property in the country which is not your principal residence and which cost you \$50,000, and you were to sell it for \$25,000, can you show a capital loss of \$25,000?

**Mr. Scace:** That is recreational property. Recreational property, if you want to call it that, is personal-use property, and one of the rules I read this morning was that there can be no loss on personal-use property.

**Senator Beaubien:** That is where most of us join hands.

**The Chairman:** The law is clear on that.

**Mr. Scace:** It is defined in section 54(f):

(f) "personal-use property" of a taxpayer includes

(i) property owned by him that is used primarily for the personal use or enjoyment of the taxpayer or for the personal use or enjoyment of one or more individuals each of whom is either the taxpayer or a person related to him—

And there are other items as well.

In the case of a principal residence, a farmer is also entitled to principal residence treatment. He gets an option of either pro-rating the part of the farm on which his principal residence is—he takes his principal residence plus one acre and pro-rates his proceeds over the total disposition price and gets that exemption—or, alternatively, he can take \$1,000 a year over the number of years over which the property was occupied as a principal residence, whichever gives him the better treatment.

**Senator Haig:** That is a deduction.

**Mr. Scace:** It is an exemption. It means it is exempt and not subject to tax.

**Senator Benidickson:** This would apply to a gentleman farmer who may reside on some very valuable land, adjoining a very large city. He can only use one acre of that land, plus his residence. Is that so?

**Mr. Scace:** If he is a farmer, that is correct. Anybody, though, can get an exemption on up to one acre of land on which his principal residence is situated. He can get an additional amount, if it was necessary in some fashion for the use and enjoyment of the taxpayer. It is hard to see situations which would fall under that, unless the extra land were needed for access, or unless municipal legislation required the additional land. Those would be two possibilities.

**Senator Beaubien:** If you had a property that you were using as a farm, and you sold it at a loss, would you use that as a capital loss?

**Mr. Scace:** Yes, I think that would be a capital loss.

**The Chairman:** I suppose the other situation is at the discretion of the minister, where you may have an area of more than one acre. I can conceive of a situation, certainly in some zoning provisions and in some real estate subdivisions, where the requirement is, say, one-half to three or five acres of land. There is a provision in the bill under which you could apply in the discretion of the minister, to have a larger area as part of the principal residence.

**Senator Benidickson:** Because he could not have less under the zoning law?

**The Chairman:** Yes, that is right.

**Mr. Scace:** The way it reads is that any excess over one acre shall be deemed not to have contributed to the individual's use and enjoyment of the housing unit as a residence unless the taxpayer establishes that it was necessary for such use and enjoyment.

**The Chairman:** You could not have it if there were that zoning provision. He could not have the residence without the acreage.

**Mr. Scace:** The next item is personal-use property. We have gone through the definition, which includes most things in your house, such as automobiles, recreational property, and so on.

Basically the rule is that there is no capital gain unless you sell the property for an amount in excess of \$1,000. If you sell it for less than \$1,000 there is no tax. If you go above \$1,000 your cost is the greater of \$1,000 or your actual cost.

**Senator Benidickson:** This is on an individual item, and not on a class as a whole?

**Mr. Scace:** Yes, it is on an individual basis. Suppose you have a piano which you bought for \$500 and you sell it for \$450. There would be no tax consequences.

**Senator Benidickson:** And in the case of pictures, it applies to each individual picture if its costs is not over \$1,000?

**Mr. Scace:** Within limits. There are certain rules in relation to sets of things. If you have an item which costs you



\$500 and you sell it for \$1,500, your cost is the lesser or the greater of your actual cost of \$500 or \$1,000. So you bring in a gain of \$500, and so on.

**The Chairman:** Senator Benidickson, you could not break up a set of, say, 12 cups and saucers and sell one of each and have that limitation on each.

**Senator Benidickson:** But the cups and saucers might be worth \$500 each.

**Mr. Scace:** The provision in relation to sets is found in 46(3). It states that where you have personal-use property which would ordinarily be disposed of as a set, and they are disposed of by more than one disposition and are acquired either by one person or a group of persons not dealing at arm's length, you then prorate the cost and the proceeds. So, in effect, you do not get the advantage of the \$1,000 exemption on each item. You prorate it down and you will be taxed as though you sold the whole group as a set.

There is perhaps a gap here. If you sell it to a group of persons, say, dealers, all of whom are dealing at arm's length, it seems that you can avoid this set rule. If you were selling your china, and you went to separate dealers in downtown Ottawa who were unrelated, and who dealt at arm's length, you could avoid it.

**Senator Walker:** You spoke about a car. Would that apply to airplanes and boats?

**Mr. Scace:** I think so, if they are for personal use. You then get another concept called listed personal property. If you will recall, when we started off we looked at section 3(b), which said that you brought in taxable capital gains other than from listed personal property, plus the taxable net gain from listed personal property.

Listed personal property is defined by section 54(e) as including prints, etchings, drawings, paintings, sculpture or other similar works of art, jewellery, rare folios, rare manuscripts, or rare books, stamps or coins.

Listed personal property is set out as receiving special treatment. It is a category, though, of personal-use property, and consequently the \$1,000 exemption or limitation would be equally applicable.

The term that has been used throughout is taxable net gain from dispositions of listed personal property, and you take one-half of that amount. To obtain the net gain, you take your gains in a year from selling listed personal property and you subtract any losses from selling listed personal property in a given year, and you can carry back and forward losses from listed personal property incurred in prior or subsequent years.

**Senator Haig:** What do you do about gifts that you receive? Senator Hayden has received many gifts of trays, and so on. That is personal-use property. What happens if he disposes of them? Does he place a value on them?

**Mr. Scace:** Firstly, if you receive a gift, under section 69 your acquisition cost is the fair market value.

**Senator Haig:** But suppose you cannot ascertain that fair market value.

**Mr. Scace:** Let us say it is zero. If it is zero, and subsequently you sell that tray or whatever it is for \$2,000 then, as it is personal-use property, you apply the rules and there will be a \$1,000 gain. You subtract \$1,000. It might behoove a person who felt the tray was worth more than \$1,000 when he received it, to go out and get a valuation on it.

**Senator Beaubien:** That would apply only if you could prove that it had gone up from the valuation day, would it not? This is all in the future. If you have a tray and the valuation day is in December and you sell it in June of the next year, you cannot prove there is any difference in the value of it.

**Senator Haig:** I was referring to a tray bearing an inscription that it is given in appreciation of services. That is of no value to any other person except the family who owns it. What do you do with that? You cannot sell it.

**Mr. Scace:** If there is no value, there is no problem.

**The Chairman:** If you cannot sell it, you cannot make a gain.

**Senator Haig:** Thank you.

**Mr. Scace:** That basically concludes the special cases. The only comment I would make on listed personal property is that it seems that they have gone to great lengths to provide special rates for these specific types of assets. One wonders whether it is all worth it; why they do not say it is all personal-use property.

**The Chairman:** Except that they are distinguishing between the two. On listed personal-use property you can have a loss; is that not right?

**Mr. Scace:** You can have a loss, senator, but historically—this may not be true in the future—the kinds of things that are listed as listed personal property have generally appreciated. I refer to such things as stamp collections, jewellery, and paintings, et cetera.

**Senator Molson:** Not necessarily paintings.

**Senator Lang:** Do you treat the listed personal properties as a class?

**The Chairman:** That is right.

**Senator Benidickson:** Where is that found?

**Senator Haig:** It is on page 84. It is section 54(e).

**Senator Burchill:** You mentioned stamp collections. How do you put a fair market value on a stamp collection? It is something you have built up over the years. How do you figure out a profit on that?

**The Chairman:** You establish a value on valuation day.

**Senator Beaubien:** The value would be the value you would get for it. If you value it at the end of this month and then sell it next year, it would be hard to say that the value had changed in that length of time.

**Senator Walker:** Until this matter is clarified, the best thing for the taxpayer to do is to ignore it.



**Mr. Scace:** We will be coming to valuation day later, but you have the choice. We do not know when valuation day will be. You can try to get a value some time between now and the end of the year or shortly thereafter. Alternatively, if you do not get a valuation done, it really will not become a problem until you subsequently sell or dispose of the property. Then you will be fighting about what the value was when you got it. That may be helpful, if you have a large appreciation. It might indicate that perhaps the value on V-day was greater than somebody told you he thought it was on V-day. You have to make this judgment and I think everybody is his own best judge of that, if he knows what assets he has.

**Senator Haig:** Are you going to deal with shares in personal corporations or non-public corporations or private corporations?

**Mr. Scace:** Yes, sir. We are dealing with corporations tomorrow. Shares make no difference. Shares are just capital property and are subject to capital gains tax.

**Senator Haig:** I am talking about valuations.

**Mr. Scace:** We will come to that, if you like.

**Senator Lang:** In the future, Mr. Chairman, amateur stamp collectors will have an incredible job of bookkeeping. I doubt if they will do it.

**The Chairman:** For those who have the flair for collecting stamps—and those people who think little of the art of stamp collecting might use other expressions than “flair”—there are well-recognized markets all over the world for stamps. There are books published offering stamps of various types and ages.

**Senator Lang:** People who indulge in hobbies such as stamp collecting or collecting paintings, and so on, are not generally prone to maintaining a set of books to ascertain their capital cost.

**Mr. Scace:** Just continuing on, there are a number of special rules set out in the act and I will deal with them very briefly. For instance, if you sell property on which you have to give a warranty or covenant with respect to certain things in relation to that property and later on you have to honour that warranty and pay out some money, that pay-out will be a capital loss and it is deductible against capital gains in the year the property was disposed of, in any of the six immediately following years from the date you gave the warranty.

**Senator Haig:** It is not against income; it is just against capital loss?

**Mr. Scace:** It is a capital loss, sir. Therefore, the allowable capital loss portion, basically, is deductible against capital gains plus \$1,000 if you are an individual. I suppose the problem with that is that you may not have taxable capital gains in the year you have to honour the warranty. It might be fairer if you could re-file for the year that you gave it or the disposition took place.

**The Chairman:** I think the option would be a very thoughtful thing to have, because in the year in which this occurred you might have other capital gains or losses that you could bring in.

**Senator Haig:** What the witness says is that you can push it forward.

**The Chairman:** You might not have anything to push it against, except the \$1,000 of general income.

**Senator Haig:** That is your tough luck.

**The Chairman:** The point is that in the year in which you dispose of it you may have had something left there that you could write this off against.

**Senator Haig:** Mr. Scace said you could take it in that year or carry it forward.

**Mr. Scace:** If you are required to realize on a warranty you can take the loss. You can get the allowable capital loss. If that occurred in the year of the original disposition or any of the six immediately following years, then all right. There are also special rules in relation to part dispositions.

**The Chairman:** What was that section you were referring to?

**Mr. Scace:** Section 42. The special rule in relation to part dispositions is found in section 43, and section 45 contains special rules where you have changed the use of property. For example, if you start off with one use, say, a personal use, and change it to a business use, you are allowed to acquire it at the fair market value at that time and so on. I think the rules are generally fair.

**The Chairman:** If you are allowed to acquire it at the fair market value at that time, you may incur a capital gain.

**Mr. Scace:** It depends which way it is going, yes, sir, but I think that is fair.

**The Chairman:** Yes.

**Mr. Scace:** We have a problem with section 47, if you would take a look at that. It contains the rules in relation to identical properties. What section 47 is trying to do is to say that where a person owns identical properties that had different costs, what he should do is average the costs. That is the intention. For example, if I bought one share at \$20 and another share at \$30, then when I wanted to sell one of those shares I should use the average cost, which would be \$25. Let me take you through it. The most common situation with identical properties would be shares and bonds. For example, you own a group of properties, and if you wanted to dispose of part of the group and retain the other part, then subsection (a) says that the adjusted cost base of the part disposed of is the proportion of the total adjusted cost base averaged out. In other words, if in my example I sell the one share for \$50, then using my average cost as \$25, I have a gain of \$25 and there is then no fight about whether I am selling my \$20 share or the \$30 share.

The difficulty arises when one comes to subparagraph (b), which says that the taxpayer is deemed to have disposed of the part of the group retained at that average cost, which in my example is \$25, and to have reacquired it at that same average cost of \$25, thus giving the taxpayer a new base of the average of the part retained. The difficulty with it is that, although you have this deemed disposition,

it does not say what your cost was of the group retained prior to this deemed disposition. Paragraph (a) only refers to the average cost of the part disposed of and that works all right, but I think you can get a problem with subparagraph (b) in that you are deemed to have disposed of the part so retained, at the average cost but nobody really tells you at the time of that deemed disposition what your cost is. It may be historical cost rather than average cost. But the intention is clear and I think that this is just a drafting technicality which I hope will be cured.

**The Chairman:** I think you could argue pretty strongly that it is the average for all purposes rather than the historical cost.

**Mr. Scace:** That is clearly what you would argue, but whether you could be successful in court or not, I do not know.

**Senator Connolly:** Mr. Chairman, just on this one point there seems to be a gap in the draftsmanship. Now I understand there are a great many amendments coming to this first reading draft which we have before us now, and it may very well be that some of these are to be picked up and clarified when the amendments are made in the House of Commons.

**The Chairman:** But that will take place in the committee of the whole.

**Senator Benidickson:** On this point, under the new rules—and I am not as familiar with them as I should be having been out of the House of Commons for five years—is it after second reading itself and before going to committee of the whole that the legislation goes to the House of Commons committee?

**The Chairman:** This legislation will not be going to a House of Commons committee at all. It is to be dealt with in committee of the whole.

**Senator Connolly:** Having arrived at that point, I understand that the normal practice in the House of Commons is to deal with the amendments as the sections are reached in discussion. On a complicated bill like this I wonder whether despite the fact that it might be a departure from parliamentary practice, we might get some agreement that all of the amendments, or at least all of them that are known before consideration in committee of the whole begins, will be made known to us so that we might have a chance of looking at them here. We would then know the kind of legislation we might actually have to deal with when the bill comes.

**The Chairman:** We do not have any position on that. The usual practice is to move amendments when they are dealing with a particular section. I would doubt very much if the Minister would want to embark upon the course of introducing them all at the very beginning. That is the only way we might get the list of the amendments in the beginning, because certainly the amendments would have to be presented in the House of Commons before they could be made available to us.

**Senator Benidickson:** Then, Mr. Chairman, are we not in a unique position, and I might add a favourable position, in view of the complicated nature of this legislation, in that

the House of Commons will not have the opportunity to examine outside witnesses such as we will have?

**The Chairman:** That is what we will be doing.

**Senator Flynn:** We may be in a fortunate position, and the House of Commons in an unfortunate position.

**Senator Walker:** Is that not the idea behind our hearings now?

**Senator Benidickson:** Therefore, the responsibility on us, as far as the public is concerned, is unusually heavy.

**The Chairman:** That is right. You can also be sure that the staff we will have in committee will keep up from day to day with whatever may be suggested by way of amendments in the other place.

**Senator Benidickson:** This is rather anomalous in that the history is that the Senate plays a secondary role in matters of finances and taxation. But by this practice we shall be playing a very important role.

**The Chairman:** We found procedures for moving ahead of that position.

**Senator Flynn:** It will be sober, second thought ahead of time.

**Senator Macnaughton:** Mr. Chairman, do you think we might have a short recess?

**The Chairman:** Yes.

A short recess.

**Mr. Scace:** I will hurry through a few items which I think are reasonably dealt with in the bill. There is provision for a tax-free roll-over when converting a bond into shares, or a bond into a bond. There is a gap in the act; there is no provision for conversion of shares into shares. The department is aware of that and, hopefully, that will be one of the amendments. Those items are contained in sections 51 and 77.

**Senator Connolly:** Is that roll-over dollar for dollar, so to speak?

**Mr. Scace:** Yes, sir.

**Senator Connolly:** And there is nothing as between shares?

**Mr. Scace:** I do not believe the conversion of shares into shares is covered.

**Senator Connolly:** Do you mean shares of one company and shares of another on a one-for-one basis, or at least a dollar-for-dollar basis?

**Mr. Scace:** I am really referring to a conversion.

Section 52 provides a number of rules for determining the cost of an asset where the amount has been included in the taxpayer's income. An example is to be found in the present act and its counterpart in the bill of section 8. Where there has been an appropriation to a shareholder and some property has been given to him. On an asset such as a car that amount will be included in the shareholder's income. He then obtains a cost base equal to the



fair market value at that time. There are a number of rules such as that.

There are also specific rules dealing with options and, so far as we can tell, the option rules work reasonably well. They are contained in section 49.

A very brief description of the option rules is that when an option is granted it is deemed to be a disposition of property and the consideration for the option is a gain. Therefore, if I own property and I give Mr. Smith an option to acquire it for \$10, that is a disposition, and the \$10 is a capital gain of mine. If Mr. Smith subsequently exercises the option, what happened previously, the inclusion of \$10 as a capital gain, is wiped out and is included in calculating the proceeds. For instance, if the acquisition price was \$100 I add the amount of the option, \$10, for total proceeds of \$110. Conversely, he obtains a cost of \$110. If it is an option to dispose of property there is a deduction rather than addition. It seems to work out reasonably well.

**Senator Connolly:** Does that apply to share warrants entitling one to buy a certain number of shares on a number of warrants presently held?

**Mr. Scace:** I do not really know; I am trying to think of it. If you had the warrants on the original acquisition in some fashion, I suppose you would have the cost of the warrants and the cost of the shares you acquired by exercising the warrants. This would be the original cost of the warrants, plus whatever number of dollars you have to pay for the shares. I think that would be the treatment, which is similar, but I am not aware of any particular provision.

**Senator Haig:** The warrants are sold at a certain price; you buy a bond for a certain number of warrants and their value is there. It may go up or down, but that is the cost of the warrant to you.

**The Chairman:** Plus the cost of whatever is paid when the warrant is exercised.

**Senator Haig:** Correct; you have the cost of that stock.

**Senator Connolly:** There are two problems: first of all, if you sold the warrants you might be taking a gain—

**Mr. Scace:** It would be property.

**Senator Connolly:** I suppose it would; it would be something in addition to your shareholding.

**The Chairman:** You would be dealing in property.

**Senator Connolly:** Yes, but if you did not sell the warrants but used them to buy additional shares, the money you paid for the shares plus your warrant is the cost.

**The chairman:** That is right. It might be variable, I take it, Mr. Scace? It might be either the cost at the time of acquisition of the warrants or, if they have a market that is higher at valuation day, that might be taken. I do not see any difficulty in that.

**Senator Beaubien:** Do you have the option: either cost to you, or valuation day?

**The Chairman:** Yes.

**Mr. Scace:** That is right; we will spend some time on that in a moment. It is one of the key considerations to understand.

The next major area that you might wish to consider is that of the carry forward and carry back of capital losses. I have outlined the situation in general terms. The act provides that in the event of an excess of allowable capital losses over taxable capital gains in a particular year, that becomes the net capital loss position for that year less, for an individual, \$1,000. The definition of net capital loss is found in section 111(8). That net capital loss position can be carried back one year, or forward, indefinitely against taxable capital gains or, if you are an individual, it can also be applied against \$1,000 of other income. That provision is contained in section 111(1)(b). I have calculations available, if you would like to see the operation of this provision. I think that for the most part it works reasonably well.

There are also restrictions, much as in the present act under section 27(1)(e), concerning how business losses must be used up and so forth. For the most part they are a direct reading on the present act and I do not think they create any problem; everyone knows how they operate.

There is one interesting situation where a corporation has a net capital loss position. In other words, it has incurred more capital losses than it has been able to set off against capital gains and when control of that corporation changes, which is 50 per cent plus one, the net capital loss position is eradicated. So there can be no dealing in capital losses where there is a change in corporate control.

**Senator Connolly:** Just because of the change in control?

**Mr. Scace:** The mere change in control; that is provided in section 111(4).

**The Chairman:** Oh, yes; this has been quite a stunt over the years.

**Mr. Scace:** It blocks it completely.

**Senator Connolly:** Over the years we have not had capital gains tax.

**Mr. Scace:** I am referring to business losses; the rules have been tightened up over the years in the form of section 27(5)(a) of the existing act and they have been carried over into the bill. However, there still is an opening in the case of business losses. If you have a change of control the loss carry forward position will still exist if the same business is carried on in which the losses were incurred. So you have a chance of maintaining the carry forward; you have no chance in the case of a net capital loss position.

**Senator Connolly:** Operating losses as against capital losses incurred?

**Mr. Scace:** That is right.

**The Chairman:** Are you saying that where there is a net capital loss position in a company, that goes on forever, so long as the company remains in that business operation?

**Mr. Scace:** Are you referring to capital losses, sir?

**The Chairman:** Yes.



**Mr. Scace:** No, sir; there is no restriction on its staying in that particular operation, so long as there is no change of control.

**The Chairman:** That is right.

**Mr. Scace:** I can perhaps make it more clear with a quick diagram. Let us assume you have business losses of \$100 and a net capital loss position of \$100 in a company. We have Company A and Company B, and Company A acquires control of Company B. Immediately that net capital loss carry-forward position is eradicated. You do not know what happens to the business loss because it is deductible if the same business is carried on, but if the same business is not carried on you lose it. If it is carried on you will get the carry-forward position.

**Senator Connolly:** No doubt there are grey areas where it is a question of whether it is fully carried on.

**Mr. Scace:** It is a question of fact as to whether that has happened.

**Senator Flynn:** Not grey; dark.

**Senator Connolly:** If it is dark you know what your position is. If it is grey you are not clear.

**Mr. Scace:** The next area concerns the basic tax-free roll-overs. There are a number of instances where you do not have a disposition within the definition of a disposition in section 54 (c), so they would be one form of tax free roll-over. Another form is where you have a disposition and receive compensation for property destroyed under a policy of insurance or compensation for property taken under statutory authority. In that case you get a roll-over to the extent that you re-invest the proceeds in new property.

This was Senator Flynn's point this morning. To the extent that you do not re-invest the proceeds there will be a gain. I can show you that one on the board.

If you have property costing \$100 and you receive compensation in the amount of \$150, say, under a policy of insurance, and you then use \$140 of the compensation to acquire a new property equivalent to the one that was destroyed, your gain will be \$10 and the cost of the new property for capital gains purposes will be \$100. You are put back for capital gains tax purposes into exactly the same position that you were in before and you only get a gain on the amount that you did not re-invest.

**Senator Haig:** You pay tax on the \$10.

**Mr. Scace:** The \$10 would be a capital gain, so \$5 would be the taxable capital gain.

The other major roll-over is in the case of transfers between spouses. In both the case of death and when a gift is made, it is exempt if the transfer goes to the spouse absolutely or if it goes to a trust for the spouse and the trust complies with the following conditions: First, the spouse must be entitled to receive all of the income of the trust other than taxable capital gains that arose before the spouse's death, and, second, no person except the spouse may obtain any part of the capital of the trust. Essentially, this is the same type of qualifying trust that you have under the Estate Tax Act.

There is one slight imperfection or lack of clarity in the definition. As I said, the spouse must be entitled to all of the income other than the taxable capital gains. I think what it means is that so long as your trust document states that all of the income goes to the spouse, she does not necessarily have to get the capital gains. However, you can interpret it to mean that she is not entitled to capital gains at all. I do not think the latter interpretation will hold, but it is possible.

The qualifying trust is set out in section 70(6). Where property is transferred to a qualifying trust if it is non-depreciable capital property the property moves over at the adjusted cost base, and if it is depreciable capital property it goes over at undepreciated capital cost. In other words, if I own non-depreciable capital property costing \$100, and if at the time I die or make a gift of the property to my wife it is worth \$200, there is no capital gains tax, but my wife acquires that property at \$100.

**Senator Walker:** So they pick it up when she dies.

**Mr. Scace:** That is right, but you get the exemption between spouses.

**Senator Connolly:** Or when she sells it.

**Mr. Scace:** Or when she sells it, yes, sir.

You can also get a tax-free roll-over where you transfer property to a corporation in which immediately after the transfer you own 80 per cent or more of the shares. This exemption would cover the situation where you are incorporating a sole proprietorship, and it would also cover the situation where you transfer from a parent company to a subsidiary where you had 100 per cent ownership. It would not cover the reverse situation where you have a transfer from a subsidiary to the parent company.

There are very complicated election rules. These are set out in section 85 of the bill. They get extremely complicated, but they do appear to work. You also get a roll-over, as I have said, where there is a transfer by a partnership to a corporation or a transfer into a partnership. Mr. Smith will be talking about that. You can also get a roll-over where there are certain re-organizations of capital, and also with amalgamations. In the case of amalgamations the rules get quite complicated, but essentially if it is a straightforward transaction without undue complication there is no problem. For example, if there are two predecessor corporations coming together there will be no capital gains tax on their assets. They just come into the new company at the adjusted cost base. If you are looking at the shareholders and they are getting shares in a new amalgamated company they will get those shares at the adjusted cost base of the old shares.

**The Chairman:** That is section 86, is it?

**Mr. Scace:** Section 87, sir.

**The Chairman:** Yes, section 86 is the re-organization.

**Mr. Scace:** Section 88 provides for a tax-free roll-over in the case of a wind-up from a subsidiary to a parent. There may be problems in that particular roll-over, but they are extremely technical and I think it is probably better to avoid them at the present time.

Before we get into the valuation day and the transitional provisions there is a general tax avoidance provision in section 55 which applies specifically to capital gains, and basically it states that where you have done something by any one or more transactions in a way that may be considered to have artificially or unduly reduced the amount of the gain or created a loss or increased the amount of the loss, the gain or the loss, as the case may be, shall be computed in the normal fashion as if this artificial creation had not occurred. This was obviously put there to cover those situations which they have not thought of, and in case there is a glaring loop-hole in the capital gains provisions.

We come now to the transition rules. This has been a very hot topic of debate in the papers. I am sure you saw Mr. Benson's letter in reply to Mr. Asper's column. I think Mr. Benson was correct. The transitional provisions are found in the transitional rules and the first one is rule 24 which anticipates that there may be two valuation days.

**The Chairman:** What part was that again?

**Mr. Scace:** The transitional rules occur after the main sections of the act.

**Senator Beaubien:** What page?

**Mr. Scace:** I am looking at rules 24 and 25 at page 421. These are the income tax application rules, 1971. I think we will get two valuation days, which will be fixed by proclamation. If anybody has any inside knowledge, I think you gentlemen will have it far sooner than Mr. Smith or I. I do not think anybody on the outside knows. Rule 25 goes on to state that each of such days must be after June 18, 1971, and that either or both of them may be before or after the coming into force of the act. It is anticipated that the act will come in January 1, 1972, so valuation day would conceivably be before that, although it might be after. I think most people think it will be close to the end of the year, but again we do not know.

**Senator Beaubien:** Why would there be two, and how could you use two?

**Mr. Scace:** I am not sure of the rationale for the two. Maybe with publicly traded securities they are a little concerned about people driving the market up in an unreasonable fashion. I do not know.

**Senator Lang:** There is not much hope of that today.

**Mr. Scace:** I would like to see it go up for one day.

**Senator Connolly:** I had not thought about this before, but it just occurs to me that if valuation day is prescribed by the new legislation, and you say it might be proclaimed before the end of the year or after, if it is before the end of the year it would still have to be after the passage of the legislation would it not? Valuation day only becomes effective as a result of the implementation of the legislation in Parliament.

**Mr. Scace:** Say valuation day was on December 15 and the legislation became effective on January 1—

**Senator Connolly:** I am not talking about it being effective. I am talking about the passage through Parliament

with Royal Assent. You would have to have Royal Assent before decreeing what would be valuation day, would you not?

**The Chairman:** If it did not there would certainly have to be considerable re-drafting to try to make a valuation day prior to the date of coming into force, trying to make it the effective date.

**Senator Flynn:** They might announce that it will be decided valuation day will be such a date, even before the passage of the act.

**Senator Connolly:** Would such an announcement prior to Royal Assent to the bill have any validity?

**Senator Flynn:** It would not, but it would be binding on the good faith of the government.

**Senator Beaubien:** We have often had changes in tariffs that have been announced when the minister has got up and said, "This is effective today".

**Senator Cook:** Valuation day in the past.

**Senator Beaubien:** This is going to be like a budget speech. We have had that in many cases, where the government has said, "This is effective today."

**The Chairman:** For all practical purposes, if you said, "It is not law yet so I will not pay it", you would have a lot of problems by the time it became law.

**Senator Beaubien:** We are talking about the effective date. Whether you want to pay it or not is another thing. If the government says that today is valuation day through the minister saying so in the House of Commons, I think there are lots of precedents for that.

**Senator McNaughton:** I do not think so, not with a taxing bill.

**Senator Flynn:** It is a conditional decision that the minister makes on budget day, because if it is not ratified by Parliament it lapses, as we have seen with the two per cent tax; it was valid up to the date when Parliament defeated the bill.

**Senator Cook:** The same thing has happened to wheat payments now, although I know it is scandalous.

**Mr. Hopkins:** It has to be validated retroactively by the legislation coming into force or it is ineffective. It is really a declaration of intention until ratified by Parliament.

**Senator Beaubien:** Still, it would be valuation day, if the minister said that for evaluating stocks today is the date.

**Mr. Hopkins:** If the act so reads it could be so, but not until the act comes into force.

**Senator Connolly:** It will depend on the wording of the section when valuation day is.

**Mr. Hopkins:** That is right.

**Senator McNaughton:** If eventually the bill is never passed, all the valuation days in kingdom come will not apply.



**Senator Beaubien:** If the bill is never passed we will never have a capital gains tax, so it would not matter to us whether there were a valuation day or not.

**Senator Flynn:** That is wishful thinking.

**The Chairman:** We are doing a lot of speculating.

**Senator Lang:** I assume rule 26(3) overcomes the problem of the cost of the property as opposed to valuation day value.

**Mr. Scace:** That is right. We are just coming to that. In any event, if the Government has a problem on how it gets valuation day into effect, from valuation day on, if the legislation goes in, that is the base, apart from what I am just going to say, for measuring capital gains.

How do we get into the system? Rule 26(3) is possibly the most ingenious piece of drafting you will find. It covers property other than depreciable property, and I urge you to read it. I think it can be simplified. It talks about an amount that is neither the greater nor the least of the following three—cost, market value on V-day and proceeds of disposition. The way this will work out can be simplified diagrammatically. In one we show cost and V-day value in a situation where you go into the system with a winning asset; in the other you have a loser. In both cases there is a tax-free zone. I think every example you go through would fit rule 26(3). For instance, if there is a cost of \$100 with a V-day value of \$200 and you sell for \$300, you are taxable only on the difference between \$300 and \$200.

**Senator Haig:** At half rates.

**Mr. Scace:** At half rates, or half inclusions. If the cost was \$100 and V-day value \$200, if you sell for \$150 nothing happens; it is in the tax-free zone and is a neutral transaction, if I may put it that way. With a cost of \$100, if you sell for \$50, the difference between \$100 and \$50 will be a capital loss, and half of that will be the allowable capital loss. The same can be done in the other case, depending what the proceeds are; whether they fall below the line, above the line or in the middle, the gains, losses or neutrality can be measured.

**Senator Beaubien:** If you elect to take the value of a stock and it is above the cost and you sell it below the value of the stock, if it is above your cost you cannot take it as a deduction. It that what you mean?

**Mr. Scace:** I think I understand your question. These tax-free zone rules apply automatically. As an alternative to the tax-free zone rules, under rule 26(7) an individual has the option of electing to value all his assets at fair market value on V-day. If you owned two assets, represented by these diagrammatic charts, you could take both assets and, as opposed to the tax-free zone rules, you could elect to have them start at V-day value. So on this one you take that value, and on this one you take that one (*indicating on blackboard*). If that happens, you take V-day value, you get your inclusions if it goes above V-day value, and you get a deduction if it goes below. Here you will get an inclusion if it goes above and a deduction if it goes below.

May I say one more word? This may become more clear. If you look at the tax-free zone, the tax-free zone is not

very beneficial to a taxpayer, where he has a winner. The reason for that obviously is that if the price goes up he immediately becomes taxable, while if it goes down he does not start getting an allowable loss in any form until it gets below his original cost. On the other hand, when you have a loser, the tax-free zone rules are very advantageous. You start off with your V-day value down here. If it begins to drop, you immediately start getting deductions, but you are not going to become taxable until you get back to your original cost. So the tax-free zones are disadvantageous for winning assets; they are advantageous for losers.

As I said, they apply automatically unless you are an individual and you elect to have all of your assets valued at fair market value on V-day.

In the debate between Mr. Benson and Mr. Asper the confusion arose because rule 26(7) refers to "each" asset, and you have to read it carefully. I think the meaning that comes out of it is that it means "all" assets, or "3ach and every" asset—that you take all your assets in the tax-free zone or you are allowed to take all your assets at market value.

**Senator Beaubien:** You cannot pick and choose?

**Mr. Scace:** No.

**Mr. Beaubien:** The minister told us definitely you could pick and choose.

**An Hon. Senator:** Does that refer to some assets or to all assets?

**Mr. Scace:** To all assets. These are all non-depreciable assets that we are talking about here.

**Mr. Smith:** If he wanted you to be able to pick and choose, it would be very easy to amend the rule to state that.

**Senator Beaubien:** Mr. Chairman, do you not remember the minister's answer? We asked him directly if it applied to each and every asset, and he said yes, you can take either valuation date or cost, on each and every separate asset.

**The Chairman:** We were talking about the White Paper provisions then. The minister may have said that somewhere. He was not before us on the White Paper.

**Mr. Scace:** I think the confusion arises on rule 26(7), which gives an election for fair market value. It says:

Where, but for this subsection, the cost to an individual of any property actually owned by him on December 31, 1971 would be determined under subsection (3) or (4)—

Which is the tax free zone rule.

—and the individual has so elected, in prescribed manner . . . in which the disposition of any such property occurs, the cost to him of each capital property . . . actually owned by him on December 31, 1971 shall be deemed to be its fair market value on valuation day.

Certainly, on an initial reading, many of us thought that that referred to a specific asset, but from Mr. Benson's letter in the *Globe and Mail*—and certainly the Department of Finance intends this—it seems that you cannot



pick and choose. You must take either the tax free zone or the fair market value. It is a case of "either/or". I think they have used the wrong word. It may be that the correct word is "each", and it may be grammatically correct and produce the result, but it is a little unclear and I think they should put in "each and every" or "all" property, and then it would be absolutely certain that what they are saying in rule 26(7) will give the intended result, and I am telling you what is the intended result here.

**Senator Cook:** Assuming that it applied to each class of persons it seems rather stupid to say "all" classes.

**Mr. Scace:** I do not know what the classes would be.

**Senator Cook:** I mean shares, and then real estate.

**Mr. Scace:** There is no suggestion of that.

**Mr. Smith:** There is one further point on the tax-free zone rules that I might mention. In order to have them apply, it appears that you have to know three amounts. You have to know the original starting cost, the V-day value, and the proceeds of disposition. The last two are fairly easy to arrive at, but many taxpayers may not be able to come up with the cost of assets that they may have bought a long time ago or that they may have traded in in the meantime.

**Mr. Scace:** This is another problem and I think it is a very serious problem. There is some dispute about this. We think, on our interpretation of the bill, that if you have received assets by inheritance or by gift, whether they are depreciable or non-depreciable, your cost is zero.

**Senator Beaubien:** When you sell them there would then be 100 per cent tax?

**Mr. Scace:** In the tax-free zone rule, if this is zero then what you are talking about is that you can never get a loss, because you are coming down to nil and you will never get a loss if the value falls. Then you are very wise to take the fair market value election, because then you establish a base, and whether you go up or down you would be all right.

**Senator Cook:** May I interrupt you there? If you take fair market value of something inherited, and that has not depreciated, does that mean the fair market value for shares?

**Mr. Scace:** You have to have fair market value for everything. This comes to a situation, when you take the fair market value election. You would have fair market value election in one situation, where you were in the very fortunate position that all your assets were winners.

**The Chairman:** Or if you had entirely inherited or gifted property.

**Mr. Scace:** If the preponderance of your assets were winners, then you take it. I do not want to come out too strongly on this inherited property having no cost base. We are firm on our conclusion on it. I gather there is a split in the Department of Finance, as to which way it goes.

I see that some honourable senators have the Clarkson, Gordon brief in front of them. I see that they say it is fair market value. I am sure I am not telling stories out of

school if I add that they had a split about it in their firm. They came down on that side. We think they are wrong, but they could be right.

**The Chairman:** What do you suggest? That it be done by way of clarification?

**Mr. Scace:** I think they could put in a very simple provision, that the cost of assets inherited was the fair market value at the time of the bequest of the gift. That would solve it.

**Senator Cook:** It was a question 25 years ago.

**Mr. Scace:** That is right. That would not be too difficult, senator, because probably there would have been estate tax, succession duty, or a return filed of some sort, and you might have the values there. If they were lower, you might be in the peculiar position of arguing that they should have been higher.

**Senator Flynn:** You are not speaking of taking the value at the time the transfer of the property was made 25 years ago, are you?

**Mr. Scace:** Suppose you inherited one share of the XYZ Company 25 years ago which was worth \$50 at that time, and that amount was entered in the succession duty return and you have a value up here of \$100. Surely, you are better to take that \$50 25 years ago as your cost rather than taking zero, if our interpretation of the law is correct.

**Senator Flynn:** If the share is on the market today, you know what the value is on valuation day.

**Mr. Scace:** You can elect to take the fair market value option. In our example, if you inherited this \$50 share 25 years ago and it is now worth \$100, in that case you are probably better to take the fair market value election, because if it goes up you are taxable and if it goes down it is deductible.

**The Chairman:** That applies to all others.

**Senator Flynn:** It is difficult to imagine that assets that were valued 25 years ago, whatever they were, would be higher than the fair market value of today on valuation day, with inflation and everything.

**Mr. Scace:** One of the difficulties with this no cost on inherited or gifted assets is that it discriminates between two people, both of whom inherited wealth of some kind, but one inherited it in specie or kind, and the other received cash and then bought the identical asset.

**The Chairman:** Is it not the situation that there are certain options here. If there are not enough options, perhaps we will write some more.

**Senator Cook:** It certainly wants to be looked at.

**Mr. Scace:** 50 per cent of your assets may be winners and 50 per cent losers. If you want to keep one tax free zone rules for your losers you might say "How can I get out of it?" and you say, "Well, perhaps somehow I can roll over my winner by selling it to my wife". Let us take an example. We know that the cost of the asset in the example is \$50. If you sell it to your wife at \$100, then within the

family you have a new high value of \$100, so the tax-free zone rules might apply. However, by Rule 26(5), if there is a non-arm's-length transfer, the transferee gets the old cost of the transferor, and such a rollover is impossible.

**Senator Flynn:** It is a problem of valuation between the winners and the losers.

**Senator Haig:** Assuming that your gift of 10 shares is at zero and they are then divided or subdivided and get to 50, what happens then?

**The Chairman:** They are still zero.

**Mr. Scace:** I do not think that would make any difference. There is another possibility that you might think about to avoid the rules. Let us say that this was a share of the ABC Company which was a listed public company, and you decided to sell your shares in the market and buy them back and establish a new base. Rule 26(6) intended to say that if you re-acquire within a 30-day period you are back in the same position that you would have been in if it had been a non-arm's length transaction. Originally I read the section as being all right, that it worked; but it has been brought to my attention that it does not work.

If you follow it through very closely it is trying to relate it back to 26(5), but it does not have all the connecting links.

As it now stands, rule 26(6) does not do what it says; but I think it is fair to assume that before this goes through we will have something that does work, which will prevent people rolling over to get a new high value within a 30-day period.

There are all kinds of complicated things going on. If you owned Canadian bank stock A and you wanted to stay in banks but you did not care whether you were in bank stock A or bank stock B, you could sell bank stock A and buy bank stock B, and obtain a new cost; and that is not caught by any of these rules. Some very complicated swaps are going on.

There are two more points. There are also special rules during the transition to distinguish between assets acquired before the implementation date. Basically you get a first-in first-out method of disposition, and that also applies where some assets are acquired before and some are acquired after.

**The Chairman:** Which number is that?

**Mr. Scace:** That is found in rule 26(8). Lastly, with depreciable property you get specific rules. I think it is sufficient to say that they seem to work, so that any appreciation over cost up to the V-day value will not be subject to capital gains tax. They have very complicated provisions where you have non-arm's length transfers. I think they are basically sound. Some of the drafting may be a little tough to deal with, but they appear to work.

**The Chairman:** Which one is that?

**Mr. Scace:** You find those in transitional rules 20 and following. They start at rule 20(1). However, you still have the problem with depreciables in that you can get the retroactive recapture. We spoke about that at great length.

Gentlemen, I think those are the capital gains provisions.

**The Chairman:** Before we adjourn until tomorrow morning at 9.30, it might be of interest to the committee to note the order of business for the next few days. We propose to proceed with the third item tomorrow, that is, corporations and distributions to shareholders. Mr. Scace will deal with that rather big item. Mr. Smith will then deal with partnerships and professional income. That will certainly take the morning. There are other items as well, but we will have only a short time in the afternoon, as I see it—up to perhaps three o'clock—in which to deal with them. That is something we can decide at the time.

On Wednesday, October 6, the people who want another bank will be coming back with certain information they had not been able to give us before, which should not take too long, and after them we will have the Canadian Chamber of Commerce to deal with on the subject of taxation. That should take us through the morning.

We are open in the afternoon on Wednesday, and I understand Thursday is also an open day. If Mr. Smith and Mr. Scace can manage it, perhaps they will come back next week. They can let us know.

**Senator Connolly:** Are there any bills from the House of Commons that are likely to be referred to this committee, Mr. Chairman?

**The Chairman:** I have been spoken to about the \$80 million bill, and I understand that it will come to this committee. I am not sure just when it will get here, however.

**Senator Connolly:** Will it interfere with the planned sittings on the tax measures?

**The Chairman:** Senator, somehow or other we are going to manage to keep Wednesdays and Thursdays available for this work.

**Senator Haig:** Mr. Chairman, I move we adjourn until 9.30 tomorrow morning.

**The Chairman:** Shall we adjourn?

**Hon. Senators:** Agreed.

The committee adjourned.

Ottawa, Thursday, September 30, 1971

Upon resuming at 9.30 a.m.

**Hon. Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** Honourable senators, we will resume our hearing this morning with Mr. Smith and Mr. Scace. Our first subject matter will be partnerships and professional income. Stephen Smith is going to deal with that. Then we are going to consider corporations and distributions to shareholders, which is quite an important and heavy item. We hope to complete both of these items by lunch time, but do not feel any restraint so far as questions are concerned.

**Senator Beaubien:** Very good, Mr. Chairman.

**Senator Connolly:** You mean that, do you?



**The Chairman:** Yes. The word "restraint" I meant in relation to questions.

**Mr. Smith:** There are really two quite separate topics that I am going to talk about this morning, Mr. Chairman. One is the new method by which taxpayers in the professions are to compute their incomes and the second is the computation of partnership income. The only connecting link between these two topics is that many professional businesses are carried on by partnerships. First I will deal with taxpayers in the professions.

You will recall that the White Paper caused a fair amount of consternation among professional taxpayers, particularly accountants and lawyers, and more so the lawyers, in my opinion, by suggesting that taxpayers in the professions generally should no longer be able to compute their incomes on the cash basis of accounting for tax purposes but rather should go on to a full accrual basis which would require them to account for work in progress. That was a particular problem for lawyers because many lawyers have inadequate records of what their work in progress consists of, and they have a real problem when it comes to valuing it.

Perhaps I could read to you two short paragraphs from the White Paper which put the whole subject into context. I refer to paragraphs 5.46 and 5.47 of the White Paper:

5.46 Generally, taxpayers who are in business must compute their taxable income on what is known as the accrual basis. This means that a merchant must take into account the inventory of goods he has on hand, the amounts due to him from his customers, and the amounts he owes to his suppliers. An exception to this general rule has for many years been made for taxpayers in the professions (doctors, dentists, lawyers, chartered accountants, professional engineers, etc.). These taxpayers have been permitted to choose to report their income either on the accrual basis or on the cash basis—that is, they could omit the amounts due them from their clients and their "inventory" of unbilled time. Once a taxpayer chooses one basis he cannot switch to the other without the consent of the Minister. The government believes that the tax postponement permitted by this concession has given professionals an unwarranted advantage by comparison to the rest of Canadians, and it therefore proposes that professionals be required to use the accrual basis.

5.47 A problem would exist in switching professional taxpayers now on the cash basis over to the new system. This problem relates to their receivables and inventories at the date of the change over. For example, if 1971 is the first year of the new system, the problem would relate to the receivables and inventories as at the end of 1970. These amounts would not have been included in the taxpayer's 1970 income because they would not have been collected at that time. They would not be included in the 1971 income because they were earned before that time. To require that the entire amount be brought into 1971 income would impose an abnormal tax liability in that year. As a consequence, the government proposes that these taxpayers be entitled to bring these amounts into income over a number of years. Specifically, they would bring them into income as their total outstand-

ing receivables and inventories are reduced. This amount would of course be in addition to the amount of their income computed on the accrual basis and would mean that they would be taxed on the greater of a cash-basis income or an accrual-basis income until they catch up to other Canadian businessmen.

Now the representations made by various professional groups resulted in the Government's putting in the bill what is essentially a compromise between the Government's position of full accrual and the representations made that professional taxpayers should be entitled to remain on a cash basis. Now this compromise is set out in section 34 of the bill which sets out rules for computing the income of a taxpayer, that is any taxpayer be he an individual, a corporation or a partnership from a business that is a profession.

Now there is one thing to note and that is that there is no definition of "profession" in the Act, so presumably the Courts will have recourse to dictionaries, and perhaps there is some jurisprudence on the subject but the definition of "profession" may end up being somewhat broader than the traditional professions that the Government obviously has in mind.

Now the rules set out in section 34 are first of all in subsection (a) that sections 12(1)(b) and 21(m) of the bill do not apply. Section 12(1)(b) is the section that requires the inclusion of accounts receivable in income unless the taxpayer is already on a cash basis accounting. So they are taking that section out. Section 21(m) is the reserve for goods and services, rent, etcetera, not yet delivered or earned against the inclusion of the amounts received by the taxpayer on that account.

Now subsection (b) says that every amount that becomes receivable by the taxpayer in the year in respect of property sold or services rendered in the course of the business must be included in income. So as soon as you have billed, if you are a professional, the amount of your account comes into your income. Subsection (c), however, is intended to prevent what some people have referred to as the ice-cream scoop theory of law office management—the professional who goes along working month after month and getting in minor accounts until he runs out of money and then he looks around to see what accounts he can bill. He may be very tardy in rendering his accounts.

Subsection (c) says that you are going to be deemed to have billed or to have obtained an account receivable on the earliest of the day on which you actually billed it, the day on which it would have been billed if you had not delayed unduly in billing it or the day on which you actually collected it. That would be the day on which you were paid for your services if you were paid in advance. They do not define "undue delay" but obviously it is intended to give the department some power over the professional who just will not get around to billing.

**The Chairman:** This is really a bit childish, isn't it?

**Senator Walker:** Why are they so fussy and meticulous in a matter like that? It seems unnecessary.

**Mr. Smith:** I think you would have to see in the books of a number of professionals to know whether they have a point or not. The suggestion is that some people keep



building up their work in progress and not billing and keep deferring it from year to year and that deferral is worth something to them in the sense that they have postponed the taxation of it, but at the same time they have not had the use of the money themselves.

**Senator Lang:** I think some firms are putting it into their trust account and just taking in their fees. This is under the old system. However, that has been eliminated now. I think we are stewing about nothing.

**Senator Connolly:** Either a professional has to bill because he wants to eat, or he is going to defer his billing and then get a great glob of income in one year that would put him into a bad tax bracket.

**The Chairman:** And in these times you cannot gamble on taxes going down.

**Senator Beaubien:** The real effect of this thing would be to give the government more money in the year it comes in.

**Mr. Smith:** It speeds up the collection of tax.

**Senator Beaubien:** If over the years you paid on every dollar that came in, then all of a sudden you have to pay on an amount which you would only have paid in the next year because you deemed it to be owed and it would be an asset to the income.

**The Chairman:** Next year if it becomes a bad debt, you charge it off against the income of that year.

**Senator Beaubien:** So all you do is give the Government more income in one year.

**Mr. Smith:** I shall get to it in a moment, but there are transitional rules to cover the change-over.

**Senator Connolly:** If subsection (c) were removed, then you would be on a billing basis.

**Mr. Smith:** Yes, (c) is not essential to the scheme.

**Senator Connolly:** It gives the department some discretion?

**Mr. Smith:** That is right, but ultimately the court would have to decide whether there had been undue delay.

**The Chairman:** Then the rather extraordinary position is that you will have a layman making a determination as to when an account is in shape to be billed. Very often there are delays in sending out accounts because the client is not in a good position to deal with it right away and, rather than have an outstanding account, you just defer billing it.

**Senator Molson:** I have just one question which will probably show my ignorance. This is all detailed by section, and yet when we come to section 34(1)(a) it refers to paragraph 12 and so on. Then in dealing with it Mr. Smith says that section 12(1)(b) does not apply.

**Mr. Smith:** I have always referred in the old act to section numbers but I guess they have changed the nomenclature somewhat, but I do not think it is significant.

**Senator Molson:** But they are described as sections here. At the head of these things for section, can we read paragraph? Are they really interchangeable?

**The Chairman:** When you go back to what they refer to as 12, you can call it section.

**Mr. Smith:** Well, referring to a part of the section—I think when they refer to part of a section—in other words to a subsection—they call it paragraph.

**The Chairman:** When you look at the original place in the bill, they refer to it as a section.

**Mr. Smith:** Yes, but I think if they were referring to all of section 12, they would refer to it as section 12. But if they are only referring to subparagraph (b) of subsection (1) of section 12, it is a different matter.

**The Chairman:** When I look at the bill on that I see it is entitled section 12(1)(b).

**Senator Molson:** I am not really nit-picking but when I read this first I wondered where paragraph 12 would be because we are dealing with sections. Maybe this is sheer ignorance on my part.

**Senator Beaubien:** Well, Mr. Smith answered it very clearly. It is a subparagraph of the section.

**Senator Lang:** For the purpose of the record, I want to object to the considering of a business as a profession. There is no such thing as a business that is a profession or a profession that is a business.

**The Chairman:** They are contradictory terms.

**Mr. Smith:** If you go along you will see that subsection (d) of section 34 says that where a taxpayer elects in his tax return he is not required to account for work in progress. Now the important point to note for any professional taxpayer here is that in his first tax return, presumably, he must make this election or he will be required to account for his work in progress. One might have expected that it would be the other way around, that he wouldn't have to account for it unless he specifically elected to account for it. This is something each professional taxpayer will have to look out for in his first return under the new system. Once you have elected in the first year, that applies to all subsequent years unless you are permitted to revoke your election with the Minister's consent.

Now from section 34 you move to Rule 23 of the transitional rules. That is the section which deals with the change-over from the cash basis to this form of accrual. It is at page 419 of the CCH edition. Rule 23(1) says that in computing income for the 1972 taxation year the accounts payable which were outstanding at the end of the 1971 year may be deducted. That is to make sure that they are in fact accounted for in the 1972 year. Otherwise they would not be taken into account in the 1971 year because they had not been paid and specific treatment is required to obtain the deduction in 1972.

**Senator Connolly:** I am sorry, Mr. Smith; but I did not follow you.

**Mr. Smith:** In 1971 you have been on the cash basis, so you have deducted the accounts that you have actually

paid, but you have not deducted those that are merely outstanding at the end of the year in computing your income, so this section 23(1)—

**Senator Connolly:** What do you mean by "deducted in 1971, including the accounts that you have billed and have paid?"

**Mr. Smith:** I am referring to your expenses, the liabilities side of your balance sheet.

**Senator Connolly:** Oh, I am sorry.

**Mr. Smith:** The amounts that you owe other people.

**The Chairman:** These are deductions.

**Mr. Smith:** So you have only deducted those that you have actually paid in 1971. Therefore in 1972 this gives you the deduction of the outstanding balance of those.

Rule 23(2) provides that where an election has not been made not to account for work in progress, the work in progress at the beginning of the 1972 year is to be taken on the same basis of valuation as at the end of the 1971 year. That section has no application to taxpayers who decide that they are not going to account for work in progress and so elect.

Rule 23(3) deals with the accounts receivable which were outstanding at the end of the 1971 year. To make any sense of subsection 3, you have to turn to the definitions in subsection 5. The first one is "investment interest" and the definition of that term depends on whether it be an individual taxpayer, a partnership or a corporation that may be carrying on a profession.

The investment interest of a sole proprietor is just his accounts receivable at the end of the fiscal period under consideration. In the case of a partnership, it is the adjusted cost base of the partner's interest in the partnership. I will discuss the computing of that later, but basically it is the partners' capital account, with all assets being taken at their tax values. It is not only receivables; other assets are also taken into account. Basically it is the partner's equity in the partnership.

In the case of a corporation, the investment interest is defined as either the accounts receivable, or a portion of them, depending on how many years have elapsed after 1971. The idea in the case of the corporation is that the accounts receivable at the end of 1971 will be brought into income gradually over a 10-year period.

"1971 receivables" is also a defined term in subsection (5). It is basically what you would expect it to be, the accounts receivable outstanding at the end of the 1971 year, less debts that became bad before the end of the year. These are the accounts which were not previously included in income because the taxpayer was on a cash basis.

Going back to subsection (3), this is intended to bring into income the 1971 receivables and at the same time allow a reserve. This will avoid taxpayers who are making this transition being suddenly faced in 1972 with all their income on an accrual basis, plus their 1971 receivables, which would obviously throw up a much larger amount of income.

**The Chairman:** You would really have a balloon there.

**Mr. Smith:** That is right. So subsection (3)(a) provides that an amount not exceeding the lesser of the amount deducted the year before may be deducted. That is to bring in this rolling reserve or your investment interest in the business at the end of the year in question.

For the 1972 year the amount that is deemed to have been deducted under that provision for the previous year is taken as the amount of the 1971 receivables. In other words, for the 1972 year the deduction is of the lesser of 1971 receivables or the investment interest in the firm at the end of the 1972 year.

For taxation years after 1972 the deduction is of the lesser of the amount that was deducted the previous year, on your investment interest at the end of the year.

Subparagraph (c) provides for the inclusion in income of the amount deducted under subparagraph (a) for the previous year.

Subparagraph (d) merely picks up bad debts which may have accumulated subsequent to 1971.

I have placed on the blackboard a rather oversimplified example of a professional firm to illustrate these rules. Not being an accountant, this may be a rather simple-minded example; I am sure any accountant would say that the figures from year to year do not follow. However, I have just assumed some hypothetical numbers and I have allowed the profit of the firm to fluctuate. The example assumes a four-man partnership which is reasonably profitable. I have allowed it a profit as a firm across the top.

**Senator Connolly:** Mr. Chairman, before Mr. Smith starts explaining the table on the blackboard, could we at this stage instruct the reporters to leave a space in order to have that table inserted in the record?

**The Chairman:** Yes. They have already copied the table from the board. It will be incorporated in the record.

**Senator Connolly:** At this point?

**The Chairman:** Yes. It will not go in as an appendix.

TABLE II

	1971	1972	1973	1974
Profit for year	200,000	220,000	160,000	240,000
Net Receivables	50,000	55,000	40,000	60,000
Other Assets	10,000	10,000	10,000	10,000
Total Assets	60,000	65,000	50,000	70,000
Payables	10,000	11,000	8,000	12,000
Partners' Equity	50,000	54,000	42,000	58,000
Adjusted Cost Base of each partner's interest	12,500	13,500	10,500	14,500

**Mr. Smith:** Across the top of the chart I have four taxation years; the numbers are all with the thousands omitted. The headings are down the left-hand side. The first heading is the profit of the firm. The second heading is the account receivable outstanding at the end of the year. The next heading is the fixed assets or other assets, making a total asset which is the fourth heading down. The next heading is the accounts payable at the end of the year.



"Equity" means the equity of all of the partners in the firm—the total of all of the partners' capital accounts. The final figure across the bottom is the adjusted cost base of each partner's interest. This assumes that the four partners each have a 25 per cent interest, so I have just divided the equity of the firm by four. I have let the profit fluctuate from year to year starting out with a base in 1971 that rises in 1972 and then falls below the 1971 figure in 1973 and then recovers to a greater number in 1974, and I have allowed the various financial assets to fluctuate in proportion to it. That is why I say most accountants would take the position that this does not follow, but it serves my purpose.

**Senator Beaubien:** How would the assets be taxable?

**Mr. Smith:** These are all balance sheet items from the end of the year.

**Senator Beaubien:** Yes, but you do not pay income tax on the assets.

**Mr. Smith:** This is just setting out a typical balance sheet which I will use for some examples. If you take a particular partner of the firm in 1972 having a 25 per cent interest in the profits and the capital of the firm, his share of the profits will be \$55,000; 25 per cent of the top figure. Now, section 23(1) gives him a deduction of the accounts payable that were outstanding at the end of 1971. Taking 1972 as an example, his interest in the profits would be \$55,000, so what we are looking at is his 1972 adjustment to income under Rule 23. He has income of \$55,000 as his share of the profits. Under Section 23(1) he can deduct his share of the accounts payable that were outstanding at the end of the previous year.

**Senator Connolly:** The second-last line is his interest in the profits?

**Mr. Smith:** No, this is the profits. These are the accounts receivable; these are the other assets; this is the total assets; this is the accounts payable; and this is the total partners' equity and the adjusted cost base. His share of the equity, if he has a 25 per cent interest—

**Senator Connolly:** The accounts receivable just happen to coincide with the equity?

**Mr. Smith:** Yes, that is right.

**Mr. Smith:** Now, in 1972 you start off with the partner's income of \$55,000. Section 23(1) gives him a deduction for his portion of the accounts payable which are outstanding at the end of the previous year. That is this figure. His share of that would be one quarter on \$2,500, so he can deduct that when computing his income for the year 1972. You then move over to section 23(3)(a) under which he is entitled to deduct the lesser of his share of the 1971 accounts receivable which is this figure here and which amounts to \$12,500 or the adjusted cost base of his interest in the partnership at the end of the taxation year 1972; this is this figure over here. That gives him a deduction of the lesser of the two figures.

**The Chairman:** Would you mention the figures?

**Mr. Smith:** The lesser of \$13,500 or one quarter of the 1971 accounts receivable, which is \$12,500, so he would be

allowed to deduct \$12,500. Moving over to subparagraph (c) of Section 23(3) it says to add the amount that you deducted the previous year. Well, you did not deduct anything the previous year under that subsection so subsection (c) says that you add instead your share of the 1971 accounts receivable which is the figure of \$50,000 and 25 per cent of that is \$12,500, so you add \$12,500. You have deducted \$12,500 and you have added \$12,500 which results in you having no adjustment to income.

**Senator Molson:** You still deduct the \$2,500.

**Mr. Smith:** Yes, the two \$12,500 washed themselves out, but you have a deduction for the \$2,500 for the payables. Your net adjustment in 1972, then, would be \$2,500.

In 1973, however, the activity of the firm has fallen and the partners' equity has been reduced. In other words, they have taken out a portion of the financial assets; they have not maintained their equity at \$54,000. They have let it drop to \$42,000.

**Mr. Smith:** I have allowed it to fluctuate with the level of income, but there is no necessary connection between the two. The key to this is how much you draw out of the firm. If you maintain the investment interest or equity that you had in 1972, you will not have to make any adjustment to income. It is only when you pull out capital, as it were, that you run into an adjustment. If you run through the examples for 1973 your have income of \$40,000 which is 14 of \$160,000. You have no adjustment to make for the accounts payable, 1971, because that has been taken care of in 1972. It is just a one-year provision. You then go to section 23(3)(a) and you deduct the lesser amount that you deducted for 1972, which you will recall was \$12,500 or the adjusted cost base of your partnership. The interest of all of the partners has fallen off and one-quarter of the interest is now only worth \$10,500, so what you deduct as being the lesser is the \$10,500. You then come to section 23(3)(c) and you find you have to add the amount you deducted the year before, which was \$12,500. Now, you have deducted \$10,500 and you have added \$12,500, so you have an adjustment to income of plus \$2,000. The reason for that is that you have allowed your investment interest to drop, and the Government says that by allowing your investment interest to drop you are pulling out some of the accounts receivable which were outstanding in 1971, and because the Government deems you to be pulling out that money it requires you to include a portion of it as income.

I do not need to run through the example for 1974 because you will see that the investment interest has risen again to a greater number than it was back here, and the effect of that is that there will be no adjustment in 1974, no inclusion of income as a result of section 23(3).

**Senator Connolly:** Mr. Chairman, if other methods of preparing income tax returns for other groups in the economy are as complicated as these in this act are, I do not know where we are getting to. We have many lawyers in this committee, and we have two very brilliant young men giving us an explanation of this section, yet we are having the greatest difficulty trying to understand it, much less say that we are able to operate it. Now we are asked, in other words, to foist this on the public of Canada and say, "Here, this is the way that you should run your affairs and make up your tax returns." We have all complained



through the years about the complications of the Income Tax Act, but it seems to me that this is beyond the bounds.

**The Chairman:** Well, Senator Connolly, perhaps what we need at this time is a reincarnation of the Gilbert and Sullivan era so that we could really put this to music.

**Senator Sullivan:** Only you should give it a name other than Sullivan!

**The Chairman:** Perhaps in that way the public would get some understanding of the complications.

**Senator Molson:** It might be a bit of a dirge.

**The Chairman:** The way to deal with this one is to lam-poon it.

**Mr. Smith:** I have heard Arthur Scace attempt to sing. I think you would need to get a new cast, if you were going to do that.

**The Chairman:** Perhaps you could take the tenor lead yourself.

**Senator Molson:** Mr. Smith, this establishes the income of the partner in the partnership. Is this correct? What happens when he moves that into his own tax return?

**Mr. Smith:** I will come to how you account for partnership income, but the point of this, first of all, is to bring it into the 1971 receivables and then allow a reserve. The effect of the reserve is that so long as you have a professional practice that is increasing in volume and you keep your capital account up to not less than what it was in 1972—in other words, you are not pulling your capital out of the firm—you will never have to bring this reserve into income until such time as you decide to retire or such time as your practice declines in volume and, hence, there are fewer financial assets invested in it.

**Senator Molson:** You see in 1973, for example, the accounts payable are down and therefore pull more out of the business and the individual has a bigger income.

**Mr. Smith:** Yes.

**Senator Molson:** And that is the year when the partnership's receipts are down.

**Mr. Smith:** I said that these numbers do not necessarily add up from year to year, but are just hypothetical examples.

**Senator Molson:** But that point is still valid. If the receivables are down \$15,000 and the accounts payable are only down \$3,000, then the money has gone out.

**Mr. Smith:** Yes, it has gone into the hands of the partners. What the Government is trying to do is only tax the 1971 receivables as that money is, in fact, withdrawn from the business by the partners—or it could be a sole proprietor or corporation.

**The Chairman:** If you leave it there as a sort of permanent capital, there is no tax problem.

**Mr. Smith:** That is right.

**The Chairman:** At that time.

**Senator Connolly:** What we are trying to get at, Mr. Chairman, is the fact that some professional groups do not render accounts, or they wait for a long period of time before they do. Is this the thing that these sections are trying to correct?

**The Chairman:** I think in the course of the White Paper hearings there was the suggestion that there were long delays in billing and you would have money on account that you just kept.

**Senator Connolly:** And you would draw on it in the bad years.

**The Chairman:** Yes.

**Senator Connolly:** Perhaps I am being simple-minded about this, but suppose for the sake of argument we use the example that I am one of the partners and that in 1971 I am entitled to \$55,000 from the firm, that in 1972 I am entitled to \$55,000, and that in 1973, when I have been living at the rate of \$50,000-\$55,000, I am down to \$40,000. If we have in this firm money that would give me another \$10,000, representing accounts which have not been billed, and if I bill them in 1973, what is wrong about billing them in 1973 and paying at the rate of \$50,000 in 1973?

**The Chairman:** If you bill them in 1973, then of course they are income in 1973.

**Senator Connolly:** That is right, and presumably you would pay at the rate of \$50,000.

**The Chairman:** We are talking about the accounts receivable with which you come into this taxation period. In other words, we are talking about the 1971 receivables.

**Mr. Smith:** Say your income in 1973 is only \$40,000 for that year, but they assume that because you have allowed your investment interest to drop below what it was in 1972 you have withdrawn some of this float in 1971 accounts receivable at the end of 1971. If you were on a cash basis in 1971 you would not have accounted for the \$50,000 of accounts receivable. If you just went on to this accrual method you would never account for it. You would have that money to pull out in cash and never pay tax on it. So Rule 23 says that we are going to make you account for this \$50,000 which would otherwise be ignored in the transition from cash to accrual, but we are only going to make you account for it when, in fact, you withdraw it from the firm and you do that when you allow your investment interest to drop, that is your capital account, to drop below what it was in 1972.

That is really all that they are trying to get at. Otherwise you would get your share of the accounts receivable free of tax.

**The Honourable Lazarus Phillips (Chief Counsel to the Committee):** Had you covered the point previously made by Senator Connolly, if a bill is capable of being billed in the sense that the work is completed and, if you deliberately postpone it, it must come into income even though not billed?

**Mr. Smith:** Yes.

**Hon. Mr. Phillips:** You covered that?

**Senator Connolly:** And the department has the discretion to tell you that.

**Senator Lang:** This has been dealt with in other contexts in the act merely by taking the average rate of taxation over the preceding three or five years. I do not see why the same problem could not be dealt with in the same way here. It would not be quite as advantageous. I am sure that any professional firm would rather pay an average rate on the \$50,000 over the succeeding five years than to go through this ridiculous computation every year for the lifetime of the partnership.

**Mr. Smith:** It enables you to defer it until such time as you do withdraw it.

**Senator Lang:** Indefinitely, in other words.

**Mr. Smith:** So it is more generous than requiring you to include it in a three-year period.

**Senator Lang:** I recognize that it is more generous than what I am suggesting, but I am saying that a recognized technique in this sort of case where you get a balloon effect might be better.

**Mr. Smith:** That is, in fact, what they did for corporations. They defined the investment interest, if you had a corporation carrying on the profession, as being a proportion of the 1971 receivables which declines by one-tenth for each year for the next ten years so that a corporation could bring in one-tenth of it every year.

**Senator Lang:** I think that would be much better than what is contemplated here.

**The Chairman:** It is an alternative we can look at, senator, when we get to that stage.

**Mr. Smith:** The problem really arises when you have people withdrawing from partnerships and not getting their full share of all the financial assets of the partnership. Really, what it is going to force partnerships to do is to revise their partnership agreements in the light of these rules and the new methods of accounting, which might be a good thing. I think many legal partnerships have been giving too little attention to their own partnership agreements and to their own accounting.

**Senator Lang:** I agree. I think the ordinary accrual method of accounting is far superior to the cash basis method. I am in favour of that proposition, but we have some complicated roll-over on receivables which is an unduly burdensome technique and is going to complicate partnership agreements tremendously, especially when a partner withdraws and so on. You are going to have infinite calculations, which any sound person would want to avoid even if it meant a little more tax.

**The Chairman:** On the point of dealing with a partnership when a partner retires or dies, that partner would still have an interest in the accounts receivable of 1971 that had not been drawn down.

**Senator Lang:** He is going to get the balloon effect then.

**Mr. Scace:** You would have to amend most partnership agreements so that when a man dies or leaves he is given

enough cash to pay his tax on his share of the receivables and other amounts. When there is a withdrawal of one partner, there should be a provision that the partnership is not dissolved at that time. I think most partnership agreements in existence now have in effect a dissolution of the partnership when one partner withdraws or dies.

**The Chairman:** I think with respect to many partnerships nowadays, on the pay-out which it becomes necessary to make following retirement or death, there is a provision for the instalment liquidation of his interest over a period of years so that it does not come out.

**Mr. Smith:** The other technique is that forward averaging by purchase of an income averaging annuity will be available, and also Rule 47 of the Transitional Rules perpetuates the present averaging provisions that are in section 70, so that a partner who dies could average over 5 years the accounts receivable that would come into income at death. Or there is the option of filing a separate return as if that year those receivables had been received in separate years. You would get another crack at the rates.

**The Chairman:** And his marginal rate on that amount would only be whatever that amount attracted.

**Mr. Smith:** Yes.

**The Chairman:** That is the value of a separate return?

**Mr. Smith:** Yes.

If there are no further questions, I will try to give a brief survey of how partnerships are to account for tax purposes.

**Senator Walker:** I saw you smiling when you said that and I think it should be on the record.

**Mr. Smith:** I said "brief" because there are only two ways of doing this, either as a quick survey or getting bogged down in some of the detailed provisions. I do not think we have time to do the latter.

**Senator Burchill:** In comparing the two methods, we had representations made during our hearings on the White Paper from the professional groups who wanted to retain the cash method. That seemed to be the general view. Now I am not quite clear as to why the Government wants to make the change. Is there much money involved in it?

**Mr. Smith:** There may be. It is really a question of the timing of the income, and a cash method of accounting gives most taxpayers who are on it a deferral. They don't bring money into income as fast as they may be earning it, but only as fast as they are getting paid for it. It comes in eventually, but at any time you can defer tax you have the use of the money that would otherwise have gone in taxes. So it is of some benefit to you, and I guess the government thought the benefit was not justified in these cases. But I think the point that most of the professions were upset about was the fact that they would have to account for work in progress, and I say the provisions in the bill are a compromise in that it gives the professional the option not to account for work in progress. That was the key point. Sure, any professional would like to stay on a cash basis of accounting, but he is in a sort of midway position if he is on accrual method for his receivables but does not have to



account for work in progress unless he wants to do so. And that compromise is a real benefit at least to lawyers.

**Senator Benidickson:** I am glad to hear of that compromise because practising in a small town, without an expert accountant such as you might have in a large office, it is practically impossible to get your bills out, if you are rushed. Your billing is rather a personal affair. Therefore it is not a matter of having the use of any money and not paying taxes promptly on the use of that money, because you do not get paid until you bill. But the average small office of a professional man only gets paid after he bills. He does not get what is on his books as a receivable.

**Mr. Smith:** Perhaps I could quickly go through partnership accounting. The basic change made is to require the computation of income—and I do not mean taxable income; I mean the profit or income of the partnership—at the partnership level instead of partner by partner. The theory at present is that you compute the income of each partner, but from a practical point of view I think most accountants have been doing it at the partnership level anyway, and then coming down to the partners' share of it. I think the act is just catching up with the accounting practice in this case. If you look at section 3 of the act you will find that the income of a taxpayer includes among other things his income from each business or property. You will remember that that was the charging section we were looking at yesterday.

Now section 12(1)(L) provides that there is to be included in computing the income of a taxpayer for the taxation year as income from a business or property any amount that by virtue of subdivision (j) of the bill, is his income for the year from a business or property. So you then go to subdivision (j) which comprises sections 96 to 103 and you find the rules for computing the income of a partnership.

If you just look at section 96 for a moment you will find it is the key section and what it says is to compute the income of a partner as if (a) the partnership was a separate person resident in Canada, (b) as if the partnership had a tax year the same as its fiscal year and (c) as if each partnership activity was carried on by a separate person, and you made a source by source computation of each taxable capital gain—that is the one-half you have to include in income—and each allowable capital loss, that is, the half of the capital loss that you can deduct—and each income from the business and each loss from the business for each year. (d) says you compute all these things as if there was no deduction for exploration and development or depletion and (e) says that you compute it as if each gain from certain farming land was computed without capitalizing interest and property taxes. But that is of minor significance, I think, in the usual professional context I have been talking about.

Now subsection (f) and subsection (g) say that you compute the income of a partner as if the income or loss of the partnership from each source for a taxation year was the income or loss of the partner from that source to the extent of his interest. The reason for this source-by-source computation is that it is not the partnership which gets certain deductions in computing taxable income but rather the partner. So in order to give the partner his dividend tax credit, his depletion, his exploration and

development expenses and so on, you have to be able to source the income of the partnership.

Now the partnership takes all the deductions permitted under division (c) of the act but those are usually the deductions to compute income. But those deductions do not include certain things such as charitable donations, prior years' business losses, dividend tax credits and so on. The biggest effect of this change requiring the computation of income at the partnership level is that capital cost allowances will now be taken at that level instead of partner by partner. And that requires you to transfer the depreciation base of each partner at the start of the new system to the partnership. That is done with a series of detailed rules, which appear to work, and they are complex only because up to now it was up to each partner to decide how much capital cost allowance he actually claimed. One partner could claim it faster than another, if he wished, up to the maximums provided by the act. So there could be situations in which some partners had claimed more than others. The bill requires the transfer of the base that the partner who has claimed the most would have in the assets, as if he had the whole interest. You just multiply by 100 over his percentage interest in the firm to arrive at the firm's total depreciation base. A partner that had not claimed as much would be left with some balance that had not been deducted. So the solution is to allow him to write it off as he pleases.

**Senator Connolly:** Up to now you have been referring to professional partners?

**Mr. Smith:** All partnerships.

**Senator Connolly:** But, generally speaking, professional partners have no depreciable assets.

**The Chairman:** They have some.

**Senator Connolly:** Well, equipment and furniture; it is relatively minor when compared to business partnerships dealing in land and so on.

**Mr. Smith:** That would be true of a professional partnership. However, I am now referring to all partnerships, no matter what business they carry on. As you know, it is relatively rare for most businesses to be carried on as partnerships unless there is some impediment to their incorporation.

**Senator Connolly:** Perhaps professional partnerships should be allowed to incorporate.

**The Chairman:** You would have to talk to the Law Society.

**Senator Connolly:** I know.

**Mr. Smith:** The non-professional side of a professional business can be incorporated. Any large professional partnership will have the clerical help it requires, space, stationery and services of that type. It is always open to the professional partnership to incorporate that side of it and have the corporation charge it for services. That would simplify the accounting of most partnerships.

**The Chairman:** I am formulating a phrasing for the deductions you are explaining as between partnerships



and the individual partners. I suppose the real description would be that there are partnership deductions and there are personal deductions?

**Mr. Smith:** That is right. I do not wish to discuss the detailed ways in which the depreciation base of the partnership would be transferred. They are set out in Rule 20 and are rather complex, to say the least, but they appear to work.

**Senator Molson:** They ask for clarification of Rule 96(1)(b), which provides:

... as if ...

(b) the taxation year of the partnership were its fiscal period.

**Mr. Smith:** They are not taxing the partnership, but computing the income of the partnership as if it were an individual taxpayer. So they must give it a taxation year. It does not have one if it is not taxable, so they pretend its taxation year is its fiscal period and compute its income for that period as if it were the taxpayer. When you come right down to it, it is the partner who is taxed, not the partnership. However, they are computing the income of the firm at the partnership level and then attributing it to the partners.

**Senator Molson:** The expressions taxation year and fiscal period trouble me, because the fiscal period may contain different rates because of different taxation years.

**Mr. Smith:** It means basically that the partner includes in his income this computation of income at the partnership level for any fiscal period of the partnership which ends in his own taxation year. In the case of a partnership with a January 31 year end, the individual partner has a calendar year end. For calendar year 1972, the partner's income would include his share of the income of the partnership for the 12 months ended January 31, 1972.

**Senator Molson:** Then why does it not say so?

**Mr. Smith:** That is what it is attempting to say.

**Senator Molson:** Oh, I am sorry; I am a little dense.

**The Chairman:** Let us have a look at where the attempt is, Mr. Smith.

**Mr. Smith:** It is section 96.

**The Chairman:** Do you mean in paragraph (b)?

**Mr. Smith:** To tie it all together, in starting I went through the relationship between these various charging sections, 3, 12(1)(l) and 96. You have to look at all three of those; it pulls into the individual partner's income his share for the fiscal period of the partnership that ends in his own taxation year. Many of these provisions really have to be set out and puzzled over to see what they say.

**Senator Molson:** Either you are adjusting the fiscal period to meet the taxation year, or you are changing the taxation year to agree with the fiscal period to make this work. I am not quite clear what you are doing.

If the fiscal period of the partnership ends at April 30, is the taxation period of the partnership the year ending April 30?

**Mr. Smith:** Yes; it says computing the income of the partnership as if it were a taxpayer having that year-end. Once that is done and an income figure emerges which is attributed to the partners. They include it in their calendar year in which the fiscal year of the partnership happens to end.

**The Chairman:** In the case of a partner on a calendar year and a partnership on any month in that year, that partnership income would be included in the partner's income in his fiscal period of the calendar year if the partnership fiscal period terminated within that year.

**Hon. Mr. Phillips:** The individual files on a calendar basis and the partnership income at the close of its fiscal year, as if it were a taxpayer, is included in the individual calendar year.

**The Chairman:** It could mean that with a fiscal year ending April 30, 1972, and the partner having to account for that income in his 1972 calendar year, the partnership period would start in 1971.

**Senator Molson:** That is right.

**Mr. Smith:** To go on to another topic, obviously there are two ways of obtaining a capital gain. The partnership can sell an asset and realize a capital gain, or the partner may sell his interest in the partnership and realize it that way. The bill attempts to provide a variety of roll-overs or tax-free transfers where no capital gain or loss is recognized, to permit people to come into, retire from and incorporate partnerships, and so on. There are a number of types of transactions; transfers of property to a partnership by either a partner or someone who becomes a partner at that time; transfer to a partner from a partnership; transfer to a corporation from a partnership, where the partnership business is being incorporated; sale of an interest in a partnership; and sales of property by the partnership itself to third parties.

Generally, the partnership is treated as if it were a person for the purpose of computing gains or losses, half of either then being attributed to the partners themselves. I think it is probably sufficient to say that there are these various types of roll-overs. They are quite technical. The first one is a roll-over to the partnership from a partner or someone who is becoming a partner by transferring property.

**The Chairman:** What section is that?

**Mr. Smith:** Section 97. It is a roll-over if all of the partners concur, and it is a Canadian partnership. There are limitations on the election and it does get rather technical.

Section 98 has in it roll-overs where there is a disposition by the partnership of property to a partner. Section 98(3) is the roll-over you get on dissolution.

**Senator Walker:** How does that work?

**Mr. Smith:** You do not really want to know, do you, Senator?

**Senator Walker:** I know it is complicated.

**The Chairman:** Section 98(3) has a lot of words in it and there it is.

**Mr. Smith:** Section 98(6) allows you to dissolve a partnership and yet not be deemed to have realized capital gains provided all of the partners form a new partnership. If that takes place they deem the old partnership to have continued. In section 85(2) there is a roll-over on the transfer of property to a corporation; this is similar to the roll-over that a sole proprietor would have. There is also a roll-over where a partnership chooses to incorporate a subsidiary; that is in section 85(3).

Generally speaking, I think they have been reasonably generous with the roll-overs, and the limitations which they have imposed on them are really intended to prevent tax avoidance by the use of the roll-overs.

A rather technical subject is the computation of the adjusted cost-base of a partner's interest in a partnership. Mr. Scace was mentioning how you compute various kinds of adjusted cost bases under section 53, and there are special rules for partnerships under that section.

There are also some transitional rules in Rule 26(9) to get your starting adjusted cost base where you have a partnership in existence, and again those rules are very technical. I think with the amount of time we have left we really should not get into them. I just mention it because they are there, and basically they look at all the tax values of the various assets of the partnership and give each partner his share of them as a starting point.

**The Chairman:** Would you say the rules work reasonably fairly?

**Mr. Smith:** If they mean what I think they mean, they work reasonably fairly, yes.

**The Chairman:** Is there any doubt about the meaning you have described?

**Mr. Smith:** I find if you stare at them long enough, Mr. Chairman, the meaning starts to come through. There may be some amendments which will make them easier to read.

**The Chairman:** I suppose you should assign reading time limits and realize then that if you read for that amount of time you are guaranteed to understand them.

**Mr. Scace:** Do you want a time limit on that? Mr. Smith is one of the few people in the country, I think, who completely understands the partnership provisions. It took a reading time of approximately one month.

**Mr. Smith:** That was partly because I had my feet off the edge of a dock while I was doing it. It always takes longer that way.

**The Chairman:** You had to dealy while the fish came on the line.

**Mr. Smith:** Yes. I would like to turn this over to Mr. Scace now because he is going to go through corporations, which is a very complicated subject and it would be something of a whirlwind tour if he finished before lunch.

**The Chairman:** There are no other questions on the partnership aspect? There is some reading we have to do, but that is to be expected. At least we know where it is now and we have the particular references.

Mr. Arthur Scace is now going to move into the area of corporations and distributions to shareholders.

**Mr. Scace:** This is a fairly lengthy topic. I think we can only do a gloss on it, but we will try to run through it and I will try to do it in a way that will make some sense. It is hard to know with corporations just where to start. To begin with, I just want to give you two or three definitions of the various types of companies and perhaps you will keep them in mind as we go along.

The first definition is of a public corporation. You will find that definition in section 89(1)(g). Essentially it is a corporation resident in Canada whose shares are listed on a prescribed stock exchange or, alternatively, a corporation may elect to be a public corporation if it complies with certain conditions relating to ownership, shares, and market distribution.

**The Chairman:** The minister has a discretion, then, does he not?

**Mr. Scace:** That is right. The minister may designate a corporation to be a public corporation if it complies with certain conditions. At this point in time we really do not know what the conditions are; we just know the general range that will be considered. They will come out in the regulations.

The next definition is that of a private corporation. It is defined in section 89(1)(f):

"private corporation" at any particular time means a corporation that, at the particular time, was resident in Canada, was not a public corporation, and was not controlled, directly or indirectly in any manner whatever, by one or more public corporations;

A subsidiary of a public corporation, therefore, could not be a private corporation. It does not get any particular name under the bill; I guess you can just call it an ordinary corporation.

There is also no real significance to being a public corporation. You just get the general tax treatment, but it is necessary to have the definition in order to determine whether a company is a private corporation.

A third important type of company is called a Canadian-controlled private corporation. You will find the definition for that in section 125(6)(a). It means:

a private corporation that is a Canadian corporation other than a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations or by any combination thereof;

In other words, if you have control by non-residents or control by a public corporation you will not qualify as a Canadian-controlled private company. The significance of being a Canadian-controlled private company is that you are entitled to the small business reduction under section 125. We will talk about that in a moment.

**The Chairman:** Mr. Scace, your reference there with respect to special tax treatment refers to the small business reduction, does it?

**Mr. Scace:** Yes. A Canadian-controlled private corporation is entitled to a reduction in tax. We will deal with that specifically in a moment.



**The Chairman:** I just thought we should label it.

**Mr. Scace:** Yes. The next thing I would like to go on to is the dividend tax credit. The dividend tax credit has been changed under the new bill. As you know, we now have a 20 per cent dividend tax credit on dividends received from taxable Canadian companies. Under the present system, if you receive a \$100 dividend from a Canadian company your rate of tax is 50 per cent which means your tax is \$50 and you can subtract 20 per cent of the dividend so that the deduction of 20 per cent gives you a net tax on that dividend of \$30. I think we are all familiar with that. It really gives you a reduction of 20 percentage points on any dividend that you receive. This is going to be changed under the new bill by a grossing-up of dividend tax credit. The authority for doing that is section 82.

How this will operate is really fairly simple in concept. I will give you the simple way of doing it and then I will show you how it actually operates.

You take a dividend of \$300, and because of the dividend tax credit being one-third—it is now one-third rather than 20 per cent because it is easier to deal with either \$75 or \$300—the dividend tax credit under section 82 is one-third of the dividend, which would be \$100. But you take the \$100 and you add it to the dividend. That gives you \$400, which is the amount upon which you will calculate your tax. If we still have the 50 per cent tax rate, then at 50 per cent we will get \$200 in tax. But we are then entitled to deduct the amount of the gross-up or the amount of the credit so that we will get minus \$100 and your tax will therefore be \$100.

The actual mechanics of the dividend tax credit are a little more complicated than that. Essentially, what you would get on a straight dividend where there is no interest expense, is that, if you are a 40 per cent taxpayer or under, the new credit is more beneficial; if you are 40 per cent, it is exactly the same as under the present system; if you are over 40 per cent, it is less advantageous.

**The Chairman:** Just to get an idea of the application of this, the 40 per cent rate would be in relation to about \$11,000 in taxable income.

**Mr. Scace:** Yes, the 40 per cent rate would be on a taxable income between \$11,000 and \$14,000.

**Senator Beaubien:** Mr. Scace, what is the reference for taking the grossing-up amount off the tax you would otherwise pay?

**Mr. Scace:** I will come to that, senator. It is a little more complicated. The reference is section 121.

The way this operates, if we take our \$300 dividend, we gross-up the one-third dividend tax credit. That gives us \$400.

**Senator Connolly:** Would it throw everybody off, Mr. Chairman, if I asked why that \$100 gross-up is added? Is it because of a credit?

**Mr. Scace:** You get the credit later on.

**Senator Connolly:** I realize that, but what is the antecedent of this?

**Mr. Scace:** I do not know whether I can answer that question. A simple answer is that it is because they tell you to do it. But I think the real answer is that if you want to get integration, well, the dividend tax credit is really partial integration. You will see when we come to the investment income of private companies that it is completely integrated under the bill. I think without the gross-up you would not get the integration.

**The Chairman:** Is there not another suggestion that might be made, that a credit is a form of income?

**Mr. Scace:** I suppose that is right.

**Hon. Mr. Phillips:** I think the real answer, Senator Connolly, is that this method is a lingering curse of partial integration that the other chamber allowed to go in. We recommended the complete annihilation. This partial integration has given us two problems: this being one of them, and the other being one which this speaker will come to later, namely, the 33 13 per cent tax on the private companies. Those are the two bequests of partial integration that the other house has given us.

**Senator Connolly:** I think Hon. Mr. Phillips is right about that. With respect to the 33 13 per cent tax credit, I think there is some harking back to the fact that so many Canadian companies being resource industries you are dealing with a wasting asset and it was a 33 13 per cent tax credit because it is a Canadian company. What is the genesis of the tax credit?

**Senator Beaubien:** Let us deal with this thing first.

**Senator Connolly:** Senator Beaubien, the point that bothers me in this is the background. I think that in order to understand it thoroughly we have to know the background of the whole thing.

**Mr. Scace:** The genesis of the tax is obviously an incentive to buy Canadian shares. The amount of the incentive could be anything from 1 per cent to 100 per cent, depending on how good you want to make it. The mechanics of it could be anything as well.

One interesting feature you referred to inferentially is that you get the dividend tax credit on any dividend from a taxable Canadian company, and there is nothing in the bill comparable to the White Paper where the Canadian company had to have paid tax. So the shareholders of resource companies or companies with large capital cost allowance deductions will get the dividend tax credit, whereas under the White Paper integration they would not have received any entitlement.

**Senator Connolly:** I think I have enough now.

**Mr. Scace:** If you look at the tax rates in the act, the specific federal rates are set out and you must add 30 per cent of the federal rate for the province. If we take a 40 per cent federal rate for this calculation, in addition to that there will be a provincial tax of 30 per cent of the 40 per cent which will be 12 per cent. Then we are really looking at a total of 52 per cent. You have your grossed-up amount of \$400. You apply 40 per cent to that and it is \$160. Section 121 says that you do not deduct the \$100, the full amount of the gross-up. Rather you deduct four-fifths of that amount,



which would be \$80. That would give you a federal tax of \$80. To get your total tax you then have to add the provincial tax, which is 30 per cent of \$80, or \$24. This gives you a total tax of \$104 for a 52 per cent rate taxpayer.

The reason they picked four-fifths was, according to my understanding, that it was the closest whole number or easy fraction that was beneficial to the taxpayer in every case. Also, if they did it any other way the provinces would have to legislate a dividend tax credit. So this was the easy way. I can show you how it comes out with a better result doing it this way. If you take your \$300 dividend and gross it up with the \$100 tax credit and then apply the 52 per cent rate to the \$400, that will produce \$208. If you then deduct the \$100 credit you will end up owing \$108 in tax as opposed to the \$104 in tax arrived at by the way I showed you previously. That indicates that with the four-fifths, and the slight complication it involves, taxpayers are in fact better off.

One last thing on the dividend tax credit under the current Act is this. If you had borrowed money to buy shares and you received dividends on the shares, in calculating your dividend tax credit, you must deduct the interest from the dividend. So, if you received a \$100 dividend and you had a \$50 interest expense, the amount on which you could take the dividend tax credit would be \$50 so that rather than getting a \$20 dividend tax credit you would only get a \$10 dividend tax credit. This has been changed under the bill in that the interest expense does not have to be deducted for the purpose of calculating the credit. Where there is an interest expense involved, the dividend tax credit is much more advantageous for all levels of taxpayers under the present bill.

**Senator Lang:** If you borrow money.

**Mr. Scace:** If you borrow money. Now coming back to companies, there will be a flat rate of tax for companies. You will find this in section 123. For 1972 it is going to be 50 per cent. It will then decline by 1 per cent per year until 1976 when it reaches 46 per cent. You will of course have your provincial credits and your provincial taxes as well.

**Senator Connolly:** The 30 per cent provincial tax remains stationary, does it?

**Mr. Scace:** Well, 30 per cent provincial tax for individuals is what the federal Government would like the provincial governments to impose.

**Senator Connolly:** Subject to what the provinces might do, the 30 per cent remains despite the decrease in the amount of federal taxes.

**Mr. Scace:** Right. Now you have this flat maximum rate of tax, but you also have what they call the small business reduction which is supposed to be the counterpart of the split rate of tax we now have, that is 21 per cent of the first \$35,000. The small business reduction will be 25 per cent in 1972, and it will reduce with the reduction in the top rate until it reaches 21 per cent in 1976. So a company entitled to the small business reduction will pay a tax of 25 per cent on its eligible income.

**Senator Lang:** We are back to pre-1949 now.

**Mr. Scace:** Was that the rate at that time, senator?

**The Chairman:** But that is limited.

**Mr. Scace:** That is right, and I want to tell you about the limitations. It is very complex, but section 125 provides for the small business reduction starting off at 25 per cent. As I said, the only kind of company entitled to a small business reduction is a Canadian controlled private corporation. The reduction is limited to income earned from an active business, and we cannot really tell you what an active business is. There probably will be some litigation on that. In addition there is an annual limit of \$50,000 per year and there is also a total limit of \$400,000. Now one thing I do not think is particularly clear in the red book, the summary, and there seems to be some confusion among business people is that if you at any time in a Canadian controlled private company earn \$400,000 of active business income you lose the small business reduction. If you have a company that in 1972 is fortunate enough to earn \$400,000 you will get the small business reduction in 1972, but never after that because it has hit the total business limit. On the other hand if it only makes \$50,000 each year, it will take eight years before it gets up to the \$400,000 limit.

**Senator Connolly:** Once it reaches that, is there a change?

**Mr. Scace:** Once it reaches the \$400,000, it is finished, subject to this: the maximum can be reduced by paying dividends to the shareholders and for every \$3 in dividends paid to a shareholder, the maximum is reduced by \$4. Let us take an example. If I have a company that has reached the \$400,000 limit and there is cash in the company and the company pays the shareholders a \$75,000 dividend, the maximum amount will be reduced by four-thirds of that which is \$100,000, and when you deduct that \$100,000 you end up with \$300,000 and so you have recouped \$100,000 which is available for the small business reduction.

**The Chairman:** That is the only way to be reincarnated?

**Mr. Scace:** It is really the only way, that is correct.

**Senator Molson:** This limit that is defined here, does it mean net profit?

**Mr. Scace:** The maximum is \$400,000 minus a thing called the cumulative deduction account, and you will find that in section 125(b)(i). You will find it is the corporation's taxable income for the year from an active business. So what you have then is the maximum of \$400,000 minus the cumulative deduction account which among other things says you add your taxable income from an active business. That would be your income after adding deductions to compute your taxable income.

**The Chairman:** One of the points put forward to us by representatives of small business when they were here was that they cannot go out and borrow money in the usual way as larger operations can do. They have to generate the money themselves. Now this new method of calculating your entitlement to the lower rate of tax would appear to defeat that, because if you want to stay in the ball park and enjoy for a period of time that lower rate, you must keep paying out dividends to reduce the impact of the cumulative effect which will build you up to \$400,000. Of

course, the shareholders could take it and accomplish that and then, I suppose, lend it back to the small business.

**Senator Lang:** After tax—that is the whole problem.

**Senator Carter:** It also defines a small business.

**The Chairman:** Yes. We wrestled a long time with that, if you remember; we had a great deal of evidence.

**Senator Carter:** It ceases to be a small business when it has over \$400,000 of capital.

**Mr. Scace:** There are several complicating features to the small business reduction. The availability can be lost if the tax saving or the tax reduction is not used in the active business. A penalty tax is imposed under Part V of the act, which starts at section 188. Basically it provides that if the business had been entitled to the small business reduction and the saving was taken and put into what is termed a non-qualified, or ineligible investment, which is defined, a tax of 25 per cent on two times the amount of the ineligible investment will be levied. So the tax saving cannot be taken and put into most normal types of portfolio investments. Otherwise this penalty tax must be paid.

In addition, under Part VI there is another penalty tax. This starts at section 191. When a Canadian-controlled private company, that is the one entitled to the small business reduction, is taken over by a non-resident, the amount of the tax will be the tax saving that the acquired company had been entitled to, or has taken under the small business reduction. This tax will not be fully on stream until eight years from now. For instance, a company making \$50,000 a year would take eight years before it reached the \$400,000. The tax saving on that would be \$100,000, which would be the penalty tax on a non-resident acquisition.

The interesting thing with this particular tax is that if it is intended to discourage non-resident take-overs, it possibly does it, but I think it does it in a funny way, because it will not really be a tax on a non-resident. I think its effect will be that the price that the Canadian shareholder can demand will be reduced, so that the effect will be a tax on the Canadian vendor, which will discourage him from selling to a non-resident.

**Hon. Mr. Phillips:** Any resemblance to a banana republic in our country is coincidental.

**The Chairman:** Mr. Scace, may I just attempt to get the effect of that: if a small business has not reached its cumulative limit of \$400,000 and it is decided to sell out to a non-resident, the penalty tax is on the small company and its shareholders. If they waited until they reached their cumulative limit, after which time they would no longer be entitled to the lower rate of tax, then this penalty tax in sections 190 and 199 would not apply, would it?

**Mr. Scace:** The tax will apply in the case of a non-resident take-over of a Canadian-controlled private company, even if it has gone above the limit and that happened some years previously.

However, there is an interesting wrinkle to your question, in that there is no penalty tax when a Canadian-controlled private corporation which has taken the reduction

goes public. If it could comply with the conditions prescribed for a public company, it might be able to qualify. There would be no tax or recapture of the small business reduction and then it could sell out. It would probably avoid the Part VI tax on a non-resident take-over.

**The Chairman:** You mean it might get the minister to exercise his discretion.

**Mr. Scace:** If he knew what was going to be done I doubt if he would, but that is a possibility.

Also, similar to the low rate of tax we have now, there are rules with respect to associated companies. However, they have been loosened up a little. The basic rules are contained in section 256(1); that is the equivalent of section 39(4) of the present act. For instance, in a situation of a husband owning one company and a wife owning another, under the present act if either one of them owns one share in the other's company they are associated. That has been relaxed to a 10 per cent limitation.

We also have the deemed association rules under the new bill, section 138A(2) of the present act, section 247(2) of the bill. As a result of the association, a Canadian-controlled private corporation that has taken a small business reduction on \$200,000 will lose the reduction if it is acquired by another Canadian-controlled private corporation which has also taken a small business reduction on \$200,000. The two are combined to come up to the \$400,000.

As I have said, in the case of a public take-over of a Canadian-controlled private company it ceases to qualify as a private company, let alone a Canadian-controlled private company, and the reduction will be no longer available, although there is no recapture.

The next topic is intercorporate dividends. Basically under the present act and the bill, intercorporate dividends between Canadian companies pass tax-free. There is a qualification in the case of private companies receiving portfolio dividends, which we will come to shortly. Intercorporate dividends are essentially the same, the reference being section 112.

However, the designated surplus provisions have been altered. Surplus, as we said yesterday, becomes designated when one company acquires the shares of another company and the surplus on hand as at the end of the preceding taxation year is then designated. A dividend cannot be paid out of a designated surplus to the acquired or acquiring company without paying tax; the exemption is lost.

**The Chairman:** You said acquires the shares; you mean acquires—

**Mr. Scace:** Control; excuse me, senator.

The method of taxing dividends out of designated surplus will change. A tax of 25 per cent will be imposed under Part VII, starting at section 192. If a dividend is paid from Company B to Company A out of designated surplus, Company A will pay a tax of 25 per cent of the amount of dividend which came out of designated surplus. As I said yesterday, the dividend less the tax will reduce the cost base of the shares.

**The Chairman:** That is, the paying company gets the special tax.



**Mr. Scace:** The receiving company.

**Senator Beaubien:** What is the system now?

**Mr. Scace:** Take the example of a dividend of \$100 going up; Company A brings it into income and is entitled under section 28(1)(a) to subtract the amount of the dividend, so it really shows no dividend. If it is out of designated surplus, he loses the deduction, so he has \$100-worth of income, on which he pays tax at normal rates.

**Senator Beaubien:** That is today?

**Mr. Scace:** Yes. The rules of designated surplus have also been tightened. The definitions of designated surplus and control period earnings under the present act had a few gaps, which have generally been filled.

There is also one interesting provision containing very ingenious drafting if it works. For instance, if Company B has \$10,000 surplus and Company C, which is Company B's subsidiary, has \$20,000 of surplus and Company A acquires the shares of Company B it becomes the ultimate parent company. Under the present act, when Company A acquires Company B, this \$10,000 of surplus will be designated and it will lose the inter-corporate deduction.

However, under the present act nothing happens to the surplus in Company C, so it is not designated. It can pass tax-free up to Company B. It will be deductible to Company B and, similarly, when it gets to Company B it forms part of B's control period earnings and can be paid to Company A tax free.

They changed this under the bill. The change is very complex and it is in section 192(10). Essentially, what it says—and it is imported into the various definitions—is that when Company A acquires Company B and you have Company C down here, the surplus in Company C is notionally designated. It may pass tax-free up through the chain until it gets to the top company or the acquiring company, in which case it becomes taxable. So the net result of the new bill will be as before, the \$10,000 surplus in Company B will be designated and there will be a tax if it is paid to Company A. The \$20,000 surplus in Company C is notionally designated, and by that I mean it can go up to Company B, tax-free, but in B's hands it becomes designated surplus and so it cannot be paid up to A without having the tax become exigible. If you want to see ingenious drafting, I suggest you take a look at section 192(10).

There is another problem with this too. The definition of control in section 192(4) has been altered a little. It is possible that the effect is that when Company A acquires B, not only is B's surplus designated but so is C's. So it could not move within the chain. But that is not what they intend, and they are going to take a look at it and try to satisfy themselves that that is not the result. They would not have gone through this lengthy exercise of enacting an assumption, if that was to be the result, so it is just a technical drafting matter.

**The Chairman:** This is something we should follow, to see whether the change is made to reflect that?

**Mr. Scace:** Yes, sir. I am moving along much more quickly than I had thought I would, and I may get through early.

The next point we come to is investment income of private companies. I think this has to be explained graphically.

**Senator Connolly:** Before we get to that, would you mind my asking an elementary question? In a corporate dividend, between Canadian companies, tax-free, what is the rationale behind the establishment of the concept of a designated surplus? Why, simply because a company takes over another company, in which it always had shares, should it have to pay tax because it has taken over the company, to take out those dividends?

**Mr. Scace:** It was designed to deal with a form of dividend stripping. Without designated surplus, Company A could acquire Company B by using Company B's money. I will show you how this would work. Let us say that Company B has \$1 million cash surplus.

**Senator Connolly:** Available for dividends.

**Mr. Scace:** Yes. Now, Scace comes along. He has no money whatever, but he incorporates a shell Company A. Then this shell Company A enters into an agreement with Company B to purchase the shares for \$1 million. Company A borrows \$1 million from the bank and the \$1 million is paid to B's shareholders. The transaction is closed. Company A owns Company B. The \$1 million, without the designated surplus provisions, would be paid as a dividend to Company A which would use it to pay off the bank. You would have stripped B and Company A would have acquired a company without using any of its own funds.

**Hon. Mr. Phillips:** I think it might be pointed out that that was in a period when we had no capital gains, so that it would create non-taxable income to the vendor of the shares.

**Mr. Scace:** There is a thought, that perhaps designated surplus is not necessary under the bill. Under the present act, the top rate of tax is 80 per cent. A dividend to a shareholder whose marginal rate is 80 per cent would result in a tax of 60 per cent after the dividend tax credit. As opposed to that, if you sell your shares, there is no tax.

Under the bill, the top rate is 61.1, I believe, including the provincial tax. After you have subtracted the dividend tax credit it comes out to approximately 47 per cent. Your top rate on capital gains, is approximately 60 per cent. If only half of the gain is recognized you can look at it as being only the half rate of tax. Half of 60 is 30, so we have reduced the differential from 60 to 17. For 17 points of tax I think there is some question as to whether we need designated surplus.

**The Chairman:** Now we come to investment income of private companies.

**Mr. Scace:** As the Honourable Mr. Phillips said, we do have complete integration for investment income of private companies. We also have integration of active business income of a Canadian controlled private company that gets the low rate. Once it gets over the maximums, there is no integration. I can show you a number of examples, possibly. We start with a portfolio dividend from a Canadian company to a private Canadian company. Let us say the dividend was \$300. The recipient company must



pay a special tax of \$100, it is a third of the dividend. This is the dividend, this is the corporate tax. But that corporate tax is refundable. The company will then have \$300 available to pay out to those shareholders as a dividend. It will have the \$200, which is the net after paying the refundable tax, plus the \$100 in refundable tax which it will eventually get back from the Government.

**Senator Connolly:** This is, as between what companies?

**Mr. Scace:** This is a portfolio dividend to a private corporation.

**The Chairman:** From a public company.

**Mr. Smith:** Would you make clear what you mean by portfolio dividend?

**Mr. Scace:** For the most part, it is a dividend from a non-controlled company.

**Senator Connolly:** It is the ordinary meaning of a portfolio?

**Mr. Scace:** That is right. If you have control here, it will not be a portfolio dividend; it will just be an exempt intercorporate dividend. Apart from certain complications, it will apply where there is no control.

Coming back, we have \$300 which is available to be paid out to the shareholder. So we get a \$300 dividend to the shareholder. You treat it as a normal dividend. You gross it up by one-third, which gets you to \$400. Assume that the shareholder is at a 50 per cent rate of tax. The tax on \$400 would be \$200, minus, the dividend tax credit of \$100—here I am simplifying the tax credit calculation—which comes out to \$100. The total tax is \$100.

That is total integration. If the shareholder of the private corporation had received that portfolio dividend directly, he would have ended up with the same result. You gross up to \$400, the 50 per cent rate of tax is \$200 minus the dividend tax credit, which gives you \$100. They have allowed the dividend to pass right through the company, and it is treated in the hands of the shareholder exactly as if he had received it directly.

**Senator Lang:** It is the same as a personal corporation.

**Mr. Scace:** Really it is, except that with a personal corporation the income for a year was deemed to be attributed at the end of the taxation year.

That does not happen here. The corporation receiving this dividend can keep it and there is no tax effect to a shareholder until it is actually paid out.

To qualify that, there is a tax effect, because this one-third tax on portfolio dividends for private companies is equal to the tax that would be paid by a 50 per cent shareholder. If the shareholder has a marginal rate of less than 50 per cent, the ultimate tax, if received directly, would be below \$100. So more tax is being paid initially than if it had gone to him directly. So there is a slight penalty there.

On the other hand, if the shareholder's marginal rate is over 50 per cent, there is a benefit and a deferral because the immediate tax is less than it would have been.

**The Chairman:** This is the reverse of the new feature they have been stressing on the new form of dividend tax credit, where the higher your rate the lesser the benefit.

**Mr. Scace:** That is right. This is really the only kind of deferral that is available.

**Senator Connolly:** Could they possibly have made it more complicated?

**The Chairman:** I do not know what "more complicated" means, senator. Either a thing is complicated or it is not.

**Senator Connolly:** I think they have reached the ultimate.

**Mr. Scace:** Mr. Smith and I, and others, have worked long enough on it, and although we may not understand it completely, we at least can follow it through.

The one interesting feature is that much of the complexity is found in the integration of private company investment income and the small business reduction. Generally this will apply to small companies and small incorporated businesses. Those are the people who will really have a tough time figuring the whole thing out and who will need professional advice.

**Mr. Smith:** And they are the people who are least able to cope with the complexities.

**Senator Connolly:** They must plan the activities of their company so that they will know whether they are afloat or not. A lot of the genius, evil or otherwise, behind some of these rules is that they have not thought about the problems of the businessman. This is just the taxing. He has problems of sales, of overhead, labour and public relations. Perhaps I am a "nut" about this, but it seems to me that we have reached the point where we do not dare to go into business.

**The Chairman:** I think it might be of some advantage, for the purpose of the record, if Mr. Scace would state in a very summary way the adverse effect of these complexities in relation to small businesses or to those who can least afford to take on a deal with these complexities.

**Senator MacNaughton:** The final solution is a 100 per cent tax.

**Mr. Scace:** The difficulty is that they have tried to provide incentives in various ways for small businesses and private companies. Those incentives are in the form of a small business reduction, basically, and the integration feature on investment income. There is no possible way that they could provide these things without it being as complicated as they are. It is a very complicated subject. As the senator said, they have been ingenious and have done an extremely good job on it.

**Senator Connolly:** I did not say that. I said the opposite. However, I think you are quite right in drawing the other conclusion.

**Mr. Scace:** The problem is—and I think Mr. Smith stated it very bluntly—that the kind of companies who would be entitled to these particular benefits are not the large companies, but the small incorporated businesses. I do not think that a man who is concerned about carrying on his

business will ever understand the complexities of the statute. He will have to rely on expert advice, and hopefully he will get it.

**Senator Burchill:** But the expert advice, in a lot of our towns and communities across Canada, has come from lawyers. People go to lawyers to make out their income tax forms. The office of Senator Aseltine made out the income tax forms for hundreds of people. But those offices could never follow the intricate explanation that we have received this morning.

**Mr. Scace:** I am not sure that I am doing what Senator Hayden wanted me to do, but, if I could put in a word in defence, my initial reaction to the bill was like everybody else's in that I was staggered by it. It has required an immense amount of work for those of us in the accounting and legal professions who do tax work. Initially, we made the comment to the Department of Finance that it was just too complex and nobody would understand it.

Part of the problem is that we are starting from a dead stop, from zero. For the first time ever—perhaps the only other occasion was 1917 when the Income War Tax Act was introduced—there are no real guidelines.

But things are coming out. We have the Clarkson book. We have this one from the Law Society. A lot of people are publishing. Once the documentation and the information is out, I think that people will develop a fairly reasonable understanding of what it is all about, much as we have now; but it will take time. I think that may happen. That is a possibility, sir.

**Senator Connolly:** When I seconded the motion for these hearings, one of the things I said was that generally I thought the new tax act, compared with the White Paper, was an improvement and generally applied it. However, when I listened to the complexities of the bill, I thought I was wrong. Now, when I hear about the results, perhaps there is an element of my being right, because it may be that the small taxpayer, and perhaps all taxpayers, will get some benefit from this over what the situation might have been had the provisions of the White Paper found their way into the legislation.

Really, the thing comes down to the use of experts upon whom we have to rely. I think Senator Burchill had a point when he said that perhaps we can get these experts in the bigger centres, but in the smaller centres they will be very hard to find.

**Mr. Smith:** Perhaps I could just add a word. The complexities come in large measure from the incentives that many taxpayers argued should be preserved, the small business reduction being the most important of them, I suppose. The complexities come from the limits that have been put on it. As you know, the present split rate was a very inefficient incentive, because it was a subsidy to those who did not lack capital necessarily, those whose businesses were not necessarily expanding, as well as those who were, so the limits that have been put on it are designed to make it an incentive for those people who do lack capital in fact, and who are starting out from scratch, the theory being that once they have derived a benefit, a tax reduction that is worth \$100,000 to them, that should be

it. The government subsidize them to the extent of \$100,000, they have got it, so long as they really need it to carry out their active business they can have it, but once they start putting it into portfolio investments, why should they have it? The complexities come from circumscribing the incentives in that way to make it efficient as an incentive.

**Senator Lang:** I object to Mr. Smith saying the government subsidizes anybody by taking less blood out of them.

**Mr. Smith:** Compared to another taxpayer, where the circumstances are similar.

**Senator Beaubien:** The torture is a little less.

**Senator Lang:** I have had some experience of the average assessor in the Department of National Revenue, and I do not know how the department will recruit or train enough assessors with sufficient expertise to do even a normal assessment job.

**The Chairman:** They will educate the computers!

**Senator Connolly:** To condition the computer they have to have experts too. I think this is right. We are talking now about the problems that are created for the businessman as a result of this complex legislation. We should have some concern too for the problem of administering a bill as difficult as this. I would think the tax people in the Department of National Revenue must be scratching their heads very, very hard to try to figure out what the people in Finance have really intended with some of these sections.

**The Chairman:** I would think their interpretation service will be overworked, and bulletins may come out very slowly.

**Senator Molson:** We have not mentioned the increased work load that is being put on people, all working for the government, trying to understand what the tax is supposed to be and what is supposed to happen. As Senator Connolly said a little earlier, it probably means that a lot of them will not be selling anything or doing anything; they will merely be sitting scratching their heads and trying to get their lawyer and accountant to straighten out their tax problems.

**The Chairman:** When they get to the finality—

**Senator Molson:** They have not got the money.

**The Chairman:** —the calculation would be a hypothetical problem, "If I had the money".

**Senator Molson:** By that time.

**The Chairman:** This is what the answer might be.

**Senator Connolly:** It is purely academic; there is no money.

**Senator Molson:** The big companies will perhaps have less difficulty in coping, but that does not mean there will not be more people and more time spent on this non-productive business of trying to figure out how much they owe the government.

**The Chairman:** This is not in aid of unemployment, is it?



**Senator Beaubien:** It will employ a lot of people.

**Senator McNaughton:** Surely it amounts to this. We will have to pay much higher fees for the expert advice and/or you will have to hire another 20,000 experts for the Department of National Revenue to explain what they are trying to get from you.

**The Chairman:** I do not know why you put an "or" in there. I do not think it is disjunctive; I think both things will have to happen. The department would have to acquire an educated staff and business would have to acquire it, because very often they have different views and end up in law suits.

**Senator Lang:** I think also that among the unsophisticated high complexity tends to encourage evasion.

**Senator Beaubien:** It is bound to.

**Senator Lang:** I think this will flow from this type of legislation.

**Senator Connolly:** Maybe we have reached a kind of society that is so complex that to regulate it we have to have incomprehensible laws at times.

**Senator Walker:** Are not a lot of these complicated features due to the fact that companies have done their best to circumvent the law?

**The Chairman:** No, I do not think so. I think that would be an unfair conclusion. The law is there and you are supposed to be your own assessor. You interpret it, and very often you have disagreements with the assessor.

**Senator Connolly:** Following what Senator Walker just said, I think it is a perfectly legitimate exercise for a taxpayer to minimize his tax.

**The Chairman:** I do not think that was Senator Walker's problem.

**Senator Connolly:** If that is evasion—

**The Chairman:** No.

**Senator Walker:** That is not what I meant. It is plugging the loop-holes.

**The Chairman:** That is a different problem.

**Senator Walker:** Is that not the problem?

**The Chairman:** Why do they call them loop-holes?

**Senator Walker:** Because the public finds ways of getting around them.

**The Chairman:** Start at the beginning. The beginning is that Parliament devises a scheme of taxation and the words they use produce certain results. In those words certain situations are not covered. Therefore there is no law and no taxation feature applicable to the situations they have to cover. When business people discover that situation they avail themselves of it. This is why they talk about amendments plugging loop-holes. I think "loop-hole" is a misnomer. It is just that the scope of the legislation at the beginning was not expanded as broadly as they subsequently realized they should have done.

**Senator Walker:** It has been now.

**The Chairman:** The scope is now being enlarged.

**Senator Connolly:** This is the first grab. We still have not got the amendments that are going to come in the next five years.

**The Chairman:** That is quite true. I would think the immediate amendments would be for clarification, and also to make sure that what is in the bill is what they mean.

**Senator Walker:** Is it a fact that the draftsmen of our statutes now are not as well trained as they used to be? Honestly, in the last few years things have been getting awfully complicated.

**The Chairman:** You made it difficult for me to answer that question when you said, "Is it a fact". I do not know as a fact.

**Senator Connolly:** I would think the draftsmen are perhaps more ingenious and better trained now, but the things they are required to put into the statutes are so complicated that they cannot possibly write it in terms of one syllable.

**Senator Burchill:** They invent new words.

**The Chairman:** You must underline too the speed with which they are expected to produce. That is a very important factor. With bills like this tax bill speed would be a very difficult thing to apply if you wanted to have the bill completely intelligible.

**Senator Lang:** I believe the United States' revenue code has some sort of explanatory paragraph attached to each section in lay language, setting out the general purposes of the section. Although they do not have legislative effect, they sometimes have an interpretative effect. Certainly they aid in finding the right places to go for the answers. I am wondering if we should not be thinking of a similar sort of device to attach to this piece of legislation.

**The Chairman:** Maybe the summary of the legislation with the raspberry-coloured cover was intended to be an indication of the purposes.

**Senator Lang:** Perhaps that summary should be put in the bill.

**The Chairman:** What good would it serve? There is no correlation between the two, so that just printing the summary as part of the bill for its persuasive and interpretative effect would not prevent our having to wade through the whole of the bill.

**Senator Lang:** That is not what I meant. I meant to follow the U.S. procedure. As I understand it, each section of the U.S. act has an explanatory paragraph preceding it, dealing with the very section. It seemed to me it would be of great assistance to the lay person and lawyer if such explanatory sections were inserted in this bill.

**The Chairman:** That is on record now and when we come to think about this in summation we can see about that.

Do you wish to continue now, Mr. Scace?



**Mr. Scace:** I hesitate to become more complex, but if you would like to see it, I can show you how interest income and capital gains income in a private corporation are integrated.

**The Chairman:** Have you the sections there?

**Mr. Scace:** Yes. All these things are a combination, but, basically, for interest you look at section 129.

Now, to take an example, let us say you have \$100 of interest income. The corporation will have a flat rate of tax of 50 per cent. So \$50 is the flat rate of tax in this amount.

**Senator Connolly:** What do you mean by interest?

**Mr. Scace:** On a bond or debenture. Anything like that.

**Senator Connolly:** I see.

**Mr. Scace:** Twenty-five percentage points of the tax, in this case \$25, is potentially refundable. So \$25 of the \$50 is refundable to the corporation. As with the portfolio dividend, this means that the corporation has \$75 available to pay out as dividend to a shareholder. It has the net between the \$100 and the \$50, which is \$50 plus the \$25 of the \$50 which is potentially available as a refund.

So if the dividend is \$75 and it is paid to the shareholder, we then go through the normal grossing-up procedure. One-third is \$100. Let us say the shareholder is a 50 per cent rate taxpayer. There is a \$50 tax. You subtract from this the amount of the gross-up or the dividend tax credit, which produces \$25 in tax. The total tax is \$25 to the shareholder plus \$25 up here, because \$25 of the original \$50 got refunded.

Similarly, if the interest was received directly by the shareholder of the private company without the intervention of the private company, there would be \$100 of interest income. He is a 50 per cent taxpayer. Therefore, there would be \$50 in tax for a net of \$50, which is exactly the same.

With capital gains it is a little more complicated. Let us say the corporate capital gain is \$200. One-half of that is taxable. So you get a taxable capital gain of \$100. The non-taxable portion of the gain, this other \$100, goes into a thing called a capital dividend account. We will come back to that in a moment.

Looking at the taxable portion, the corporate tax is 50 per cent, or \$50. But as in the case of interest income, one-half of the corporate tax is potentially refundable. So \$25 of the \$50 can get refunded to the corporation. Just looking at the taxable half of the dividend, we have the \$50 still available plus the \$25 refund. So we can pay a dividend to the shareholder of \$75, gross it up to \$100 and he is at the 50 per cent rate so his tax is \$50 minus the gross-up which produces \$25 tax. So at that point of time the tax which has been paid is \$25 by the shareholder and \$25 by the corporation, the original \$50 less the \$25 refund.

The non-taxable half, the \$100, as I said before, goes into the capital dividend account persuaded under section 83(2).

**Senator Connolly:** That is segregated on the company's books.

**Mr. Scace:** That is right. It is a sort of notional account.

**Senator Lang:** Can you borrow money against it?

**Mr. Scace:** I do not think it is a real asset. The real asset is \$100 in cash. It goes into this notional capital dividend account and you may pay dividends out of the capital dividend account tax-free to the shareholder. So that you have \$100 going over to the capital dividend account and it comes out as a tax-free dividend to the shareholder. So the total or net result is that the tax that has been paid is \$25 plus \$25, which is \$50, and the total tax is \$50. The net to the taxpayer is \$150.

Now, if he had done that directly, the taxpayer would have realized the \$200 capital gain. One-half of that would have been the taxable capital gain. If he is a 50 per cent rate taxpayer as in our example, then that is 50 per cent of \$100 and it is \$50 tax so that it is exactly the same tax and the same net. That is how it goes through. The only wrinkle with respect to the capital dividend account is that it does not come into play until you have taken out the 1971 surplus in the company. That is the next topic.

In those three calculations you see how the total integration of private company investment income is achieved.

**Senator Lang:** So we are now going up from the present 15 per cent to 25 per cent. When you extract tax-free capital gain from the corporation now you are going to have to pay 15 per cent tax before the undistributed income goes out.

**Mr. Scace:** That is right. For example, let us say a corporation realizes a \$200 capital gain now, there is no tax in the company. So you have zero tax. But that gain gets locked in behind the undistributed income in the company, and, you are right, to get at it you cannot distribute it tax-free until you have paid out all your undistributed income, which means the 15 per cent tax under section 105 of the existing act. That really results in an approximate 37 per cent tax rate, because on the dividend out you do not have your dividend tax credit. So it is better, if you are under 37 per cent, to pay it out as a straight dividend. If you are over the 37 per cent, it is better to go with section 105 of the present act.

We then come to the 1971 surplus. This is really what we touched on yesterday. At the end of 1971, companies if they are not in a deficit position will have a surplus, and this surplus will be made up of three things. It will be made up of tax paid undistributed income on hand; that is income or surplus that the company has earned and upon which it has paid the 15 per cent tax under existing section 105. Let us take an example of this; if in 1970 the company has \$100 surplus or undistributed income and it paid the 15 per cent tax, then it has \$85 left. But if it does not use it or distribute it, then that \$85 is in a notional account called tax paid undistributed income going into the system. There will also be straight undistributed income, and that is roughly the same undistributed income as we have now with one major change. Undistributed income under the present act starts from 1917 and is calculated up to the present time. Undistributed income for the purpose of 1971 surplus only covers from the year 1950 to 1971. So for companies which were in existence prior to 1950 their pre-1950 surplus is no longer considered to be undistributed income.

**Senator Connolly:** But in both those cases the corporate rate has been paid on the profits, and in case No. 1, in addition to that the income that they are holding there as undistributed has already been subjected to the 15 per cent tax and that is why it is not tax free.

**Mr. Scace:** That is right.

**Senator Connolly:** And then in case No. 2 the 15 per cent tax has not been paid on the undistributed income.

**Mr. Scace:** No. We will come to that in a minute and we will see what happens to it.

The third item is capital surplus. Capital surplus is a very lengthy definition. It is in section 89. Capital surplus is going to be made up of a number of things. Probably included in it will be pre-1950 undistributed income, and this is one of the great advantages to the method of distributing 1971 surpluses. So you will have pre-1950 undistributed income in there, and you will also have accrued capital gains up until implementation of the system. If the company has an asset which it bought at \$100, and on V-day it is worth \$200, that \$100 is notionally included and it will fall into capital surplus if it is ever sold.

Taking the 1971 surplus out of the company, the tax paid undistributed income can just be paid out as a straight dividend, not taxable to the shareholder. On the undistributed income, under section 96 you may pay 15 per cent and it can be paid out to the shareholders after the 15 per cent tax has been paid. With capital surplus nothing need be done. It can go out, after these amounts, tax free to the shareholder and no additional tax has to be paid. Now you can see that one great benefit of these distribution rules is that without the new bill companies which had say \$1 million of undistributed income earned prior to 1950, the tax cost of getting that out under section 105, the immediate cost, would be 15 per cent or \$150,000. Basically that pre-1950 undistributed income goes into capital surplus and can get out tax free. This caught some people who were trying to preplan for what the bill might do. I do not think anybody ever expected this would be the result, and some people were taking out their pre-1950 surpluses and paying the tax and I suspect that they will not be very happy when they find out that the tax need not have been paid.

The other feature of these non-taxable dividends out of the 1971 surplus—as we mentioned yesterday—is that the amount of the dividend must be deducted from the cost base and you reduce the cost base of your share by the amount of the dividend. So if the shares are ever sold for an amount in excess of the cost base, you may get taxed on the capital gain.

**Senator Connolly:** What is the rationale behind paying out the capital surplus tax free? Here I am on the other side and I am being the devil's advocate. Simply because a company before 1950 did not bother to distribute surplus which it had earned, in 1971 it is able to distribute it to its shareholders without any corporate tax of any kind. Presumably they paid the going corporate rate before 1950. I suppose that would be all right. Then when it gets into the hands of the shareholder, he pays at his own rate.

**Mr. Scace:** No, he has no tax on that.

**Senator Connolly:** Why should he not have tax on it?

**Mr. Scace:** I do not know whether I can answer that, but we have double taxation and will continue to have to a certain extent under the new system. There is corporate tax and then again there is taxation when it is distributed to the shareholders. The dividend tax credit is a method of trying to reduce the element of double taxation, and the whole business of section 105 was an effort to allow people to take out the surplus at a lesser tax cost and thereby minimize the double taxation. I do not know if you can rationalize this as anything but a policy to benefit the taxpayer in these particular circumstances. The really important one is the one concerning the pre-1950 surplus. But it is hard to assess what the benefit will be.

**Senator Lang:** You still have to pay 15 per cent to get out the pre-1950 surplus.

**Mr. Scace:** No, sir. That is capital surplus. Formerly you would have had to pay 15 per cent, but now you do not.

**Senator Lang:** But the pre-1970 surplus?

**Mr. Scace:** Between 1950 and 1971, yes.

**Senator Carter:** Are there any circumstances where it would be beneficial to move No. 2 up to No. 1?

**Mr. Scace:** You mean to pay the tax on it?

**Senator Carter:** Yes.

**Mr. Scace:** To get it out as a tax-free dividend, what you could do is to pay it out as a straight dividend and then you would be into the normal rules. This is a cheaper way of doing it—by paying the 15 per cent. Take the situation of a company which owns investments and the value of the shares in the company is directly proportionate or commensurate or related to the value of the assets in the company, I think in that case this would be very beneficial. You would pay your 15 per cent tax on the 1971 undistributed income and you would move it up to No. 1 and you would pay it out as a non-taxable dividend and it will reduce the cost base of your shares in the company. But since they are completely related to the assets inside the company, there is really no penalty to it at all. It is very beneficial.

**Mr. Smith:** There is a penalty where an operating business is valued by capitalizing its earnings. Ordinarily a payment of a dividend by that kind of company would not necessarily reduce the price at which it could sell its shares, unless it were a very large dividend which impaired the working capital and its ability to produce profits. This reduction in the cost base does not really reflect the good will inherent in any capitalization of earnings.

**Mr. Scace:** Our last point is with respect to section 184, under Part III, headed "Additional Tax on Excessive Election". In order to obtain the special treatment on the 1971 surplus, a company must elect and say it is paying a dividend out of tax-paid undistributed income or capital surplus. Section 184 provides that if that election amount is in excess of the actual amount of tax-paid undistributed income or capital surplus, there is a penalty tax of 100 per



cent of the excess. This could be a disaster and I think it has to change.

Assume that by a calculation it is determined that the 1971 surplus is \$1 million and an election is made to have it paid out as a tax-free or a non-taxable dividend. It is later discovered that the 1971 surplus is only \$500,000 so the tax or, penalty will be \$500,000. It is completely unfair that there should be that type of penalty tax on something against which it is almost impossible to guard. Many of you, I am sure, have had dealings in which it was necessary to calculate the undistributed income of a company. It is generally an accounting matter. They are going back a great many years and might be accurate, but might not, and by pure inadvertence could be out by a substantial amount.

I think a provision should be added that if a mistake were made the additional tax may be paid to bring it on side without a terrible penalty such as this. However, the Department of Finance has been informed of this and it may be in the amendments.

**Senator Lang:** Is the definition of undistributed income in this bill the same as under the old act?

**Mr. Scace:** Yes, it is essentially the same. However, one major difference is contained in section 196(4). It specifically inserts the year 1950 as being the starting point for the calculation.

**The Chairman:** Will any problems be presented by the fact that over the years many companies have maintained one surplus account, into which they have added not only income, but capital gains?

**Mr. Scace:** I think all companies generally have kept one surplus account and probably have not kept a running calculation or account of undistributed income, or anything else. They only considered that when it became necessary to make a calculation for the current tax. Most companies will be in the situation of having it all lumped.

**The Chairman:** This emphasizes more than ever the disastrous effect of paying an amount in excess of undistributed income and how easily it might develop. I know there has been a great problem in trying to analyze surplus accounts going back over a period of years and identifying capital gains and income items.

**Senator Burchill:** Should there not be an item on reserve?

**The Chairman:** No; reserve is something else.

**Senator Burchill:** What is the difference? I often wondered.

**The Chairman:** The analysis can be most careful and honest, but the penalty for an error of one dollar, or I suppose even one cent, is pretty severe.

Where does that leave us now, Mr. Scace?

**Mr. Scace:** Senator, that completes what we were going to do today. If you wish to continue, we can discuss estates.

**The Chairman:** We have had quite a strenuous morning. There are several items left. We have appointments for hearings for next Wednesday, but so far we have kept

Thursday open. On Thursday we might finish the other headings.

I regard the heading of International Taxation as very important, then generally the law relating to estates, real estate and corporate acquisitions. Lastly, we have resource industries.

Certainly, later the following week and thereafter, judging by the number who now have dates for hearings, the presentations will involve international taxation, corporations and distributions to shareholders. I think it would be a good idea if we were educated a little before we start hearing those.

**Senator Carter:** Do we resume hearings on this bank bill next week?

**The Chairman:** Yes, on Wednesday; that will not take more than half an hour. They have material which they wish to submit regarding the standing of the people who made the feasibility studies for them.

**Senator Walker:** Could Mr. Scace start discussing estates this morning?

**The Chairman:** It is almost ten after twelve now.

**Senator Lang:** Is it necessary to qualify again by paying out the equivalent in dividends in order to acquire status to elect on the payment out of tax-paid undistributed income?

**Mr. Scace:** No, the necessity of a dividend record is abolished, which is a great advantage.

**Senator Lang:** That is quite a change in the ball park.

**Mr. Scace:** There is no doubt that the Department of Finance has been very, very generous with regard to the distribution provisions. I cannot say as a fact, but I have heard rumours that the Department of National Revenue is not particularly happy with the generosity of the Department of Finance.

**The Chairman:** There are one or two other things I would like to say. This committee may be sitting tomorrow. I am not at all sure it will be, but it may be sitting earlier than Wednesday of next week. It all depends on Bill C-262 and when it is referred to committee.

**Senator Beaubien:** The Senate is sitting at 8 o'clock on Monday.

**The Chairman:** This, I do not know yet.

**Senator Burchill:** Yes, at 8 o'clock Monday.

**The Chairman:** It may be that they do not want to wait until Wednesday. It may be that the debate on the bill may go on into Tuesday, in which event it would not come to us until Wednesday. For all these reasons I do not think there would be any time on Wednesday that we could count on having available to continue our study. I think Thursday is a more convenient date for Mr. Scace and Mr. Smith.

**Senator Walker:** Next Thursday?

**The Chairman:** Yes, I think perhaps we will deal with that on Thursday.



**Senator Beaubien:** Thursday morning?

**The Chairman:** Yes. I would like to make a statement of "instalment credit" and appreciation to both Mr. Scace and Mr. Smith for what they have done to date.

**Hon. Senators:** Hear, hear.

**The Chairman:** I would also like to express the appreciation of the committee to our Chief Counsel who is sitting right beside me. I think he might like to say a few words to the committee before we adjourn.

**Hon. Mr. Phillips:** Thank you very much, Mr. Chairman. Firstly, I wish to thank the honourable senators for allowing me to be here to deliberate with them on this bill. Naturally, I will have more to say as we continue our study of the bill.

There is only one observation that I would like to make at this time, and that is that we are considering the draft bill without having the benefit of studying the proposed amendments or the regulations, neither of which have come down as yet. I am not speaking of the regulations that have come down to date, of course, but the ones that we are expecting. I think the Chairman is being skilful in getting a so-called money bill before the Senate committee for consideration while it is still being deliberated on in the other house. We are, however, paying a price, in the sense that we are dealing with a draft bill only rather than a bill that has gone through the other house. We are not really dealing with the proposed bill in its final form.

I cannot understand the logic of the Government in having the Committee of the Whole consider the bill without the amendments being brought down in total. I am told, as I am sure other gentlemen have been told, that it is proposed to bring the amendments down as each new section of the bill is passed. It appears to me, and I put this to you gentlemen for consideration, that it would be desirable to have a message conveyed to the other place, through the Leader of the Government in the Senate, stating that this house through its committee is considering the bill and it expresses the view that it would be highly desirable that all of the proposed amendments to the bill be brought down in the other house immediately so that the public of Canada and the legislative body here can consider the entire bill in a little more intelligent fashion than we are able to do now.

**The Chairman:** There would be a benefit to the Commons members also.

**Hon. Mr. Phillips:** Yes, it would be a benefit to the House of Commons as well.

I think that we ought to crystalize that, if I may suggest, Mr. Chairman, and if honourable senators agree, in the form of a conclusion of this committee that the Leader of the Government be asked to convey that point of view to the Minister of Finance or, for that matter, to the Prime Minister himself, because I think it is a matter of vital importance in order that we can intelligently study this bill.

Before concluding, Mr. Chairman, I would only like to say that I realize I missed a great deal in not being here yesterday to listen to both Mr. Scace and Mr. Smith. How-

ever, they have presented it brilliantly thus far, and it is a promise of what is to come.

Generally speaking, tax lawyers studying a bill are frightened by it. Someone asked me what I thought of the bill and I said it was an avalanche of words juxtaposed to other words that produced unintelligible phrases which, juxtaposed to other unintelligible phrases, produced incomprehensible sentences, and I said only God himself could define its meaning, and, leaving blasphemy aside, I was not even sure about that. I will admit that that is a little bit of literary indulgence.

**The Chairman:** Hyperbole.

**Hon. Mr. Phillips:** Yes. It is true, however, that if you study the bill carefully, broadly speaking, there is considerable merit in some of it.

**The Chairman:** And benefit.

**Hon. Mr. Phillips:** But you have to go back and attack it and attack it and attack it, until the words begin to have some meaning. In the early stages only the younger men seemed to have the physical and mental fortitude to keep on reading and re-reading it. Those of us of an older generation find it a little harder to go back to the attack, but I suppose what we lose in fortitude we gain in experience and we will catch up with them in understanding the bill.

I look forward, Mr. Chairman and honourable senators, to working with you on this bill.

**Senator Macnaughton:** Mr. Chairman, before we adjourn, should we not have a motion from the floor to instruct you, the chairman of this committee, to advise the Leader of the Government in the Senate along the lines outlined by the Honourable Mr. Phillips?

**The Chairman:** If there is such a motion, I will be glad to act on it.

**Senator Macnaughton:** It is so moved.

**Senator Beaubien:** I second it.

**Hon. Senators:** Agreed.

**Senator Connolly:** We discussed this yesterday, Mr. Chairman, and, of course, it is unusual for us to be sitting here in this fashion, according to parliamentary practice. Now this is a further departure from parliamentary practice. I think it is a desirable one, though, from the point of view not only of this committee but, indeed, of the people who have to consider this bill in the Committee of the Whole in the other place.

**The Chairman:** Yes, but a request is never out of order, senator.

**Senator Connolly:** That is right.

**The Chairman:** And whether the request comes from the Senate to the Government or from another source, it is a part of the function of the Government to deal with requests relating to the laws of the country and certain requests relating to the convenience of the general public. It is not just a matter of convenience to the Senate or to

the members of this committee, but it is also a matter of convenience to the general public in order for them to know what the whole thing is going to encompass and what the interpretations are going to be as reflected in the amendments. It will also be beneficial to the members of the other place in their deliberations. I am not embarrassed by the fact that a Senate committee would request that consideration be given to this. We are not passing an order or anything like that.

**Senator Connolly:** On top of that, I think too that we have used a parliamentary process here that does not stick to the dead letter of the law. In other words, we did not wait until the bill came to us from the other place. The dead letter of the law states that we cannot have these amendments, but if you are going to stick to the dead letter of the law all the time you are not going to have Parliament operating as efficiently as it should.

**The Chairman:** I do not think there is any dead letter of the law involved here. Parliament makes the rules and it

can change the rules and procedures. Certainly the practice in the past may have been that when there are amendments they are usually proposed when you are considering the particular section in the committee as a whole, but I am sure if you went back and analyzed you might find situations where, for various purposes, some indication of the nature of amendments to be proposed has come forth. This has even occurred on second reading.

**Senator Macnaughton:** Mr. Chairman, we are simply asking that the ordinary parliamentary procedure or precedent be followed. It is as simple as that. There is a tendency now to get away from past parliamentary procedure, and I am not at all sure that it is a wise thing. It is certainly not in the interest of and for the protection of the ordinary taxpayer or the ordinary citizen.

**The Chairman:** It is not in the interest of the public, and that is whom we are here to serve.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

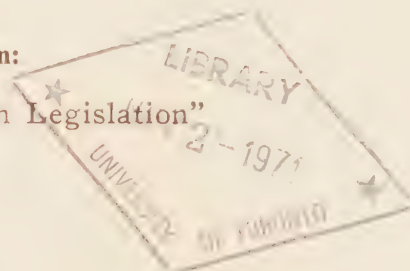
The Honourable SALTER A. HAYDEN, *Chairman*

No. 36

WEDNESDAY, OCTOBER 6, 1971

Second Proceedings on:

"Summary of 1971 Tax Reform Legislation"



(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, October 6, 1971.

(43)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further consider:

"Summary of 1971 Tax Reform Legislation".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Gelinac, Giguere, Haig, Hays, Isnor, Lang, Molson, Smith, Sullivan, Walker and Welch—(21).

*Present, not of the Committee:* The Honourable Senator Heath—(1).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant.

Upon motion it was Resolved that 1000 copies in English and 400 copies in French of these proceedings be printed instead of the usual 800 English and 300 French copies.

## WITNESSES:

### *The Canadian Chamber of Commerce:*

Mr. Neil V. German, Q.C., President;  
Mr. Brock Bradley, Chairman, Executive Council;  
Mr. H. P. Crawford, Q.C., Chairman, Public Finance and Taxation Committee;  
Mr. D. M. Parkinson, member, Public Finance and Taxation Committee;  
Mr. C. B. Mitchell, member, Public Finance and Taxation Committee;  
Mr. C. Gajewski, member, Public Finance and Taxation Committee;  
Mr. E. Newman, member, Public Finance and Taxation Committee;

### *Secretariat: (C.C.C.)*

Mr. C. H. Scoffield, General Manager;  
Mr. D. J. Gibson, Manager, Policy Department.

At 11:20 a.m. the Committee proceeded to the next order of business.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, October 6, 1971.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions, in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. This morning we have the representatives from the Canadian Chamber of Commerce to present their brief in connection with our consideration of Bill C-259.

Sometime during the morning, I expect that either the Honourable Mr. Pepin or someone delegated by him will come in to express their views in connection with three amendments to the Employment support bill, which we discussed last evening. When that happens, I suggest we interject it into our proceedings—it may take about ten minutes—so that we can report that bill this afternoon.

**Hon. Senators:** Agreed.

**The Chairman:** Furthermore, we adjourned the consideration of the private bill, S-22, to incorporate United Bank of Canada, until this morning. However, we had given an appointment to the Canadian Chamber of Commerce for 9.30 this morning. Our procedure should be, therefore, to go ahead and hear them and finish their presentation. I suggest that we fix 3 o'clock this afternoon to hear further representations from the United Bank of Canada.

**Senator Beaubien:** The Senate will sit at 2 p.m.

**The Chairman:** I do not think it will be a long sitting. Therefore, 3 o'clock would be a good time. The main point is that, having brought the United Bank of Canada representatives here, we should dispose of them today. Is that agreed?

**Hon Senators:** Agreed.

**The Chairman:** Honourable senators, I think we should have a motion for the printing of the proceedings.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 1,000 copies in English and 400 copies in French be printed.

**The Chairman:** Honourable senators, the Canadian Chamber of Commerce delegation consists of Mr. Neil V. German, Q.C., President of the Chamber; Mr. Brock Brad-

ley, Chairman of the Executive Council; Mr. H. P. Crawford, Q.C., Chairman of the Public Finance and Taxation Committee; Mr. D. M. Parkinson, Mr. C. B. Mitchell, Mr. C. Gajewski and Mr. E. Newman, members of the Public Finance and Taxation Committee; and two members of the Secretariat; Mr. C. H. Scofield, General Manager; and Mr. D. J. Gibson, Manager, Policy Department.

We have established a practice here that we hear a summation or a statement, rather than hear the brief read. The brief has been in our hands for quite a while and we can enter into a discussion on it a little later. I understand Mr. Crawford will make the opening statement.

**Mr. H. P. Crawford, Q.C., Chairman, Public Finance and Taxation Committee, Canadian Chamber of Commerce:** Mr. Chairman and honourable senators, when you read the submission you probably noticed, that for the most part it was extremely detailed, in terms of suggesting that the wording of a particular subclause, a particular paragraph of a particular subsection, may be inappropriate. It seems better that I should state what we regard as several of the more important points in the submission.

First of all, I would refer you to the general points made, commencing on page 2. There are four recommendations there. Recommendation 1, in substance, is our suggestion that the procedure of the Department of National Revenue for issuing information bulletins and stamp tax rulings, in the context of tax reform and uncertainty at this time, is even more significant and more important than it has been heretofore under the existing law.

Since that was written there have been one or two developments that make this even more troublesome. For reasons that I think are understandable the Department of National Revenue has indicated that it will be some time before it can issue any interpretation bulletins, because it is going to take the department some time to organize and decide how it is going to interpret various provisions. Moreover, for advance rulings they are reluctant to do so for the same reasons.

It is important, however, particularly in view of the complexity of the various provisions and the inevitable difficulties that will result when particular problems are being worked out by corporations in their planning and because inconsistencies are inevitably discovered in legislation, that the Department of National Revenue be prepared at least to issue on the old basis informal rulings of some sort.

**The Chairman:** I might say at this point, Mr. Crawford, that before we are through we will very likely invite some

of the officials from the Department of National Revenue in order to ask them how they are going to approach the consideration of this matter, because they have a number of problems to settle. They have the fair market value question to settle in a big way. From what I understand they may transpose the present facilities they have in that regard in relation to estate tax and import into this field those men who have had experience. But the best way of finding out how they propose to approach the problem is to get them in here and ask them. We will do that before we finish our hearings.

**Mr. Crawford:** I agree with that idea, Mr. Chairman. The point that I am making is one that has been made by many others, namely, that they do have a difficult problem. You find, for example, that if you sit down to plan transactions in many areas such as foreign affiliates in terms of putting them together, there is to be no roll-over and you find as a result that there are many areas, including foreign affiliates, where there seem to be inconsistent provisions in the legislation, and to decide which ones will be applied, and so on, is very difficult. That is just one illustration. We certainly agree with the approach that we should find out from the Department of National Revenue what they intend to do, and we would urge that you encourage them to try to come up with a system of at least issuing informal rulings. Indeed, that might be combined with item 4 of our particular recommendations on page 3, that during the early years of this new system there be a certain amount of leniency in the assessing process.

It has been stated to us that there will be this leniency inevitably, but the difficulty with that is that the assessing process sometimes occurs four or five years later, and, when the assessor goes in he practises interpretations which were unclear two or three years previously but have since been formulated and at least in the mind of the departmental officials are fairly clear, and this can present numerous problems.

**The Chairman:** A few days ago in our consideration of this bill we were discussing the aspect of the bill dealing with the distribution of undistributed income in hand at the 1971 year, and we were informed that there is a very severe penalty in that, if you are one cent over the amount of your 1971 undistributed income, even though you have honestly calculated at that amount and have paid your 15 per cent tax, which then opens the door to let you do this, you would be subject to a 100 per cent penalty. In other words, the whole amount would be subject to tax, I assume.

**Mr. Crawford:** That point is dealt with on pages 6 and 7 of our submission, Mr. Chairman. Several suggestions are made as to how the resulting possible hardship you refer to could be dealt with.

**The Chairman:** Would you care to speak to that now?

**Mr. Crawford:** I would prefer to finish the two introductory points first, if I may.

**The Chairman:** All right.

**Mr. Crawford:** I appreciate that it is probably not of direct relevance to your committee, Mr. Chairman, but it would be helpful in our opinion if the minister, or his assistant, in

explaining the bill either here or before the Commons could make available at an early date at least the amendments they have drafted up to that time. That would certainly be preferable to waiting until you get to section 248 to find out how it is going to be amended, because that might be pretty far along. Again, we do appreciate that they have a problem if they have not all of the amendments drafted or if they are changing them subsequently, but, certainly, if something could be done in that area it would be a help—certainly, if you could get at least the amendments that have been settled at this time so far as the Department of Finance is concerned.

**Senator Connolly:** We have made that suggestion already.

**The Chairman:** I can tell you, Mr. Crawford, that in the course of the discussion at the last meeting there was a resolution in the committee requesting the Government Leader in the Senate to make to the Minister of Finance the request that the amendments which have been settled be tabled in the course of second reading rather than, in accordance with the usual practice, having them presented in relation to particular items in the bill. We have indicated in the supporting material, which is now in the hands of the Minister of Finance, that, if January 1, 1972, is to be a realistic date for the coming into force of this bill, we should have this material early in committee and the people who are going to make representations should have it early. Otherwise there will be inevitable delays. Certainly, our purpose would be defeated if we permitted ourselves to be stamped without having that material and allowed ourselves to be crushed against that deadline of January 1. We are not going to permit that to happen so far as we are concerned—that, at least, is my feeling of the temper of the committee.

**Mr. Crawford:** I can see that it would be very frustrating for your committee, Mr. Chairman, if you were instructed to see how you could amend a section and found out subsequently, perhaps four weeks later, that they were already amending it in the Department of Finance.

**Senator Connolly:** Have you made any representations either to the Department of Finance or to the Department of National Revenue, Mr. Crawford?

**Mr. Crawford:** The Chamber of Commerce had a meeting with the Minister of Finance and one of his assistant deputies.

**Senator Connolly:** In respect of the material you have given us here?

**Mr. Crawford:** Yes.

**Senator Connolly:** Was there any indication that any of the points you have raised here are to be amended?

**Mr. Crawford:** Yes. The Minister of Finance indicated that his officials were in agreement with a great many of the technical points and that amendments were being drafted.

**Senator Connolly:** But you have not seen them.

**Mr. Crawford:** No.



**The Chairman:** There is a follow-up question there, if Mr. Crawford wishes to answer it; would he care to indicate to us which were the sections to which he got that reaction?

**Mr. Crawford:** I am afraid the minister was not that specific, Mr. Chairman. He said there would be many amendments. We did ask him if he could indicate the areas, but the only area he indicated was the partnership area, in which he said there were going to be substantial amendments. However, he did not so indicate specifically with respect to any other area. I think a lot of people are assuming there will be many amendments in certain areas, but nobody is being quoted.

**The Chairman:** Perhaps you could correlate what the minister had in mind with what you were talking about when he made that statement.

**Mr. Crawford:** It is almost impossible, in the context.

**Senator Walker:** Was he just being pleasant, making a general statement?

**Mr. Crawford:** Senator, I have been at several meetings with his officials—

**Senator Walker:** Before that?

**Mr. Crawford:** Before that, discussing various aspects with them, and obviously there are going to be many amendments. Many of the items in this submission do not go to policy. They go to technicalities, and in that case I do not see any particular reason why they would not be amended. When we get our work near the end of July and early August, if, according to our interpretation, there were a technical problem that needed to be righted, I do not see why it would not be amended.

**The Chairman:** What do you include in a technical problem? I understand what you mean by policy, but how broad is the statement of technical problems? Do you mean just the failure to put in a comma, a semi colon or a period or a crossing of a "t"?

**Senator Connolly:** I suppose it would mean a conflict between sections, such as you describe here under section 24, good will. That is a technical amendment in your opinion.

**Mr. Crawford:** Yes. Mr. Chairman, you have touched on a very difficult problem, in crossing the line from a technical problem to a policy problem. I suppose in a way it is a matter of judgment for the person dealing with it as to how he regards it. You can approach things as technical matters, but they may turn out to be policy matters. I do not think I can state a general rule as to which side of the line it would fall on.

**Senator Connolly:** Generally speaking, your technical problems arise out of the draftsmanship of the sections, do they not?

**Mr. Crawford:** Yes. There is one item we want to speak to here which in a sense is technical and in another sense is very important in terms of policy. I refer to the very limited corporate reorganization role-over provisions. There is a very broad policy aspect here, but there are also, of course, many technical aspects to it.

Finally, in the opening part, Mr. Chairman, we would hope that either here or in the House of Commons the minister or his representatives would make some statements as to the more complicated parts of the statute—not in detail but as to what their general philosophy is and what their approach is in this area. In fact, if we had had that earlier, some of these complex provisions that so many people have criticized might have been much more understandable because in reading them we would have known what their general purpose was.

**The Chairman:** Well, Mr. Crawford, perhaps what I am about to suggest would meet the problems that you are referring to. We would propose in committee to have the departmental officers here and have them give us the objectives of the particular sections that have been discussed.

**Mr. Crawford:** That would be very helpful, Mr. Chairman, particularly since your proceedings are available and could be distributed to the public.

Coming now to specific points, let me speak first of all on what might appear to be a rather small point but is one which appears to be causing a great deal of concern and anxiety. I am referring now to the so-called departure tax which is dealt with on page 31 of our submission. This is the tax that applies where if you are a resident in Canada and cease to be a resident, you are then deemed to realize any accrued but unrealized capital gains at that time except with respect to property that would be subject to capital gains tax if you were a non-resident. I think many of us in our practice—and I am sure, Mr. Chairman, if you follow this up you will find it to be the case—are receiving perhaps more calls about this problem than any other. There are executives who are reluctant to come to Canada because of what this could mean when they leave, and there are Canadians who are reluctant to leave for a two-year posting in England or Australia or the United States, or Canadian residents who are citizens of foreign countries and who are here now and who are suggesting to their corporate employers that they should leave by or shortly after valuation day so that this provision would not apply to them.

It is also unsatisfactory in several respects in terms of some of the countries with which we have tax treaties, particularly the United States and the United Kingdom—and there may be others—where they prohibit the imposition by Canada of a capital gains tax on residents of, say, the United States. That does not prohibit Canada imposing a capital gains tax on a resident of Canada at the time he ceases to be a resident, but if he makes the election to defer the tax until he realizes on the property, which could be some years later, and puts up the security, then at that later time he is a resident of the United States and not of Canada, presumably under the treaty he is protected from capital gains tax in Canada and will get his deposit back. Then there is also the problem of getting credit.

**The Chairman:** At that point you are assuming that this exemption in respect of capital gains will be included in any new treaties or amending treaties negotiated.

**Mr. Crawford:** No, I am assuming that the treaty will not be renegotiated before it becomes a problem for one or two taxpayers—at least that or the assumption you make,

one or the other. We find it troublesome, and we have suggested that temporary residents might not be subject to this tax. There are various ways it could be dealt with. We appreciate that no solution can be perfect, but we quarrel with the decision arrived at.

**The Chairman:** Well, a departing Canadian who is changing his residence from Canada to another country may find himself in the position where for Canadian tax purposes there is a deemed realization, and he has made a profit or a loss, and he can pay taxes on that at that time. But in fact he has not disposed of the asset. At a later period in the country where he becomes a resident, if he disposes of it and they have a capital gains tax, he may be subject to another gains tax without any credit.

**Senator Connolly:** Then what you are suggesting, Mr. Crawford, is that there should not be any deemed realization if he is going for a period of, say, two years.

**Mr. Crawford:** You are quite right. If you are here up to two years and then leave again, either you are treated as not having been a resident for the purposes of deemed realization or there should be no deemed realization. There are various solutions to it.

**The Chairman:** Well, Mr. Crawford, did you notice the solution we suggested in our report on the White Paper in paragraph 17 on page 60? There we said:

17. In view of the need of Canada to attract investment capital, the Committee strongly recommends that all of the White Paper doctrines of tax on unrealized appreciation should be eliminated. The Committee, therefore, recommends the removal from the proposed capital gains tax of

(a) the five-year revaluation rule . . .

Now that has been done. And then in the next paragraph it says:

(b) the deemed realization of capital gain or loss on individuals giving up Canadian residence . . .

(c) the deemed realization of capital gain or loss on the value of gifts . . .

So, we were with you at that time. Are you now going so far as to say that deemed realization on departure should be eliminated?

**Mr. Crawford:** We do not in our submission. I think in this submission we were looking at what we thought was in the realm of possibility in terms of influencing the Minister. I think we probably would go that far. But we might think that by doing so we would have less chance of achieving any results in influencing the process of legislative change, but we could be wrong in that judgment.

**The Chairman:** Obviously what the bill proposes does not meet your view of what should be in the bill. So if you were asked to rewrite this provision, what would you suggest?

**Mr. Crawford:** If I had a free hand to rewrite it I would suggest what this committee did in its report that you have referred to.

**The Chairman:** That is a nice attempt to avoid the effect of my question. But my question was; in the light of your attitude, that is that you wanted to stay within the realm of what was possible, and putting it to you on that basis of staying within the realm of what is possible, and accepting the principle of dealing with people departing from Canada and establishing residence elsewhere, how would you rewrite it so as to cure the objections you have raised?

**Mr. Crawford:** We would obviously insert in the bill that temporary residence for a period of, perhaps, two years would not be subject to it. We would also look at the basic purpose which to many of us involves Canadian residents who have accrued, but not realized, substantial gains upon going to live in tax-havens. If they go to live in a country with which Canada has a tax treaty, perhaps there should be no deemed realized gain.

**Senator Connolly:** Can you possibly go that far? Would you not say that if there is a tax treaty between Canada and the country in which they take up residence, presumably they would be saved from the effects of double taxation? Would such a treaty not include that?

**Mr. Crawford:** Until the treaty could be negotiated, or renegotiated with whatever results might flow from that, which would save it from the effects of double taxation, I would say if you go to a treaty country, most of the treaties, with perhaps one exception, which Canada has today are not with tax-haven countries, or are not with countries that do not levy taxes. Therefore, the person who leaves Canada to go to a country with which we have a treaty today would not ultimately achieve a big tax saving. It is true it might go to a country other than Canada. So, until a treaty could be renegotiated, or until a new treaty could be negotiated, I would exempt it with respect to treaty countries.

**Senator Carter:** Mr. Chairman, there would not be double taxation if the treaty country did not have a capital gains tax?

**Mr. Crawford:** That is true.

**Senator Carter:** What would be the position then?

**The Chairman:** Are you thinking about tax credits in these circumstances?

**Mr. Crawford:** Yes.

**The Chairman:** If a Canadian should establish residence in the United States and he takes his assets with him, and there is a deemed realization and he pays his tax on the gain here when he leaves Canada, and he realizes a capital gain a couple of years later in the United States and is subject to tax on it, how would you apply the tax credit if you say he should be entitled to a tax credit in Canada? Should the bill provide in those circumstances that the Government of Canada should go back and refund him?

**Mr. Crawford:** If you are negotiating a treaty with the United States, the Canadian approach is perhaps correct, that it would be subject to tax on the gain accrued while a resident in Canada and would be paid to the Government of Canada; and a gain subsequently accrued in the United States would be subject to the United States tax.



**The Chairman:** There would be no question of applying the tax credit in those circumstances, is that correct?

**Senator Connolly:** And there would be no double taxation.

**The Chairman:** No, because he would have paid tax on the accrued gain in Canada up to the time that he leaves; and the only way he would have a further capital gain in the United States would be if he realized a gain on a subsequent sale as against the value at the time he came into the United States.

**Senator Beaubien:** Mr. Chairman, what would happen if he had a gain when he left Canada, and then he realized a loss during the time he was in the United States?

**The Chairman:** If he had other capital gains in the United States, I would think that he would dispose of them in the United States.

**Senator Beaubien:** But assuming he only had one asset.

**Mr. Crawford:** Part of the difficulty arises with the United States tax system whereby a person becoming a resident in the United States, or subject to tax in the United States, is considered to have a cost base which relates back to his original acquisition cost even if this were 10 or 15 years earlier.

The gain that had accrued while he was a resident of Canada will be taxed. It is a very complex problem, Mr. Chairman. I am sure the committee wrestled with it when preparing your earlier report and there are no easy answers.

**The Chairman:** We cannot write the U.S. tax laws; we can only attempt to remedy some of these situations by means of the tax treaty.

**Mr. Crawford:** In part it is a matter of balancing an imperfect tax system and resultant imperfect situations in that system, with the desirability, to the extent those making the judgments consider it to be desirable, of enabling people to be transferred or moved about between jurisdictions without imposing too many roadblocks.

**The Chairman:** Your suggestion of granting an exemption or exception to those Canadians who establish residence outside Canada is of a temporary nature, in the sense that it may arise from their employment and at some subsequent time they may return to Canada.

Would there be inherent in that any basis upon which an exemption could be allowed? The two-year period for an exemption may not really deal with the situation.

**Mr. Crawford:** That is true.

**Senator Hays:** Mr. Chairman, when persons from the United States, France or these other countries come to Canada, what is the situation with respect to capital gains? Could we consider the situation in reverse?

**The Chairman:** Have we dealt with the reverse situation?

**Mr. Crawford:** You make a very good point, senator, which I might have made earlier. It is my understanding that most of the countries which impose a capital gains tax do not in that case.

**Mr. D. J. Gibson (Manager, Policy Department, Canadian Chamber of Commerce):** It was my understanding that the United States taxes citizens, not just residents. A citizen of the United States who came to Canada would be liable for capital gains tax in the United States.

**The Chairman:** As long as he remains a United States national, wherever he may be in the world he is liable for United States taxes.

**Mr. Gibson:** So they still have him in the net.

**The Chairman:** He does not file a return and pay the tax if he decides he will not return to the United States at any time, because it could not be enforced. However, if he hopes to return to the United States, he had better keep up his income tax returns.

**Senator Hays:** Are there examples of the various countries who see fit to send people to Canada? Would that not be the best approach? I do not believe we can expect much better than the treatment our people receive in other countries.

**Mr. C. Albert Poissant, Tax Consultant to Committee:** A very good booklet dealing with capital gains in other countries is contained in the Carter Report. It illustrates the treatment of other countries such as Germany, France, England and the United States. It is true that the citizen rule for which there is no counterpart here exists in the United States. It is an avoidance rule applied in the case of a person moving out of the United States to obtain the capital gain while outside. This will attract capital gain in the States for ten years after the person leaves. In other words, they cannot leave the United States for the purpose of having the capital gain outside, because it is not deemed to be a capital gain realization at the time they leave the States.

**The Chairman:** I should have announced this earlier, that the speaker was Mr. C. Albert Poissant, who has been retained as tax consultant to the committee.

**Senator Isnor:** From the Canadian point of view those affected comprise a very small percentage, do they not?

**Mr. Crawford:** That would be true.

**Senator Isnor:** You, as the Canadian Chamber of Commerce, are representing to a very large extent Americans who might be affected by this, am I right?

**Mr. Crawford:** I have to ask how our percentages in the Chamber line up. It is not only U.S.-controlled subsidiaries who transfer employees, and this can be helpful to Canada in terms of learning know-how, new methods, and so on. However, there are Canadian companies with international operations who move their employees abroad from time to time on a temporary basis.

I would certainly concede that you are perfectly right that as a percentage it is very small.

**Senator Isnor:** Mr. Chairman, I cannot for the life of me see why the Canadian Chamber of Commerce should be involved to this extent.



**The Chairman:** Well, senator, if the bill deals with the situation in what appears to be a fair and equitable fashion, then I do not suppose there could be any quarrel. There may be a large number of Canadians, which I suspect to be true, who establish residence outside Canada for many reasons, such as health. I think you might be surprised at the numbers. Therefore if they are dealt with fairly in making the change, we are not concerned. If there are unfair aspects, we should consider them.

**Senator Lang:** Many Canadians of advanced years and very modest means leave the country in the last years of their life for health and climatic reasons. They might be literally prevented from making such a move by this provision. I believe that there are many more people in this category than my colleague suggests. They represent a sizable segment of our population, a segment which is not affluent in any sense of the word and they could be seriously hurt.

**Mr. Crawford:** If I could speak to this on a note of idealism: in an increasingly interdependent world within which it is becoming important to understand various cultures, it would be in that sense important to have a system which did not prevent the mobility of people between countries.

**Mr. C. H. Scoffield, General Manager, Canadian Chamber of Commerce:** I am not sure I understand the question, or the point made. I will at least make the comment that the preponderance of companies in the Canadian Chamber of Commerce represented by us today are purely and simply Canadian companies. We are not here speaking for companies that are members of chambers which are largely international, have American operations or are subsidiaries of American companies. The large proportion of the members for whom we speak are purely and simply Canadian companies.

**Mr. Crawford:** The next area of our submission is page 15, headed: "General Assessment of Provisions Dealing with Acquisitions and Reorganizations." From your earlier studies, you are no doubt aware that one of the difficulties in any tax system that imposes a capital gains tax is in determining when a change in investment should be imposed for tax purposes and when it should not.

Most people would say that any movement of assets or shares between or among wholly-owned subsidiaries are up to the parent company, and, since the basic economic interest remains the same, should result in what is commonly referred to as roll-overs without any gained realization at that time. When I say "most people," that is probably going too far. I should say "many people."

The provisions of the bill are very limited with respect to roll-overs. No doubt you will discover that when you discuss the matter with the Department of Finance officials.

There are very difficult judgment areas involved in determining when you should be entitled to tax-free roll-overs. Once they get the new system under way, I hope that in the course of the next two or three years they will slowly broaden the areas where they can effect tax-free roll-overs.

If it is done that early it should not be serious, because in most cases the gains built up after valuation date will not be substantial.

This is an area which, in our submission, causes difficulty in terms of the efficient operation of a business. It will also create many distortions. Some people will be able to do roll-overs, and other people will not, for reasons that have very little substance.

If you happen to have companies incorporated in one jurisdiction, or in a jurisdiction that permits you to re-incorporate in the area where the other company is incorporated, you can amalgamate in certain instances and get a tax-free roll-over. On the other hand, if you cannot amalgamate the companies, you may not be able to achieve a tax-free roll-over.

There are no roll-over provisions with respect to foreign corporations or foreign affiliates. On the other hand, if your foreign corporation is incorporated in a jurisdiction such as Delaware and can be re-incorporated in Ontario, presumably you can get it re-incorporated in Ontario and amalgamated with your Ontario parent company, or with your other interests in Ontario, and you may perhaps get a tax-free roll-over.

There are provisions for tax-free roll-overs in and out of partnerships. Here, if you happen to be so structured as eventually to achieve, by rather artificial means, the setting up of partnerships, of rolling into partnerships and then rolling out of partnerships and liquidating them into other corporations, this will create a lot of distortions. I realize that it is a difficult area to deal with.

I would remind honourable senators that the bill came out in June.

**The Chairman:** On June 30.

**Mr. Crawford:** We were told, in terms of technical matters, that our submissions should be in by late August. Therefore we did most of our work, in terms of the committees involved in putting this together, by the end of the first week of August. In the time that was available to us we did not have sufficient time to work out any positive recommendations in the roll-over area.

One suggestion that has been made is that until the system matures a little, and until more provisions can be developed regarding roll-overs, there should be a roll-over somewhat similar to the system existing in the United States where, in fact, you have to get a ruling; and if you can get that ruling and it does not appear to be avoiding tax, and so on, the minister can authorize you to have a tax-free roll-over.

**The Chairman:** If consolidated returns are validated for tax purposes, would that assist the situation?

**Mr. Crawford:** Consolidated returns help a great deal, if in terms of a loss in one company and a profit in another. You do not necessarily help your corporate organization where you have assets in one and you want to amalgamate the operation, or where they are subject to a low-cost base and a fairly high value. It would be of some assistance, but it would not help the problem.

**The Chairman:** It would not get to the root of the problem. For the purpose of the record, I should point out that in our report on the White Paper on this question of roll-overs we dealt with this question on page 61, paragraph 20. I suggest that honourable senators might like to read that section at their convenience.

**Mr. Crawford:** I will put the same question to you again: You have called our attention to this problem. What do you suggest should be done?

**Mr. Crawford:** I am now speaking personally, because the chamber did not have time to formulate any specific recommendations in this area.

I am not familiar with the parliamentary process, but if the minister could announce, either before this committee or in the house, or wherever it is appropriate, that the Government recognizes that the roll-over provisions are very limited, and that they are proceeding to develop and extent the provisions in the first or second amending bill to the tax reform act, that further roll-over provisions will be introduced, then that would be helpful.

I have another suggestion to put forward, which I made earlier. However, the Government might not have time to implement it. By regulation they might see whether they can get roll-overs by application on a discretionary basis, similar to the provisions in the United States Internal Revenue Code. It is a complex matter, and they may not have time to do it at this time.

There are no easy answers. We think that the Government has come down too strongly against roll-overs. We suspect that it was due in part to lack of time to consider further provisions and to study the operation of the bill in this area. It is a problem, particularly when dealing with foreign businesses, where there are no roll-over provisions. You might find, perhaps, that you have operations based in the Netherlands and, for reasons completely unrelated to Canada or unrelated to tax, the centre of your corporate activity abroad should be based in France or in the United Kingdom, or somewhere, and to move that operation is going to involve substantial tax if there are any accrued gains.

**The Chairman:** We suggested in our report on the White Paper with respect to this question of roll-overs that in so far as foreign companies are concerned the taxation provisions should not apply unless the purpose was tax avoidance. Would you subscribe to that?

**Mr. Crawford:** I wonder, Mr. Chairman, if you would repeat the question?

**The Chairman:** I will give you the exact wording. At the top of page 62 of our Report on the White Paper we state:

... The Committee recommends, however, that where the roll-over transfer is to a foreign entity, the free roll-over provisions should only apply where the purpose of the transaction is not primarily for the purpose of avoiding Canadian taxes.

**Mr. Crawford:** Yes, I certainly would subscribe to that. The context of our limited roll-over provisions which we have does not fit because it is more or less built on the assumption of many broader roll-over provisions.

**The Chairman:** Mr. Poissant, are you prepared to add anything to this discussion?

**Mr. Poissant:** I would just say that I agree with the points made in the brief, and I do think that the recommendation which was made verbally, that roll-overs be obtained free of tax after a ruling, is a good point.

**The Chairman:** In other words, the minister would have some discretion in the matter?

**Mr. Poissant:** Yes, and it would permit some natural roll-over to take place without having to attract taxation.

**Senator Connolly:** Just to simplify and to use an example, Mr. Chairman, and it may be too crude, but if you take the case of a merger of a Canadian parent company and a subsidiary, and the subsidiary has capital gains which were realized at the time, there would be tax if those assets which are the subject of the capital gains are taken over by the parent company. It is proposed under the law now that capital gains are deemed to be realized at the time of an amalgamation or merger, and, if that is the case, is not the revenue protected just as well by having the parent company or the company that results from the merger held responsible for the gains based on the gain record which was developed by the subsidiary as well as by the parent?

**The Chairman:** Do you have any comment on that, Mr. Poissant?

**Mr. Poissant:** No, I have no comment to make on that. You are saying that as it is suggested in the law now there would be this realized gain?

**Senator Connolly:** I understood the witness to say that once a merger takes place then any gain made by any of the merged companies is deemed to have occurred at the time of the merger.

**Mr. Poissant:** That is true.

**Senator Connolly:** I understand this is what he said. If the resulting company is saddled with the gain or loss history compiled by the subsidiary which was merged with the parent, then, there would be no loss to the treasury. When the gain is in fact realized the tax would be exigible.

**Mr. Poissant:** That is what they are asking. Am I correct, Mr. Crawford, in that what they are asking is that the gain is not realized or deemed to be realized at the time of the merger but that it is realized at the time the gain is actually disposed of by the parent company?

**Mr. Crawford:** The loss, Mr. Chairman, to the treasury is, of course, in the form of a tax deferral. The treasury may get this tax in year 20 rather than year one, and this does obviously involve a loss.

**Mr. Poissant:** If the roll-over is permitted the treasury will eventually get this tax if there was any tax.

**Senator Connolly:** Are you saying, then, that the purpose of the section in the act as we now have it is to get the tax sooner and nothing more?

**The Chairman:** That is the effect.

**Senator Carter:** Mr. Chairman, this clause is designed against specific situations where companies buy or acquire assets and never sell them, is it not? In other words, they could go on forever accumulating assets and never paying any capital gains tax as long as they do not sell the assets. My understanding is that this section is aimed at that type of situation.



**The Chairman:** This is a generalization, senator. Let us take a specific situation. Supposing you have a manufacturing company manufacturing a number of different commercial products and it has acquired subsidiary companies who are in some of these fields, and they then reach the stage where they decide to put them all together, once you look at the picture as being that of a manufacturing company, a manufacturing company does not ordinarily engage in the business of buying and selling its assets. It may have a portfolio of investments which it has to deal with, but if the companies are put altogether they are put together for the purpose of carrying on in a larger or better or more efficient way their manufacturing or processing operations. At that stage there may have been a deemed realization on an accrued gain in value, and it is at this point that we have to look at it and decide whether it is reasonable or not.

**Mr. Poissant:** In a general way, you are correct. It comes back also to this five-year revaluation provision, and also to the economic implications of locking-in assets and having people reluctant to realize on them, and all that flows from that. You have to look at that philosophy and that problem when you look at this; there is no question about that. But as the chairman has pointed out, when they are all down below as subsidiaries, not being able to move them back and forth does not seem to have much implication, in terms of the lock-in, economically.

**Senator Lang:** Mr. Chairman, I can conceive that such a corporate organization might be necessary for the purpose of public financing where it is an issue on the market and this might seriously inhibit a company and render it impossible to obtain additional capital which it might require.

**Senator Beaubien:** Mr. Chairman, does our legal counsel think that if Company A wholly owns Company B there would be a tax on the capital gains deemed to be realized are on the assets of Company B?

**Mr. Crawford:** I should speak to that, Mr. Chairman. If Company A wholly owned Company B, there is a roll-over provision where you can liquidate Company B into Company A. If Company A owns companies B and C and you wanted to move assets from B to C, as pointed out on page 6 of our submission you will probably have a realized capital gain; it comes under interaffiliate transfers. There are some roll-over provisions. It is just that they are very limited and will operate accidentally to permit certain types of organizations to do roll-overs where persons who happen to have a slightly different structure will not be able to do this. I appreciate it is easier to criticize than to solve this problem.

**Mr. E. Newman, Member, Public Finance and Taxation Committee, Canadian Chamber of Commerce:** I think one of the important points is that if Company A is moving assets down to Company B there is no roll-over; the roll-over is only on the way up.

**The Chairman:** On the way up, yes.

**Mr. Newman:** It does not make sense in terms of equity or for any other reason to me.

**Mr. Crawford:** Perhaps I can illustrate the logic of it in this way. There is a roll-over provision if the sole proprietor incorporates a company, transfers his business to the company and ends up by owning more than 80 per cent of all classes of stock in the company. However, if two or three individuals who may have sole proprietorships or capital to contribute in terms of assets want to move into a corporation, they will all end up with, say, 20 per cent each, or 33 1/3 per cent each in the corporation; there is no roll-over provision, but they could go into a partnership first, have a roll-over into a partnership, and the partnership could have a roll-over into the corporation. There are provisions where you can do indirectly what you cannot do directly. Again, it is very difficult not to do this in structuring a tax system, and I am not saying it is easy.

Another area that I think may have important economic implications is that it is possible in the United States, and other countries I believe, to do a share exchange takeover bid, whereby if there is no cash boot the shareholders of company A can exchange their shares of company A for shares of company B and have a roll-over; that is they keep their original cost base. Whereas, under our system on a share exchange takeover bid I guess the bidder will have to pay more to pay the tax of the shareholders acceptance, because there will be a deemed realization. It can be said that this is where the lock-over implications come into play. In one case it makes the takeover bid more difficult and may frustrate putting together more efficient corporate units. In the other case, however, it forces a realization at that time, and therefore tends to avoid building up big potential gains in the future.

**The Chairman:** Are there any further questions on that? What is the next point, Mr. Crawford?

**Mr. Crawford:** I think I have addressed myself to the points of significance that I wanted to speak to. I do not know if any of my colleagues would like to speak to any others. Otherwise, if you have any questions we can deal with them.

**The Chairman:** I would like to ask you one question. We have dealt with several points that you have developed. There are quite a number more in your brief, and you are only selecting these to deal with. How do we rate the others in importance and the attention we should pay to them?

**Mr. Crawford:** I think the others are largely technical, but in some cases with important implications. No doubt the committee and your advisors can review them. Some of them are simply a matter of improper references. Take the one on clause 24, good will, on page 3, to illustrate this . . .

**The Chairman:** I have just picked one in a hurry. On page 22 you deal with moving expenses and you refer to clause 62(3). That says:

... "moving expenses" includes any expense incurred as or on account of . . .

(d) the cost to him of cancelling the lease, if any, by virtue of which he was the lessee of his old residence.

What you have suggested is that he may not cancel the lease, he may be able to negotiate a sub-lease, and there-



fore the wording should be a little more general; that is, that it should provide not only for the cancelling but should also say, "or otherwise disposing of". To give real meaning to it, the suggestion would appear to be a fair and reasonable one, that however the person incurring moving expenses and has a lease deals with it, whether by cancellation or by negotiating a sub-lease, if it costs him anything to do it it should be an allowable expense.

**Mr. Crawford:** I would hope that that type of point will be picked up by the amendments that are now being or have been drafted. You can get around it in most cases, if you can get a sub-tenant and you are going to lose your expenses by sub-letting, if you have to sub-let for less than the rental obligation and the landlord co-operates you can make a new lease. The people who will get caught will be those whose landlord will not co-operate. In Ontario, for example, a landlord is not entitled to withhold his consent with respect to sub-letting in the way he heretofore has been. Or it may be the person who is not informed and gets trapped by sub-letting.

**The Chairman:** A lot of these section references deal with situations for purposes of, I would say, clarification.

**Mr. Crawford:** Yes.

**The Chairman:** Is there any other person in your delegation who would care to add anything?

**Mr. Newman:** I have not spoken to my colleagues about this, and I am not a tax specialist or expert by any means. I have taken a two-day wonder course about it to acquaint myself with the complexities of the legislation. I am struck by some of our adherence to old rules. I am thinking particularly of forward averaging which is offered as equity for a taxpayer whose income bounces up in one year. I notice that the annuity to be deducted for forward averaging must be purchased during the taxation year or within 60 days, which is the symmetry of the registered savings plan and so on. I suspect that a great many taxpayers will not know that it is to their advantage to buy such an annuity within the 60-day period. They will probably be preparing their tax returns in late March or early April. I do not think there could be any loss to the treasury if they gave the taxpayer an opportunity to acquire the equity they are offering. I think that would be a very simple thing.

**The Chairman:** You mean without any time limitation?

**Mr. Newman:** No, I would say 120 days from the date of filing the tax returns.

**Senator Hays:** Taken to April 30.

**Mr. Newman:** The following year.

**The Chairman:** There would appear to be sense in that. Is that dealt with specifically in your brief?

**Mr. Crawford:** I do not believe it is.

**The Chairman:** We have a note of it on the record now. Is there anything else you want to add?

**Mr. Newman:** No, that is fine, sir.

**The Chairman:** What about the other members of your committee? You are here for the purpose of telling us what your problems are as you see them and directing our attention to them.

**Mr. Newman:** There is one point which I do not believe is covered in the brief. It refers to foreign tax credits.

**The Chairman:** In which section?

**Mr. Newman:** I do not believe it is covered. There will be an inability to group foreign tax credits in Canada, by proceeding on a country-by-country basis. In a situation where a company may have operations in many countries and may pay foreign tax in one jurisdiction and is unable to offset that against some loss in another jurisdiction, there may be taxes paid which would not otherwise be payable. The United States system provides an election of either a grouping of countries or of individual countries. This is not provided for in our present system under this bill.

**The Chairman:** Let us take an illustration. Supposing you have a Canadian company that has operations in the United States through a subsidiary company—this is the sort of thing you are thinking about—then they have operations in Australia through a subsidiary company, and operations in the Netherlands through a subsidiary company. Let us say that in two of them they have earnings and profits and they bring them home in the form of dividends; and in the third one they have a loss so that there is nothing to bring home. Is that the sort of situation you are talking about?

**Mr. Newman:** Yes. I think it is a clearer situation, sir, if you think in terms of a branch operation. It is much clearer there. Therefore, if you have tax in one country and a loss in another, you will not be able to offset these to get the maximum value in Canada.

**The Chairman:** The simple answer is that if they are limited companies they do not have to bring the income home.

**Mr. Newman:** That is true.

**The Chairman:** On the branch operations, those would be earnings or income of the Canadian company. Is not that right, wherever the operation is?

**Mr. Newman:** Yes.

**Senator Beaubien:** Mr. Chairman, then the loss would be offset.

**The Chairman:** You would think so. Mr. Poissant, what have you to add there? If you have branch operations of the Canadian company in three or four countries in the world and in one of them you have a loss, the earnings made in those branches are earnings of the Canadian company under the definition of income?

**Mr. Poissant:** They would be, yes. They are.

**Senator Beaubien:** The loss would be, too, then.

**The Chairman:** In those circumstances, I can understand how to deal with the earnings. They would swell the

Canadian income. How about the losses? How does the bill deal with the losses in a branch?

**Mr. Poissant:** If I am right on this, Mr. Chairman, they would be the same; but if you permit me, I do not think that is the point Mr. Newman is raising. Am I right?

**Mr. Newman:** That is right.

**Mr. Poissant:** You are raising the point that the tax credit, the tax itself, is to be worked out individually by each country. Is that what you are raising?

**Mr. Newman:** Yes.

**Mr. Poissant:** And you say there may be cases, as in the United States, where they have an election, whereby you can pool that as income from various sources, but only for purposes of credit of the tax itself. Am I right?

**Mr. Newman:** That is right. If you have a situation, Mr. Chairman, where you have a profit in one country and a loss in another, then the profit and the loss would be taken together and offset. But if you have had to pay foreign taxes in the country in which you have made a profit, then in Canada's case you would not be able to offset your foreign source income, which would be positive in one country; and you cannot offset the loss, so you would have no foreign source income and no foreign tax credit in that year, because you cannot merge the two operations for Canadian purposes.

**Mr. Poissant:** Even, Mr. Chairman, when they are not operating as branches. That is because they are different companies—or it could be different branches too.

**Mr. Newman:** Yes, or branches.

**The Chairman:** In looking at the Clarkson, Gordon & Company analysis of this bill, under the title "Tomorrow's Taxes", dealing with this question, on page 198, at the top of the page, section K53, they say:

Under the proposed legislation, income from a business carried on in a foreign country through a branch will continue to be subject to Canadian tax. Similarly, business losses of foreign branches will continue to be deductible against other income of the Canadian taxpayers. However, a number of significant changes have been made relating to the tax credits to be allowed in respect of foreign income taxes imposed on foreign business income.

Your question was addressed to the question of the extent of the tax credit that you might get where you have earnings subject to tax in a branch in a foreign country.

**Mr. Newman:** Yes, sir.

**The Chairman:** If you have earnings subject to tax in a branch in the United States, you would be subject to United States tax there.

**Mr. Newman:** Yes.

**The Chairman:** If the United States tax were more than the Canadian tax when it is brought home, you would only get a tax credit at the Canadian rate. Is that the point you were making?

**Mr. Newman:** No, not quite, sir. It is a situation where, in calculating all overseas profits, there may be a situation in which inadvertently your foreign source income, in the calculation for a foreign tax credit, does not give you any relief; whereas if you were able to combine the results, you would get relief. If Canada will insist on treating each country on its own, you do not have the ability to combine this, as in the case of the ability in the United States.

**Senator Connolly:** Could we take an example. Suppose you made \$100 in the Netherlands and \$100 in England and you have branches in each of these two countries, and you bring in \$200, that becomes taxable in Canada.

**Mr. Newman:** Yes.

**Senator Connolly:** But if you have a loss of \$100 from the Australian branch, it is ignored. You cannot say that your net income from the three branches is \$100; you have to say it is \$200 and your loss does not figure in the tax calculation. Is that the point?

**Mr. Newman:** Yes, part of it, sir.

**Senator Isnor:** Is that a true picture, to say that you cannot get credit? If the parent body is in Canada and there are branches in three countries and one of those branches has a loss you cannot get credit for it? The Canadian company cannot combine?

**Mr. Newman:** It would combine.

**Senator Isnor:** And get credits?

**Mr. Newman:** The point is this, there are foreign taxes which will exceed Canadian taxes in some situations, either because of the difference in the method of calculating income or rate. If you have two countries and you have income from all sources, you may well find that, if you look at one country in isolation, you will not get full credit from Canada, because the tax rate exceeds the Canadian tax; whereas if you were able to combine countries A and B, the rate would then be less than the Canadian tax and you would get the full credit in Canada.

**Senator Beaubien:** That is the point the Chairman made.

**Mr. Newman:** It is quite an important one, in the case of multi-national corporations.

**The Chairman:** Yes, but, Mr. Newman, if I have a loss in one country and a profit in two countries, the loss is referable to the Canadian taxpayer.

**Mr. Newman:** Yes, sir.

**The Chairman:** And his income overall in Canada would be less by reason of the amount of the loss.

**Mr. Newman:** That is right, sir.

**The Chairman:** Then, when you move on to taxable income, he is getting some recognition for the loss. He is bringing it home, is he not?

**Mr. Newman:** Yes.

**The Chairman:** All he has to do then is have earnings in Canada.



**Mr. Newman:** He has to have a foreign income and a tax rate on it, which does not result in any disallowance of that tax in Canada.

**The Chairman:** Do you mean if he has losses and profits abroad, in branch operations, overall he must come up with income. In other words, the loss in one of the foreign countries could not be used to eat up the income.

**Mr. Crawford:** Perhaps we could state it this way, Mr. Chairman: if in foreign country A the tax imposed is 53 per cent and in foreign country B the tax imposed is 45 per cent, and our rate is 50 per cent, you will not get any credit in foreign country A for the amount their rate exceeds ours, nor will you get any reduction either in foreign country B, but you will pay 6 per cent extra tax if their rate is lower than ours.

**Senator Hays:** Does the same situation apply if you are an individual?

**The Chairman:** How do you mean? An individual in Canada?

**Senator Hays:** Yes, who has an operation in Australia, for example.

**Mr. D. M. Parkinson, Member, Public Finance and Taxation Committee, Canadian Chamber of Commerce:** With respect to earnings on a country-by-country basis you end up paying the taxes in the foreign country or the taxes in Canada, whichever is the greater, and this is in toto.

**The Chairman:** Yes, that is right. You get no credit for the excess over the Canadian rates. Is it your suggestion that you should?

**Mr. Parkinson:** That was Mr. Newman's point.

**The Chairman:** Certainly you would if you pooled all the earnings outside of Canada.

**Senator Connolly:** It is really a matter of averaging rates, is it not?

**Mr. Crawford:** Maybe it is a policy matter. It depends on how you look at it, really.

**Senator Connolly:** Mr. Chairman, perhaps with the Canadian Chamber of Commerce we should make the point that we in this committee and in the Senate are, and should be, conscious of the fact that more and more Canadians are getting into multi-national organizations, particularly corporate organizations.

**The Chairman:** We are going to hear people to whom we have given appointments who are carrying on multi-national operations.

**Senator Connolly:** We want to make it as efficient as we can. We are very conscious of that in the Senate.

**Mr. Crawford:** The final general point of our submission, Mr. Chairman, is that we did not have time in dealing with this really to deal with the international foreign source income problem. Since then many of us who are in practice realize that there are many problems in this area, and

I am sure that when these other groups come before you they will bring those problems to your attention.

**The Chairman:** I can tell you, Mr. Crawford, that we realize the importance of the international income aspect and we did deal with that in our report on the White Paper. In addition to that tomorrow morning we are going to become students and be lectured by people who understand this area thoroughly. One of the subjects we will be dealing with will be the international income problem. We do want to be equipped. Certainly, we are grateful to you for bringing this to our attention.

Are there any other points that any member of the Chamber would care to develop?

**Mr. Parkinson:** If I may speak once more, Mr. Chairman, one of the items I am sure will be brought up by multi-national corporations or international corporations is the question of foreign accrual property income. Ostensibly this is to stop the moving of assets to tax havens and building them up there. I suspect there has been a certain amount of that going on.

The definition of foreign accrual property income includes a dividend received by one foreign subsidiary from another foreign subsidiary, which is merely the passage of the business income within the consolidated group of countries. But by their definition they have suddenly tainted this income, which was untainted when it was first earned, and that creates a flow-through to be taxed in Canada immediately upon the dividend being received by the foreign subsidiary.

**The Chairman:** Whatever is the sum total of the earnings.

**Mr. Parkinson:** Yes. It is all business income and it is all untainted, but as it moves from one foreign subsidiary to another it gets the taint. I imagine you will hear quite a bit about that.

**The Chairman:** I think we have to look at the other aspect as well, that in the so-called tax havens there may very well be an introduction of taxation. I expect that many of them, when they give thought to this, will introduce a system of taxation because they can collect taxes in that country, and then you can get your tax credit here in Canada, and the one who will be the loser will be Canada.

**Mr. Crawford:** The sad part of that, Mr. Chairman, is not so much with respect to the tax havens as with respect to the developing countries. One or two departments of our Government are trying to encourage investment in and foreign aid to developing countries, and this system is rather rough on such investment in those types of countries.

**Senator Connolly:** Why?

**Mr. Crawford:** Because at the present time Canada does not have any tax treaties with developing countries, and those countries, in order to encourage industry, do not for the most part impose any tax or any substantial tax. Many of them do not. So a Canadian company starting operations in one of those countries will only pay tax on its business income in the developing country in accordance with the tax there, say, 10 per cent. To flow its earnings



back to Canada it will pay tax on the additional 40 per cent, thereby making a very difficult system for the economics of investing in a country like that.

**Senator Connolly:** Therefore, there is no encouragement for Canadians to invest in that developing country.

**Mr. Crawford:** That is true. The answer to that is that we are going to negotiate tax treaties with developing countries and, if that is possible, that will solve the problem because then your earnings could flow back tax-free. If by 1976 they have not negotiated the tax treaties, and if the same policy continues, then they should extend the time. I think it is even the philosophy of the Department of Finance that, where you are not talking about tax havens but are speaking in terms of overall economics, the country where the money is earned should be the jurisdiction that is looked to for the maximum rate of tax. This is just a lever to negotiate foreign tax treaties, primarily.

**The Chairman:** Our counsel has handed me a memorandum in connection with Bill C-259 dealing with foreign accrual property income, which is referred to as FAPI. Apparently many people lean to the alphabet to describe these things. This very short memorandum does pinpoint the problem:

With respect to foreign accrual property income (FAPI), the appropriate definitions—

that is, definitions of the bill—

could result in well over one hundred per cent of FAPI being taxes to resident Canadian shareholders where the foreign affiliate or affiliates concerned have more than once class of shares. This problem is compounded where one or more of the foreign affiliates is a trust with various types of income and capital beneficiaries. Appropriate amendments must be made to ensure that under no circumstances does FAPI income bear a Canadian tax in excess of one hundred per cent of the FAPI income.

Now, I do know from having done some forward reading that at least one of the submissions that will be made to us deals with this very situation where the exposure they estimate will be in excess of 100 per cent of the income. Then, continuing:

In addition, some relief should be given for those situations where, as a practical matter, the FAPI, even though technically taxed to the Canadian resident, will never be received by such resident.

Then in relation to FAPI on capital gains, there is this:

Capital gains are by definition considered part of FAPI and the treatment thereof is misleading since it would appear at first glance that when taxed as FAPI to a Canadian taxpayer, only one-half of the gain will be taxable. Since, however, in the case of individuals there are no appropriate offsets when a dividend out of such capital gain is actually made, the net result is that where a Canadian individual taxpayer has FAPI through a foreign affiliate and such FAPI consists of capital gains, the capital gains will ultimately be taxed to the Canadian individual shareholder in the same manner as though the FAPI was ordinary income. Appropriate amendments should be made to see that

individual shareholders of foreign affiliates bear only the capital gains tax rate on that portion of FAPI which is capital gains.

**Mr. Crawford:** That, Mr. Chairman, well illustrates the problem raised earlier as to whether you are going to get the amendments. These FAPI problems have been brought to the attention of Finance.

**Senator Connolly:** Could I make a suggestion with respect to that, Mr. Chairman? Might I suggest that not now but perhaps at some future time our counsel might be good enough to take us through that memo together with the appropriate sections and point out the difficulties that arise.

**The Chairman:** Yes, and I want our counsel to feel that his position here is such that if he has something that he wants to direct our attention to at any time we want him to do so.

**Mr. Crawford:** Mr. Chairman, the CCH analysis does a very good job of going through those sections.

**The Chairman:** Is there anything else that any other member of the deputation or even those members who have already spoken wishes to add?

**Senator Connolly:** I take it that you gentlemen have read a good deal of the literature that has come out on this matter. Is there any one particular publication that you think is superior to the others—without making invidious comparisons?

**The Chairman:** Well, now, you should be a little hesitant on that, Senator Connolly, because our tax consultant, Mr. Poissant, has been identified with a publication which I have read and copies of which have been furnished to all members of the committee. It deals with corporation taxes and with the treatment of corporate distributions in the hands of Canadian shareholders. Of course I am not suggesting that you should not look at all the others, because I have tried to wade through them with more or less success, but this is going to be basic, I should think, seeing that Mr. Poissant is our advisor but we can make comparisons, and say, "Well, what have you to say about this?"

**Mr. Parkinson:** Senator Molson has a very nice book, sir.

**The Chairman:** Senator Molson will make his contribution I expect.

**Senator Hays:** I wonder if the Chamber of Commerce have now decided that we would be better off without a capital gains tax.

**The Chairman:** You know, senator, I was wondering when you were going to bring that up. You were really hard shell on that the whole way through. You were utterly, completely and very vocally opposed to capital gains tax.

**Senator Hays:** It is an estate tax on the living.

**The Chairman:** Yes.

**Senator Hays:** The old one used to be on the dead.

**The Chairman:** Well, it didn't make way so I think we have to live with it and do the best we can in connection with its application.

**Senator Isnor:** Mr. Chairman, might I inquire from the President of the Chamber of Commerce if he has any representative from east of Montreal?

**Mr. Neil V. German, Q.C., President, The Canadian Chamber of Commerce:** No.

**Mr. Crawford:** Perhaps I might qualify that by saying that although I am from Toronto I spent a great deal of my life quite far east of Montreal.

**Hon. Lazarus Phillips, Q.C., Chief Counsel to the Committee:** Mr. Chairman, might I, through you and honourable senators, put this question to the Canadian Chamber of Commerce. In going through this act it seems to me that the most redundant section and the one most badly drafted is that dealing with partnerships. You have touched on that, Mr. Crawford, in your discussions with the Minister.

**Mr. Crawford:** Where the deemed amount is not the deemed amount but the actual amount?

**Hon. Mr. Phillips:** Incidentally, as one example, I do not think the word "partnership" is even defined, although we have a special section of the law dealing with it. But to this day we do not even know if a joint venture is a partnership. I mention that as an example of the, shall we say, looseness of the draftsmanship, which is obviously due to lack of time rather than to any particular attitude which does not exist in any department of government. It simply results from the problem of time and draftsmanship.

The second section which is horrendous on account of its consequences is that dealing with foreign source income of Canadians rather than with the income of non-residents, which is also troublesome, from Canadian sources. But particularly the incomes of Canadians from foreign sources is horrendous in some of its consequences in that it is quite possible, I think, from my reading of the act that redemption of shares in the foreign company under certain conditions constitutes taxable income on the total amount, unbelievable as it may be. We will deal with that in due course.

The reason I have asked the Chairman to allow me to say a few words through this committee to the Chamber of Commerce is to see whether they would like to consider a submission to the Minister that in view of the trying problem that is involved, that for the present, aside from the technical amendments which the Minister has offered, relief should be granted to at least (a) the subject matter of roll-overs, which has been dealt with today, (b) the question of reconsideration of consolidated returns, which in my humble opinion will solve a considerable number of problems not dealt with this morning, and (c) the complete suspension by way of deletion from the bill for the present of that part which deals with partnerships and that part which deals with foreign source income. The matters of partnerships and foreign source income of Canadians run right down the line as dealt with in the act under special Chapter K and might well be suspended from the bill for the present until such time as opportunity is given for more detailed study of this very, very important section of

the bill in its relationship to international operations in all directions.

**Senator Beaubien:** Mr. Phillips, would you suggest that the present act would apply then?

**Hon. Mr. Phillips:** Yes, in terms of the deletion of these sections for the present. I feel that the present bill, with these deletions, can be harmonized without too much trouble, particularly since we have trained officials who can work under the pressures of draftsmanship. I am not trying to be facetious about this bill, because we are dealing with serious matters, but we could well delete the entire section dealing with partnerships, the entire section K, press for consolidated returns, press for the vital problem of the extension of roll-over provisions, and harmonize the bill to fit in with what I have just said. If one wanted to be colloquial, I feel we could then live with the bill in some form, and this would give us an opportunity to study more carefully some of the more complicated provisions.

I am asking, Mr. Chairman and honourable senators, that the Chamber of Commerce, which is such an important institution, consider this further, even at this late stage, and present supplementary representations to the minister.

**The Chairman:** If you could find it possible to do this, that would be very much appreciated.

**Mr. Crawford:** Certainly, the learned gentleman's points are well made. Dealing with partnership, as an example, I do not think that anybody has even looked at some of the problems that are obviously doing to be thrown up. For example, it would appear that you could avoid the thin capitalization rules by having a partnership and avoiding the existing structure. I am sure that the Chamber will give very careful consideration to this and take whatever action they feel is proper.

**The Chairman:** Mr. Phillips has used the word "delete". Perhaps it would be more appropriate at this time to speak of suspending the operation on the bringing into force for a definite period of time.

**Hon. Mr. Phillips:** Mr. Chairman, I am sure that I need not say, through you, that these observations which I have made are purely personal to me, and they obviously do not represent the views of any member of this committee because it has not been discussed in Committee at all. These are purely my observations as an individual, but I take advantage of this situation because you gentlemen are here today representing this important body.

**The Chairman:** Honourable senators, it would appear that the representations of the Chamber of Commerce have been completed. We may have saddled them with additional work, if they find they are able to take it on, and if they are, we would welcome what they have to submit.

I want to thank you gentlemen very much for coming here today, for the work you have done and the presentation you have made. Thank you very much.

**Mr. German:** Mr. Chairman and honourable senators, we appreciate very much the opportunity of making this presentation and being with you on this occasion. I would



point out, for the benefit of one honourable senator, that I have been president only since September 28, and Mr. Gordon Archibald of Halifax was the president previous to that time.

**The Chairman:** Now, perhaps we have given this the proper eastern flavour. Are you satisfied with that?

**Mr. German:** Yes. Thank you very much.

**The Chairman:** Honourable senators, please do not leave yet. There are a few things about which I want to report to you, and then we need to consider the several clauses in Bill C-262, which we were dealing with last evening, which were stood until today. I want to be able to report the bill to the Senate this afternoon, so we should complete our consideration of it this morning. This committee is sitting at 9.30 tomorrow morning, and we will be continuing with our witnesses of last week, Mr. Scace and Mr. Stephen Smith in this room. We have several very interesting and important subjects to be dealt with—for instance, general matters relating to estates, real estate, and corporate acquisitions. I can tell you that inherent in this problem so far as the United States is concerned are some very important and complex questions that need to be considered. Then we have international taxation, which we have been talking about this morning, which is a very important consideration in Canada now.

We then have international taxation, which we have been discussing this morning, and which is a very important consideration at present in Canada. We also have resource industries. We would hope to complete all that by 1 o'clock tomorrow.

The other point I wish to make is that we have fixed appointments for succeeding weeks, having made definite arrangements with organizations to October 28.

**Senator Beaubien:** Could we have a list?

**The Chairman:** Yes, I will arrange for you to receive a list. However, I am more concerned now with regard to next week. We have confirmed appointments for Wednesday of next week to the Canadian Federation of Agriculture and the Canadian Construction Association. For Thursday, October 14, we have confirmed appointments for the National Association of Canadian Credit Unions, the Co-

operative Union of Canada, and the Allstate Insurance Company of Canada.

Now, that is just for next week. I stress this particularly now, because I have heard rumours that it is possible that the Senate may not be sitting next week. Against that possibility, having confirmed these appointments and this subject matter being very important, will I have a quorum for the meetings next week in the event the Senate is not sitting? Yes; I can see by your response that we will have a quorum. Thank you on that point.

You might be interested in knowing of some of the other appointments. During the week of October 20, on the Wednesday we have the Canadian Jewish Congress, Massey-Fergusson Limited, which is multinational with international income, and The Canadian Mutual Funds Association. On Thursday, October 21, the Canadian Bar Association and the Independent Petroleum Association of Canada will appear. On the 27th we will have ALCAN, which will be international income, Bethlehem Copper Corporation Limited, The Canadian Gas Association and, tentatively, the Canadian Export Association. On October 28 we have the Canadian Petroleum Association and the Mining Association of Canada.

The volume of requests to appear at hearings indicates that it may be necessary at the beginning of November, or even in the last week of October, to add another day of hearings per week, maybe Tuesday. We should endeavour to conclude our hearings by the middle of November, as we will need some time to prepare our conclusions, after which they will be discussed with the committee. I certainly do not consider two weeks to be too long a period for that.

**Senator Connolly:** Hopefully we will have the amendments by that time.

**The Chairman:** I believe I informed you earlier that I had submitted in writing to the Government Leader in the Senate the substance of the resolution passed by the committee last time. That submission stressed the importance of having this information as early as possible, in order that the hearings may be expedited.

The Committee adjourned.





THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-1971

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 37

WEDNESDAY, OCTOBER 6, 1971

Second and Final Proceedings on Bill S-22,

intituled:

"An Act to incorporate United Bank of Canada"

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 15, 1971:

"Pursuant to the Order of the Day, the Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Macnaughton, P.C., that the Bill S-22, intituled: "An Act to incorporate United Bank of Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Macnaughton, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, October 6, 1971

(45)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 3:00 p.m. to further consider the following Bill:

Bill S-22 "An Act to incorporate United Bank of Canada".

*Present:* The Honourable Senator Hayden (*Chairman*), Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Gelinas, Haig, Hays, Isnor, Lang, Molson, Smith, Sullivan, Welch and White—(18).

*Present, not of the Committee:* The Honourable Senators McNamara and Robichaud—(2).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

*WITNESSES:*

*United Bank of Canada:*

Mr. B.V. Levinter, Q.C., Counsel;  
Mr. Dennis Dwyer, President, Chartec Limited;  
Mr. Robert Wilson, member, Chartec Limited;  
Mr. Bernard Charest, member, Chartec Limited.

Upon motion it was Resolved to report the said Bill without amendment.

At 4:40 p.m. the Committee adjourned until Thursday, October 7 at 9:30 a.m.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, October 6, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-22, intituled: "An Act to incorporate United Bank of Canada", has in obedience to the order of reference of June 15, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter S. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, October 6, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-22, to incorporate United Bank of Canada, met this day at 3 p.m. to give further consideration to the bill.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order.

You will recall that on the last occasion we were considering this bill we requested the feasibility studies, and so forth, and I understand these are available today.

Mr. Levinter, are you ready to continue?

**Mr. B. V. Levinter, Q.C., Counsel:** Mr. Chairman, I understand that there were two facets which the Senate was interested in: The first was with regard to the financing, and the second was with regard to the projections which I would prefer calling our goals over a five-year period.

If I may, Mr. Chairman, I would like now to call upon Mr. Dennis Dwyer, the President of Chartec Limited, who has done our financial study and who is perhaps in the best position to give you an outline as to what Chartec Limited has done. He can then answer any questions that might be in the minds of the honourable senators.

**The Chairman:** Has this been developed in any statement?

**Mr. Levinter:** Mr. Dwyer has a short statement. In order to get to the meat of the matter so that we are aware of the questions you want answered I would suggest that he give you this brief outline, and then any questions can be asked.

**The Chairman:** Honourable senators, this is Mr. Dennis Dwyer, the President of Chartec Limited. Chartec Limited is the organization that was referred to in our previous hearing as having conducted certain studies in connection with the feasibility or the practicability of a bank of this kind and its operations having regard to the present state of the market, and so forth.

Mr. Dwyer, I have identified you to the committee. If you want to add anything further to your identification, go ahead.

**Mr. Dennis Dwyer, President, Chartec Limited:** Thank you, Mr. Chairman. Mr. Chairman, honourable senators, I am appearing before you today along with Mr. Robert Wilson, C.F.A. and Mr. Bernard Charest, both of whom are my partners. We appear before you as independent financial counsel retained by the provisional board of the United Bank of Canada to assist them in making the proper arrangements for the raising of the bank's capital.

Let me introduce the members of our firm. Mr. Bernard Charest joined us in 1969. He has been in the investment business since 1955. His major role in our firm is as an investment manager for client's security portfolios. He is also retained as an investment adviser to outside institutions.

Mr. Robert Wilson joined me in 1968. He has been actively engaged as a security analyst and portfolio manager since 1948. His responsibilities in our firm involve the management of funds entrusted to our care, advising our institutional clients, and using his past expertise in specific financial counselling assignments, such as our present one.

My background in the investment business began with Greenshields Incorporated in Montreal in 1959. I became sales manager in 1963 and held that position until 1966. I then spent some time with Hodgson, Robertson, Laing & Co. investment counsel, of the same city. By 1967 I went into business for myself as a financial consultant.

Mr. Wilson, Mr. Charest and myself bring to the provisional board of the United Bank a total of some 50 years' experience in dealing with the investment house, the stockbroker, the investing institution and the investing public.

Our mandate from the board was quite clear. One, the ownership of the bank was to be as widely held, by as many Canadians as possible. Two, the bank was to have an initial capitalization of at least \$20 million. Three, the provisional directors were in no way to control the bank financially. Four, our firm and its own members, were to have no financial interest in the actual sale of the shares.

Also, the board was interested to know if the bank would receive broad investor support, in view of its socio-economic policies. We discussed our mandate with 71 people representing 28 investment houses, brokers, and 18 institutions. We considered that this group represented a good cross-section of the most responsible people in the investment field. A few were negative, many more were positive, and of these a substantial number were very enthusiastic.

The comments made by those who were positive may be summarized as follows: One, investor interest in Canadian chartered bank shares in general is high, in view of the high return on capital investment. Investor interest in the United Bank, solely on the grounds of the provisional board's responsible and deliberate actions to date, has given the impression that the investor believes that the basic policies of the bank will ensure a profitable operation.

Two, one crucial factor in investor interest has been the desire expressed by the provisional board that no one group, or small combinations, will control this particular bank. Our mandate specifically stated this objective and

this met with great acceptance and enthusiasm amongst the people whom we saw.

Three, institutional investors, brokers and dealers are particularly conscious of the role that they can play in realizing what so many Canadians want at this point in our history, that is, a broader genesis and control of emerging Canadian industry. With their leadership, a public issue will be successful.

Four, the deliberate attempt by the founders to involve a group of Canadians from all walks of life, to ensure the bank's particular responsiveness to the changing Canada of the seventies was fully endorsed.

Finally, the regional concept of the bank found great acceptance.

Honourable senators, I believe it is important that I stress that the great body of investment people viewed the policy of the United Bank in this regard as a strength and not a weakness, as this policy is particularly in tune with the general socio-economic views now being expressed widely across our country. These many meetings with investors suggested a logical step by step process, so as to enable the bank to raise the required funds.

The following is a summary of that plan:

One, after the granting of the charter, management will make itself known to the investment community and will meet with them individually and collectively to explain the actual operations of the new bank.

Two, following this, investment dealers who have already indicated a desire to be major underwriters will be selected by the provisional board.

Three, subscriptions from investing institutions will be accepted and, following this, subscriptions from private individuals will be accepted.

It must be appreciated that because the bank does not yet have a charter, specific commitments cannot be obtained. The result of our survey indicates, however, that \$20 million can be raised.

Mr. Chairman, I shall be pleased to answer any questions which may be put.

**The Chairman:** Mr. Dwyer, you said there was a general acceptance of the regional concept of the bank. What do you mean by that?

**Mr. Dwyer:** I mean, sir, that the investing people that we saw, and more particularly the institutions than the dealers, were very conscious of the necessity for very close development ties between the granters of credit and the people who wish to borrow. And they felt that the policy was a rather deliberate policy as expressed by the provisional board, that this was a very key part of the operations of the bank, to be very sure they are aware of the concerns of their particular areas. The investment people viewed this very positively.

**The Chairman:** But, Mr. Dwyer, let us get down to cases. You have been talking about a regional concept. When Mr. Levinter was talking, he was talking about a regional concept in relation to the receipt of deposits and the making of loans.

**Mr. Dwyer:** That is right, sir.

**The Chairman:** You are talking about a regional concept being attractive to investors. I did not ask you about the investors. I asked what makes a regional concept. First of all, is the regional concept of the bank such as Mr. Levinter has said—that is, you accept deposits in a region and you make your loans in the area from which you have received the deposit. Is that your concept, too?

**Mr. Dwyer:** Yes, it is.

**The Chairman:** That is why I asked Mr. Levinter on the last occasion whether this was a new philosophy in banking—that is, that you collect money in an area and you loan it in that area even though there are better opportunities to make money in other areas. He said no to that.

**Mr. Dwyer:** No, sir, I think he said that, wherever possible, as a deliberate act, given a good and a responsible banking practice, that the bank would exhaust, as it were, every effort to ensure that the money was returned to the area from whence it came. Why the investors are interested in this is because this should engender deposit loyalty. And a bank grows because of its ability to attract deposits. One of the questions I was repeatedly asked was: Where are the deposits to come from? Our answer was to explain that particular policy.

**The Chairman:** When I asked Mr. Levinter he expounded on the concept of the Provisional Board of Management and he said:

— we have considered that if deposits are made in, let us say, Nova Scotia, the money raised in Nova Scotia by way of deposit should first be made available—again, within guidelines—to people who need loans there and for the development of the Province of Nova Scotia, instead of bringing it down here for the development only of Ontario or only of Quebec.

Now that was his pronouncement of principle. So then I said to him:

The directors of this bank will be dealing with money that has been invested by shareholders. Do you subscribe to the principle that they should follow the regional theory of investment, even though investment opportunities and earning capacity are greater in another area than where the money was raised?

His answer was:

No, sir. I was talking strictly about deposits. We must remember that the overall concept must be the success of our bank.

I have a question which bothers me—and I can ask Mr. Levinter later, of course—but it is whether he was drawing a line between money that comes in from shareholders for investment, and you will be free to invest that anywhere, and money that you collect by way of deposits which you would loan out only in the area where you collect deposits. Is that your concept of regional investment?

**Mr. Dwyer:** Well, I would like Mr. Levinter to answer that question because it is a question of board policy.

**The Chairman:** No, I want you to answer.

**Mr. Dwyer:** I am not trying to avoid it, sir.



**The Chairman:** You have just expressed an opinion and I want to know what is behind it.

**Mr. Dwyer:** The people that we saw were concerned that the policy not override profitable banking. But at the same time they were very interested that the policy existed and they did not, and I do not think that I do and I do not think that any investment person would try to artificially divide between the capital of the bank and the deposits. I think that would be a very, very difficult thing for management to try to do. But I think the intent, and the very strong intent, that the bank make every effort to employ these funds in the area from which they came is a very positive thing.

**The Chairman:** Senator Cook the other day said, and I am wondering whether you investigated this:

I think the history of banking will show that most banks which tried the regional theory either failed or merged.

Have you made a study of the operations of banking and its development throughout Canada to be able to express any view in relation to what Senator Cook said?

**Mr. Dwyer:** My partners and I as security analysts have naturally looked at banking, and I think when that remark was made, it was probably intended to isolate those banks that only dealt in a certain region. This bank will be a national bank with a strong regional flavour. I think this is rather a different thing.

**The Chairman:** What do you mean by "a strong regional flavour"?

**Senator Beaubien:** What region are you contemplating?

**Mr. Dwyer:** The head office of the bank as proposed is in the City of Toronto, but I believe our Provisional Board expressed the thought that in the first year of operation there would hopefully be a branch in Halifax, in Montreal, in Toronto, in Winnipeg and Vancouver.

**Senator Beaubien:** That is quite a big region, from Halifax to Vancouver.

**Mr. Dwyer:** Well, the Halifax area would be considered in this sense to be a region as would the Vancouver area be considered a region.

**The Chairman:** You see, Mr. Dwyer, from what has been said so far, from what you have said and from what Mr. Levinter has said, the regional concept is dictated to you. You do not choose it because the regional concept, according to Mr. Levinter and you support it, is where you get the deposits; that is where you will loan the money. You accept that as the definition and surely this is the way we have to look at it, and see whether it is practicable or not. If you meld this regional concept of collecting deposits in an area and loaning in that area with what is also said—that is that the bank has a national concept—what money would be used for that national concept? Are you going to rob the regional area? What are you going to do?

**Mr. Dwyer:** No, sir. I think it is not only possible but it will in fact happen that in any one area and perhaps especially in certain wealthier areas, the amount of deposit money

coming in will probably be able to be used all in that area because of the amount of industry that exists there. But I think at the same time the amounts of money coming from, shall we say, less-developed areas would require harder work for its investment. There will always be an extra pool. It will always exist. But I think it is the intention—and I think that is the important thing here, that when we saw the investment people, we never for a moment suggested that for every dollar of deposit coming from region X, that same dollar plus a multiple will go back to that particular area.

**Senator Molson:** Mr. Chairman, I think the philosophy is excellent, but I would like the witness to explain to us in what way this differs from the practice of the existing chartered banks, because I fail to find any material difference.

**Mr. Dwyer:** Initially, sir, it will be a difference in size, right from the start, I think it is fair to say that a smaller organization just by its very nature tends to move more quickly. I think one possibility is that you may find that your limits may not be as different as they are, for example, if you had a head office, say, here in Toronto. I suggest that this is a matter not for us but for management, but the loan limit in Toronto may not be two or three times the loan limit for management in Winnipeg. That may be a difference. As I understand the present chartered banks, the loan limits in different areas tend to be different.

**Senator Molson:** Not because of the areas, but because of the different circumstances and size and so on. I am talking not about the size of limits and so on, but about the philosophy you have expressed that this bank is going to make a new move in that it is going to try to relate deposits to loans. I have been led to believe that this is a fairly general practice in banks, and so I asked you what the difference is and you did not answer my question so far.

**Mr. Dwyer:** Let me try again, sir. I think it is a fairly general practice, and as you know some statements have been made in the press by other provinces about the amounts of money that were supposed to have been taken out, and these have been questioned by some of the chartered banks, and I think rightly so. The only thing I am trying to say here is that this policy has been enunciated as a policy. Now I do not think the other chartered banks have as yet enunciated that as a policy. I think it happens perhaps a lot more than is publicly believed.

**The Chairman:** What is the difference? If this happens, what is the difference whether they enunciate it as policy or not?

**Mr. Dwyer:** Sir, if I may, the reason for enunciating it is because these people have not normally been involved in banking at the board and management level, as Mr. Levinter has said. The communities which they represent wanted to know what the policy of the bank was in this regard. Therefore, it was reasonable for the provisional board to make such a statement of policy.

**Senator Benidickson:** Mr. Chairman, we have several experienced directors of banks on this committee. From their experience, when these banks are as old and as large as they are, and with as many branches as they have, can



they determine a relationship between where they lend money and where they get their deposits?

**The Chairman:** I would assume that you lend where the advantage is.

**Senator Benidickson:** Yes, I would agree, and where you get the interest and the loan repayments.

**The Chairman:** When I asked Mr. Levinter that question he agreed with the statement I made, that you go where you make the money; and if you have any other policy, you are going to fall flat on your face ultimately.

**Senator Connolly:** Mr. Chairman, would the witness say that so far as the lending policy of this bank would be concerned that basically the bank would follow the normal banking practice, looking first to such things as the prospects of the borrower, the security that he offers, and the kind of covenant that he can give. And, assuming for the sake of argument that there are applications for loans from British Columbia, Ontario, and from Nova Scotia, and all of these applications satisfy the general banking criteria—which I may not have exhausted, but which are reasonably representative perhaps—then the policy would be to say, "Since we have a greater volume of deposits from the Toronto branch than from the Nova Scotia branch, we should first of all, favour those Toronto applications." They might then say, "Even though we have not sufficient deposits to justify a loan to a proposed borrower from Nova Scotia, we are pretty short on loans in Nova Scotia. Perhaps we had better pay some attention to the geographic factor and make a loan there." Is that the way it is going to work?

**Mr. Dwyer:** I would think so, yes.

**Senator Connolly:** In other words, geography is a secondary consideration for the granting of a loan?

**Mr. Dwyer:** That is right, a loan has to stand on its own two feet.

**Senator Connolly:** I do not use the word in any objectionable sense, or in a sinister sense, but, in a sense, that will be a political decision as to whether you should approve a loan in Nova Scotia rather than Ontario—political because of the geographic factor perhaps. I think we mentioned also the other day that the ethnic factor comes into play here.

**The Chairman:** I was going to come to that later.

**Senator Connolly:** All right, we will stick with the geographic factor.

**The Chairman:** I was wondering, Mr. Dwyer, supposing the first branch of this bank is opened in Toronto and they get substantial deposits. Following the principle of lending does that mean that most of your loans would be made in Toronto? If there is no question of the quantity of money you have to lend, would you not find good loans in the Toronto area? Then supposing you open up the next branch in Halifax —

**Senator Benidickson:** Let us give ethnic consideration to this also, and let us say Sudbury instead of Halifax. I do not see how you can separate discussion of new emphases

of a geographical or ethnic nature if they are new emphases.

**The Chairman:** Let us go along with free-wheeling. The first question that we have to settle on the ethnic matter is how we are going to achieve ethnic representation.

Senator Molson previously asked the question as to how they were going to maintain that in their solicitation of investment.

**Senator Benidickson:** There are two sections of the community who feel, rightly or wrongly, that they have been rather neglected in the banking system of this country on regional and ethnic bases. Have people been approached as possible investors on the basis that certain ethnic groups are inadequately represented on the boards of directors of our banking system at the present time? Has that been part of the approach for capital funds?

**Mr. Levinter:** We are not making any direct effort to appeal to any of the ethnic groups, with regard to either financing or loans. It is not an ethnic approach. It is a cosmopolitan approach. In other words, it is a blending of all the people in banking, both in a financial way and in the operations of the bank.

I can say that there will be no favouritism given to the ethnic group as opposed to another ethnic group with regard to loans. The only value attached to a cosmopolitan approach lies in a board of directors, which sets policy, understanding the needs of the various people it represents and of which it is a part. I am totally against, favouritism being given because someone is Polish or is Italian. Nor it is a fact that any individual will become president by reason of his ethnic background. But by reason of his ethnic background, nothing shall hinder him from becoming president. In other words, we want to involve everybody.

**Senator Benidickson:** It may have hindered them in the past.

**Mr. Levinter:** I would prefer not to make a comment on this.

**Senator Benidickson:** But I would.

**The Chairman:** On the last occasion Senator Molson asked the following question:

Might I ask whether it is proposed in your by-laws, or through any other way, to limit the ethnic makeup of your board or management? How do you expect to perpetuate this situation which you are now starting with a provisional board, which no one can quarrel with? How do you expect that it will continue? Where do you think you will be in five or ten years, or in the future? Do you think you will be able to continue in this way?

And Mr. Levinter replied:

I do, from a practical point of view. Firstly, our goal is to have mass distribution of stock so that nobody has control of the bank.

So far as I am concerned, that is a very indefinite and inconclusive answer. How do you maintain the ethnic com-

plexion unless you have participants in the form of bankers, shareholders and directors who have various ethnic origins?

I am not criticizing whether or not they have ethnic origins. This has been put forward as a basis as to why the charter should be granted. Therefore I want to know what value there is in that representation. The same thing applies when we talk about a reasonable concept of operating a bank. I am not criticizing it one way or the other. I want to know its value in terms of assessing the possible success of the bank. That is all.

I want to see whether it is a practical thing. If not, ultimately we may have to look at this as an application by a certain group of people, and consider whether they should be granted a charter or not, not leaning on the regional concept at all, not leaning on the ethnic group concept at all, because on close analysis they may not stand up, and it would not appear that they do stand up. I am sorry that I am intruding.

There is one question I wanted to ask, if I may. You talk about the investment in such a bank being attracted up to \$40 million. As we said the other day, the Bank of British Columbia finally ended up with \$12½ million. They had the Premier of the Province of British Columbia behind them. Here he told us, when they were applying for a charter, that they would have no trouble getting \$400 million. There is a big gap between \$400 million and \$12½ million. What makes you so sure that you can get \$20 million?

**Mr. Dwyer:** First of all, we have spent a great deal of time talking privately to a very large number of people, whom we have known over a long period of time, explaining very carefully the aims and objectives of this bank, and the desire to broaden the Canadian banking system in general. We have not made any extravagant claims about \$400 million, or \$100 million. Anybody who was in the investment business at the time of the issue of the Bank of British Columbia would have their own ideas as to why the money was not raised.

**The Chairman:** I was not asking you why it was not raised.

**Mr. Dwyer:** I am just saying that we have done this very quietly and, we hope, responsibly. We found among a lot of people in this country, a lot of investment people, a desire to see a broadening of the banking system, and, to answer your question to Mr. Levinter if I may, to see how the complex of people at the management and board level will be maintained. I think one only has to look at the States to see how certain institutions that were started there have become great big companies, by the very nature of the initial board and policies of these companies, which have continued to attract people from a wider spectrum than other companies.

I think those looking at this bank and seeing the sort of people who are founding it, will say, "These men are prepared to commit themselves. I would like to be involved." Believe me, that will happen, because many of the investment houses that we saw have very large clientele in certain areas, and a number of them have had people actually phone in. We have not been out trying to

sell bank stock. We have merely been telling the story of the bank and saying why we think it would be good for the country.

**The Chairman:** I assume part of the story you have been telling has been singing the virtue of the regional concept.

**Mr. Dwyer:** That is one thing.

**Senator Benidickson:** And perhaps the ethnic concept.

**The Chairman:** And singing the virtues of the ethnic concept.

**Mr. Dwyer:** Certainly, sir.

**Senator Benidickson:** I was going to ask a question. There are people more knowledgeable than I about this, but am I right in my thought that perhaps the largest bank in the United States today is the Bank of America, away from New York and organized by an Italo-American?

**Mr. Dwyer:** Yes, and that is an ethnic bank.

**Senator Benidickson:** That is on the west coast, in California.

**The Chairman:** Are there any other questions on this aspect?

**Senator Molson:** I would like to follow up a little more on the regional aspect. I do not quarrel with this. As a matter of fact, I think it is very desirable in this country under the circumstances. I question how far it is possible, how far it is to go. I also repeat that I believe this is in very large measure a practice of the banks today. I would point out the wheat trade gets loans aggregating at times \$800 million. Is it suggested that that money comes from the Prairies? I suggest to you that that is money from elsewhere; the deposits do not match the loans in this case. The CPR would have ended up in Westmount if there had been a completely regional practice in banking a long time ago. I think that to a large degree this applies today. I believe it is a very valid objective. I hope it can be worked out by this group.

The same thing applies to the question that I raised and which you have just mentioned about the ability to continue an ethnic character in relationship and proportion as time goes on.

Quite frankly, I have to question in my own mind whether some of these quite laudible objectives will be diluted and will disappear as the bank gets underway. However, that is not sufficient in my mind to say that there is anything wrong with the proposition that is put forward by these gentlemen.

**The Chairman:** No, all it means is that you may have to look at the application in the light of an application from the people who are making it and the feasibility of it, forgetting the other things that they are urging, even about ethnic participation and about matching deposits with loans, which certainly has not proven to be a good banking theory.

**Senator Benidickson:** Perhaps in the past there has been regional under-lending, or at least the feeling of that in certain regions.



**Senator Cook:** Mr. Chairman, I do not oppose the application in any way, but I do agree with your remarks and those of Senator Molson in that, after all, a bank is a custodian for its depositors. It is not the money of the shareholders which the bank lends but it is the money of the depositors. If the bank adopts any principle other than making a loan which is a sound risk, if the bank operates on a regional basis or an ethnic basis and gives loans that are not sound risks, then that bank is going to be in trouble as sure as we are sitting here.

**Senator Burchill:** Mr. Chairman, in the region I come from in the Maritimes people tend to feel and complain that banks do not look after them very well. Although two of the biggest banks had their beginnings in Halifax, their head offices are now located in Montreal and Toronto and the people of the Maritimes have a feeling that these banks have moved away from them. Their complaint is that the banks do not know enough, or seem to know enough, about the economy of the regions which are far distant from them. In other words, they measure us by the tempo of the economy in which they live. I have spent many hours talking to bank officials at their head offices, pleading with them to become more familiar with the life style and way of life in the Maritimes. I have done so because we feel that sometimes we are at a disadvantage owing to the fact that we are too far away from those who make the policies of the banks.

**The Chairman:** Senator Burchill, are you suggesting that the policy of the banks that are in existence today is not to make good loans in every area where they can possibly make those loans?

**Senator Benidickson:** I am glad you and a previous speaker with banking knowledge used the word "today", Mr. Chairman. I am old enough to recall, and you have spent enough time in western Canada to know, that there has been in my time in the west this feeling such as Senator Burchill describes for the Maritimes. It may be that that is not the feeling today, but it was the feeling in recent years, and not too long ago at that. Rightly or wrongly, there was a very strong feeling in western Canada in cities like Winnipeg and Vancouver, where bank charters have been applied for in recent years, that if money was scarce it was because the borrowers were looked at first in the regions where the national banks had their head offices—in Toronto and Montreal.

**The Chairman:** Well, that is just what we heard when the Bank of Western Canada applied for its charter.

**Senator Benidickson:** With Toronto money, unfortunately. But the Bank of British Columbia has a little different record.

**Senator Connolly:** Mr. Dwyer, you are familiar with the provisions of the Bank Act.

**Mr. Dwyer:** Not entirely, sir, although I was brought up on it.

**Senator Connolly:** I assume in undertaking this investigation for this group you became reasonably familiar with its provisions.

**Mr. Dwyer:** Yes, sir.

**Senator Connolly:** You know what is required of a bank in order to meet the statutory demands.

**Mr. Dwyer:** Yes, sir.

**Senator Connolly:** What you have told us is that you made investigations in the financial and commercial communities. Are you satisfied, first of all, that this bank will be operated in a manner which will meet the requirements of the statute?

**Mr. Dwyer:** Yes sir, I am.

**Senator Connolly:** Are you satisfied also that the investing public and the depositing public will be served in the manner in which banking institutions should serve?

**Mr. Dwyer:** Yes sir. Particularly on that point I refer to Senator Hayden's remarks with regard to the bank charter passed on the basis of the people, rather than any of the concepts. One of the things that seemed to convince the people that we saw that this was an honest, if you will, straightforward, no nonsense undertaking, was that the sponsors have in no way attempted to control the bank, either politically or financially. I have checked the testimony of some of the previous hearings before this committee where it expressed very great concern regarding the control factor in some previous applications. In this application there is no such control desire.

This is one of the reasons why investors look upon this kind of bank which, after all, will have a professional management and a board which would be deliberately representative of all sections of the public, as being something which will attract investors.

**Senator Gélinas:** When you mention investors, do you mean institutions, or investment dealers with whom you have been in contact?

**Mr. Dwyer:** Both, sir.

**Senator Gélinas:** Some people have told you, I suppose that the banking system could be enlarged and it would be very beneficial?

**Mr. Dwyer:** Yes sir.

**Senator Gélinas:** Is that for the two reasons you mentioned, both the regional concept and the ethnic concept?

**Mr. Dwyer:** Also to generally broaden the credit-granting base. Many investment people who are concerned with the development of industry in this country feel that any responsible broadening of the credit-granting base is good for the country, that any innovation will raise the general level of excellence of banking in Canada.

**Senator Gélinas:** Is there a language barrier involved in the ethnic concept?

**Mr. Dwyer:** No sir; as a matter of fact, as you know, the provisional board is made up of persons speaking a number of languages. In fact, one could say this, that in the future one would hope that the language attitude would be one of at least being able to bring in perhaps newer Canadians who will not speak either one of the official languages, but will be able to train themselves.



**Senator Gélinas:** I think they can get along with the present system as far as language is concerned.

**Mr. Dwyer:** I do not think there is any implicit policy that the board has taken with respect to language.

**The Chairman:** I would think you would have to acknowledge that no one would suffer as a result of a lack of communication due to language if he went into any existing branch of any existing bank.

**Mr. Dwyer:** All of the existing banks have people on their staff who speak Italian and German.

**Senator Benidickson:** Many of the big banks have directors who are not resident in Canada. That is correct, is it not?

**Mr. Dwyer:** I believe so, yes.

**The Chairman:** Some directors.

**Mr. Dwyer:** Not very many.

**Senator Molson:** There would be very few.

**Mr. Dwyer:** Would these not normally represent overseas correspondent connections and that type of thing?

**Senator Molson:** No. Most banks have the odd overseas director. I have not looked at any of them recently, but I think if you do you will find that 90 or 95 per cent of the members of the boards of the chartered banks are Canadian, pure and simple.

**Senator Benidickson:** I would agree with that. I just simply said that many of the banks have non-resident directors.

**The Chairman:** And all I said was "some non-resident directors".

**Senator Connolly:** From your investigations —

**The Chairman:** Wait a minute, senator; Senator Hays asked to be heard a short time ago.

**Senator Connolly:** I am just finishing my question.

**The Chairman:** Senator Hays?

**Senator Hays:** Mr. Chairman, if this particular area has been exhausted I would like to ask some questions. These questions have probably been asked already, but I was not present at the last meeting.

If Senator Hayden, Senator Molson and Senator Beaubien were to start a bank and they applied for a charter I would take a flyer on it. I would be particularly interested to know the principals behind this, as to who is going to start this bank. In the first place, I think management and direction are the most important factors, and also the confidence that you have in these people if this bank is ever going to get off the ground.

**The Chairman:** Mr. Levinter is here. Ask him the questions.

**Senator Hays:** These people should have supporting evidence to let us know exactly what their methods are; how

involved they are going to be personally; and what they have done in the past.

I realize that small acorns into great oaks grow, but it seems to me that this is the most important aspect of any group that is starting any organization. Who are the principals? How is it going to be managed? Is it going to get off the ground?

**The Chairman:** Who is going to run it?

**Senator Hays:** Who is going to run it, yes, and I think this philosophy can change. I would hope that it would if they found they were making errors. In other words, if it was found that one venture was not profitable, then they would move their money into another venture. How safe is the money going to be? Are they going to lend it? Will it be a money-making proposition for those involved in the bank and for those using the bank? It seems to me these are very important questions to be asked of anyone who is asking for a bank charter.

**The Chairman:** Mr. Levinter?

**Mr. Levinter:** I appreciate your concern, senator. Without proper management the bank will not get off the ground. However, I am in a difficult position. One can only take my word for the fact that I have a gentleman who is a senior man in Canadian banking and who is intimately familiar with, not only operating a bank but who is also equipped to set up a bank. Naturally, I cannot disclose the identity of this man, but as soon as the charter is granted his identity will be made known. Bear in mind that no one can cause any harm to the public until Mr. Scott's department and the Governor in Council give their approval to the charter.

This is not a question of a cat-and-mouse game; this gentleman has an extremely responsible position in banking and you can well understand that if something should happen here or in Parliament it could ruin a man's career in Canadian banking. We have assessed this man. Mr. Dwyer has met this man, as have both Mr. Lasalle and Mr. Scott. Mr. Scott saw him yesterday.

I have Mr. Ryley present today. He is a partner in the firm of McDonald Currie & Co., and he has been an accountant for some 20 years. He has met our management and he has looked over our proforma goals, our objectives, our proforma balance sheet, and our profit and loss statements. He is available here to give you an opinion as to his views with respect to how our management is going about this. I can unequivocally say to you that I am very lucky to have such a man. It was a great stroke of luck, a great experience. He has great know-how and is very methodical.

I can also say that we have commitments for senior accountant, and so on. I may say that they are all coming from the present banking system—and I do not mean from the lower echelons, I am talking about the upper echelon.

We have commitments, I believe, from consumers. The manager has set out an organizational chart for me, so that I would be able to discuss this to some degree. We have, I believe, a consumer credit man available to the bank. We have a chief accountant now available to the bank and, remember, this is even before we get a charter.

We are not through the Senate, yet we have these commitments.

We have a president who is topnotch; we have a vice-president in charge of administration already. I am advised by the president that there should be no difficulty in getting an investments man, a money man, an international manager, personnel manager and so on. My management knows how to get these people. I do not. I am not intimate with the system.

**The Chairman:** Mr. Levinter, may I interrupt you for a moment? Do I understand you to say that the Inspector General, Mr. Scott, has met the person you contemplate to be either the president or the general manager? Is that right?

**Mr. Levinter:** Yes. I took the liberty of introducing him to Mr. Scott.

**The Chairman:** So it will be open to us, in our own right, to have the Inspector General come here and express a view. We have had him here once already, but I believe that was before he met this man.

**Mr. Levinter:** Yes, but the Inspector General was king enough to indicate that he would not discuss the identity of the individual.

**The Chairman:** Quite apart from disclosing it, if he is ready to say he has met this man, that he knows this man and that the business ability, the banking experience and training of this man is such that he can do a good job—with all due respect, that is even stronger than when you say it, because you are promoting this.

**Senator Cook:** What is the opinion of the proposed president on these regional and ethnic objectives? Have you discussed that with the proposed president, how far you are going to carry out the regional concept?

**Mr. Levinter:** I discussed the regional concept. The president is of the view that regional loyalty is a plus in obtaining deposits, in having people generally deal with the bank—consumer credit, commercial loans, deposits, various things of that sort. He considers it as a plus.

Perhaps I did give the wrong impression at the last hearing. I did not want to give the impression that all the deposits obtained in British Columbia were going to be available for British Columbia. This has to be worked out on a ratio, naturally; but the best banking practice must be considered. A ratio of the deposits obtained in British Columbia should be available for development there, a ratio of the deposits obtained in Nova Scotia should be available for development there; but one can never overlook the overall concept that it is one bank, and that this one bank must operate and be successful.

I am not suggesting, again on a regional concept, that if 40 per cent of the deposits are made in Nova Scotia, 40 per cent should be made available there; but if there is not as good a loan available in Nova Scotia, unfortunately it cannot go to Nova Scotia.

**Senator Hays:** You are not going to have much to do with this. This is your philosophy now, which might completely change when this gentleman, whose name you do not wish to disclose, takes over. Am I right in this?

**Mr. Levinter:** No, sir. Our views do not conflict. When I first met this gentleman I explained my views, and I am trying to get away from the word "ethnic", because I was tagged with that word by the *Financial Post* when the first notice was put in the *Canada Gazette*. The squib came in as soon as they heard that it was I who was promoting it and they called it an "ethnic" bank. I am trying to get away from that because I do not like the word. It is a cosmopolitan bank; it is a Canadian bank, and inasmuch as Canada is made up of a great number of ethnic groups, I suppose one could call it an ethnic bank. But I refer to it as a Canadian or a cosmopolitan bank. That is why I qualified what I said before. Because a man is an Italian, it will not guarantee his loan in any way. But I would like to have an Italian on that board who knows the needs of his community so that we can better serve and service his community. That is what I mean by a cosmopolitan bank. If a man is a bright young man and he may be Polish or he may be German or he may be Italian, but if he wants to come into the banking business, I would like to be able to say to him, "Young man, it does not matter whether you are white, blue, green or purple, you do the job and you will get somewhere some day." That is all I want.

**The Chairman:** After all, the word "ethnic" has a broad application; everybody is ethnic.

**Senator Hays:** But I go back to my original question. I think before we vote on it and consider it, we should know exactly the principals behind the bank, who they are and what they have done and what sort of confidence we can put in them, because, after all, this is what it is all about. To me the most important thing about the whole charter is the people behind it.

**Mr. Levinter:** Sir, the five provisional directors are behind it and I can tell you that they are: my father, Dr. LaSalle, a gentleman who is a Polish accountant by the name of Mr. Gutkowski, a gentleman by the name of Pianosi from Sudbury and myself. The board will certainly be enlarged because we want to have an excellent board.

**Senator Hays:** You are all nice-looking people and you look intelligent and bright, but I would just like to see it all down.

**The Chairman:** You want a chart?

**Senator Hays:** Yes.

**Mr. Levinter:** I gave this last week, sir.

**The Chairman:** No, you gave the history of the provisional directors from almost their original birthday down to date. But what we are talking about here, if I understand Senator Hays correctly, is a chart in relation to the personnel who would be the senior operating officials of the bank. Granted you will have to put Mr. X as president because you do not want to disclose his name, but what about the others?

**Mr. Levinter:** But, sir, these are all people in the banking institution.

**Senator Benidickson:** Mr. Chairman, we do not ask this normally if we are incorporating an insurance company which eventually has vast sums of money to administer. Often we are only shown a list of provisional directors.



**The Chairman:** Senator, this may be your view, but Senator Hays has asked the question and certainly it is relevant. If he asks it, it is relevant.

**Senator Benidickson:** But I should say it has not been a universal precedent or practice in this committee to ask, before a charter is granted, who the eventual directors are going to be. Maybe it is desirable and I am not objecting to the question.

**The Chairman:** What Senator Hays has asked, as I understand it, is who will be the senior personnel who will be operating the bank.

**Senator Benidickson:** If they are coming from important jobs in the present banking system and these applicants do not get their charter, in many instances it may be very embarrassing, even catastrophic, to those people and they will lose their jobs in the existing banking system.

**The Chairman:** Is that the answer Mr. Levinter makes?

**Mr. Levinter:** Oh, yes. I am equivocal and I cannot disclose their names.

**Senator Hays:** It seems to me that if you are granting a charter, it is reasonable to want to know whether it is going to be a success or a failure. I do not have all that much money to invest, but when I do I look at the management first to see if my money will be safe and if it is going to be used wisely.

**Mr. Levinter:** Before a dollar's worth of shares are sold, yes, the management will be disclosed, but we have to have our charter first. That is all I can say. The management, of course, is very important, but I would point out that Mr. Hall was not employed by the Bank of British Columbia and they did not have a president until they had been open for six months. I am sorry, sir, I cannot give you that. I can give you our organizational structure.

**Senator Benidickson:** The Inspector General would not let you operate unless there was a certain amount of capital paid up which he felt was sufficient to protect the public.

**The Chairman:** It does not read that way. It says:

When, at the time of the application for the approval of the Governor in Council, a sum of less than one-half of the authorized capital stock has been subscribed, the Governor in Council shall, when granting the approval, reduce the authorized capital stock to the largest multiple of one million dollars that is not greater than twice the amount so subscribed, Schedule A is thereupon amended accordingly . . .

When these people apply and indicate the quantity of capital they have subscribed, and the Inspector General compares that with what is authorized or stated to be the authorized capital, then if it does not bear a certain relationship, the authorized capital is reduced accordingly.

**Senator Benidickson:** Mr. Chairman, you are one of our best lawyers. I am glad you have quoted this from the Bank Act for us. That is really what I meant. The public is protected through investigations and inquiries subsequent to the issue of the charter by the Inspector General of Banks.

**Mr. Dwyer:** And the money is held in trust until such time as the licence is granted. So there is no way the provisional board can use these funds until such time.

**Senator Benidickson:** Does the cabinet itself have to come in after Parliament grants the charter?

**Mr. Levinter:** It is the Governor in Council.

**Senator Benidickson:** Yes, the same personnel.

**Senator Beaubien:** Mr. Chairman, I feel that the Senate's job is to look into the past histories of the provisional directors so that this committee can ensure that they are perfectly honest, respectable citizens, that they have very good histories in business, and so on and so forth. If we are satisfied with the investigation which has been made, I feel the Bank Act can look after the rest of it; but I feel that this is the Committee's real purpose.

**Senator Connolly:** The only thing that I would like to add to that, Senator Beaubien, is that we have asked that Mr. Dwyer, who did the investigation for this board, come here and give us an account of his investigation.

**The Chairman:** And he is here.

**Senator Connolly:** And of his own responsibility, he has said, "Yes, I am a financial consultant, and I think this is a valid proposition."

**The Chairman:** We asked the sponsors to bring in their financial representative to indicate the studies and projections he had made with regard to this matter. Is it the desire of the committee to hear the representative?

**Hon. Senators:** Yes.

**Senator Cook:** Who certifies the chartered analyst? Is it a degree from a university?

**Mr. Dwyer:** In the investment community there has been a professional designation for some time. Such an institute was started in the United States some years ago, and it was introduced into Canada in 1964. It involves having had a certain number of years' experience in other business and taking hours of courses and examinations over a three-year period.

It is the hope of the International Federation of Chartered Analysts that it will be accepted as a designation just as, say, a C.A. is. In the community this is the top analytical designation that a man can obtain.

**Senator Burchill:** If this gentleman meets all the requirements of the Bank Act, then I do not think that we need sit here any longer, and I move that the bill be passed.

**The Chairman:** The committee has already indicated that it would like to hear the auditor or the accountant.

**Senator Lang:** How long, on your projections, will this bank be in a loss position? Where is your turn-around point? How much of your capital is going to be eroded before you start making a profit?

**Mr. Levinter:** We have projected, in line with the Bank of British Columbia for the first three years. After the first three years we have no past precedent upon which to



draw. Therefore we can only set our goals for the fourth and fifth years based on management experience, taking into consideration the amount of capital raised and the base which will have been obtained after that first three-year period.

After taking into consideration an appropriation for losses of \$300,000, and after paying \$50,000 into a rest account, there should be a profit of \$12,177 in the first year. That is on earning assets as opposed to total assets. Total assets after the first year are anticipated at \$75 million.

**The Chairman:** What capital are you referring to?

**Mr. Levinter:** Twenty million dollars will be raised in the first instance. The earning assets of the bank, to come to that net profit, would be \$63 million. The earning assets are made up of treasury bills, securities, day call and short loans to investment dealers which are secured, loans which include business and personal, consumer credit, mortgages, and other currencies. That is the earning assets. For the second year, which follows right in line with the Bank of British Columbia, the net would be \$25,600; that is after an appropriation for losses of \$850,000; plus a further \$50,000 in the rest account. The net then of undivided profit would be \$25,600. In the third year, after an appropriation for losses of \$1 million and a further \$50,000 into the rest account, the profit would be \$34,409. In the fourth year, with appropriation for losses of \$1,500,000 and in the rest account \$225,000—

**Senator Benidickson:** Why does the "rest account" provision go up almost five times in that fourth year?

**Mr. Levinter:** As I understand it, this is a method putting away profit so that you are not taxed; you are building up the capitalization of the bank. At this point they thought \$225,000, and they would have a \$35,603 profit; that would be undivided profits.

**The Chairman:** Would this be a good place to interject? Perhaps Mr. Ryley could tell us on what basis you calculated the losses in each year.

**Mr. Patrick Ryley:** I think I should explain that these are the projections made by the proposed management of the bank. Our role is to review these, and really to try to determine whether they are based on reasonable assumptions, so that the appropriation for losses is the appropriation over and above, as you know, the actual losses that we expect to incur. When Mr. Levinter is quoting the balance of profits, I think most in the banking business feel the balance of revenue is more appropriately the profit of the bank. Of course, that is expressed before appropriation for losses and income taxes. I hope those remarks might clarify the position.

**Senator Molson:** That figure you say is expressed before appropriation for losses, but there is the appropriation to come in from the five-year experience, which would come on to administration and other charges up above.

**Mr. Ryley:** That is correct.

**Senator Molson:** So you are speaking about non-specific reserves.

**Mr. Ryley:** These are the appropriations for losses that banks make after this determination has been made, yes. It is a contingency appropriation.

**Senator Benidickson:** That has something to do with income tax?

**Mr. Ryley:** Not in its entirety, no.

**Senator Molson:** This is all done in accordance with the requirements of the Inspector General of Banks. That is what you are saying.

**The Chairman:** And the provisions of the Bank Act. Mr. Levinter, in making these calculations were there available the experiences of the Bank of British Columbia in those years, to see how it did in relation to its build-up?

**Mr. Levinter:** Yes, sir. As I say, for the first three years our projections and goals are the same as the Bank of British Columbia. What I have just indicated to you follows their pattern almost exactly, except in 1975, which is the third year, as I understand it, as of July 1, the Bank of British Columbia had \$162 million in assets. We anticipate having \$7½ million more in capital, which would mean that we would have \$167½ million, but by reason of our anticipated mix and our anticipated national character, instead of the \$162 million which the Bank of British Columbia had as of July 1, our total assets were \$180 million. This is \$10 million more after the third year than the Bank of British Columbia. That is a projection of \$10 million more than the Bank of British Columbia.

**Senator Benidickson:** Although you propose to start with 50 per cent more capital than the Bank of British Columbia eventually started with?

**Mr. Levinter:** Yes, but we have tried to be conservative to the nth degree in making these projections, because we want to set goals for management which are good goals. We do not want to set impossible goals. Moreover, the goals we set must be credible. So this is what management has taken into consideration. We have kept lower limits all the way down. For example, I understand that in the accumulated appropriations for losses basically they put 25 per cent more than the average banks do.

I heard a comment that you are allowed the five-year experience; but in fact we have no experience. So as a percentage of total expenses we have taken 25 per cent more, again just to be conservative all the way down the line.

**The Chairman:** Mr. Levinter, suppose you do not get the \$20 million of authorized capital, have you looked at this on the basis of other amounts—for instance, \$10 million?

**Mr. Levinter:** Yes, sir.

**The Chairman:** Would you throw up a profit figure in each year with \$10 million?

**Mr. Levinter:** In view of the fact that I am advised by management that our first two years fall right in line with the Bank of British Columbia, regardless of the fact that we have more capital, and we still show a profit of \$12,177, I would say, yes. I would say that with \$10 million, of course, the bank is feasible. It is not as comfortable as I

should like to have had, because with the \$20 million you can get off that much more quickly. If we were to get only \$10 million, we would not put in as many branches. You cut your cloth to suit your pocketbook.

**The Chairman:** Have you set an objective of an amount that you must have subscribed before you would apply for your charter? You realize that under the Bank Act you may start with a minimum capital of \$1 million. Have you set any amount below which you would not pursue the matter? If you got \$1 million subscribed, would that mean that you would go ahead?

**Mr. Levinter:** No, sir. In my view it would be utterly impractical with \$1 million. I would think that the break-away point would be higher than that. However, again in view of the investigations that were made there was not great consideration given to this. We considered that if we had \$12 12 million there would be no problem. At \$10 million I do not think there are any problems, but if we got below \$10 million it would certainly have to be considered very, very carefully. This, again, would depend on what management advised us, what our financial consultants advised us, what our accountants advised us. If it were below \$10 million and they in their wisdom considered that it would not be feasible, then we would have to accept their advice. That is all.

**Senator Hays:** Mr. Chairman, perhaps we could get Mr. Scott, the Inspector General of Banks, to answer the question that I asked.

**The Chairman:** Certainly, Senator Hays, but first I believe Senator Lang has a supplementary on this same point.

**Senator Lang:** Thank you, Mr. Chairman. Mr. Levinter, do you use the Bank of British Columbia experience to make your assumptions as to your rate of intake of deposits?

**Mr. Levinter:** Yes, sir, except that in our fifth year again in considering prognostications we use the general industry average. I can say that in using the general industry average, the percentage of deposits of total capital is 54.9 per cent. That is personal savings. At the end of five years we considered only 40 per cent of our total assets being personal savings. There were two reasons. The first was that we have to build up our deposits to the general industry average as experienced for many years. Secondly, management has indicated to us that personal savings deposits, in their opinion, as the years go by will form less and less of the total assets of banks. This is because of the general public's present knowledge of the value and interest rates which they can obtain on, for example, certificates. The general public is becoming more and more aware of the fact that it is not a very profitable proposition to keep money in personal savings in banks. Therefore, management is of the view that the trend will decline in this regard. Therefore, again in an effort to be conservative, while the industry average was 54.9 per cent in 1969, after we have been in operation for five years we believe we will have only 40 per cent of our assets in this category.

**Senator Hays:** Mr. Scott, in discussing the United Bank of Canada with the principal who are here today, are you

satisfied with all the investigations you have carried out to this point in so far as personnel and that sort of thing are concerned?

**Mr. W. E. Scott, Inspector General of Banks:** At this point, Senator Hays, it is difficult and unusual to be able to carry out a full investigation; all the plans are tentative. After the act is passed, if it is, there will presumably be a period in which these people can, as they have indicated, make firm engagements and firm up their plans. There will be an opportunity later, when they apply for their certificate, to obtain a much better picture of the situation than is possible for any group applying for a charter at this point.

**Senator Hays:** If at that point in your investigation you are not satisfied, then the deal is off?

**Mr. Scott:** I do not have that power in my hands; I can only recommend to my minister.

**Senator Benidickson:** Do you recommend to the Governor in Council?

**The Chairman:** It is the Governor in Council who issues the certificate.

**Senator Hays:** On the recommendation of the minister, I suppose.

**Mr. Scott:** Yes.

**The Chairman:** Yes. Do you feel that you have authority under the Bank Act to carry out these investigations after a charter has been issued and before a certificate has been issued, or are you studying what money they have collected and what their authorized capital is in order to recommend to your minister on that basis?

**Mr. Scott:** It is usual, sir, to be in touch with the management of all new banks in that period, following the plans quite closely. Therefore one would hope to have a reasonable picture of their ability to do what they are planning by the time they ask for the certificate to open their doors.

**The Chairman:** I just wonder what authority you have to do that.

**Mr. Scott:** To keep in touch with them?

**The Chairman:** Yes?

**Mr. Scott:** I think the authority is in the act to require information, if necessary.

**Senator Benidickson:** Assuming that a charter is granted, Mr. Scott, then between that time and your recommendation to the minister, and also from the point of your recommendation to the minister to the point of a granting a certificate from the Governor in Council, what control is there over the funds that have been put forward by investors in the capital of this bank?

**Mr. Scott:** In a sense they are trust funds in the hands of the provisional directors.

**Senator Benidickson:** Would you periodically look and see if that trust fund is there intact?

**Mr. Scott:** It can be done, yes, but they would have no authority to make loans or accept deposits.



**Senator Benidickson:** It would be an illegal act if they encroached on that capital before the certificate was issued?

**The Chairman:** It would be illegal for them to do anything of a banking nature before they had their licence.

Any other questions?

**Senator Benidickson:** What if they pay organizational expenses out of the funds?

**Mr. Scott:** They may incur a liability for these expenses, but they are quite limited under the act with respect to the extent that they can pay them.

**The Chairman:** Are there any other questions you wish to ask Mr. Scott?

**Senator Lang:** Are the powers vested in either you or the minister under the Bank Act with respect to the operation of a bank comparable to those under the Trust Companies Act? Can you put in a comptroller or supervisor, if you wish, and operate it yourself, if necessary?

**Mr. Scott:** Within quite wide limits. The management of banks, like the management of trust companies, is responsible—

**Senator Lang:** Yes, I know that, but there are great powers conferred under the Trust Companies Act. I am just wondering if there are comparable powers conferred under the Bank Act.

**Mr. Scott:** Under the Bank Act the minister's power to put in a curator is limited to the circumstances under which he deemed the bank to have become insolvent. There is no authority for him to step into management before that situation is reached. He can express views, but he cannot act.

**The Chairman:** Are there any other questions?

**Senator Hays:** Mr. Scott, you really do not make a thorough investigation until after the charter has been issued, is that right? Your responsibility starts at that point, does it, or do you examine the principals before that point?

**Mr. Scott:** I believe the statutory responsibility that is laid down in the act does not start until after they have received the certificate, but, as a matter of practice, the Inspector General of Banks has been the official on whom the minister relies to keep in touch with the progress of things in the bank before the certificate is issued.

**Senator Hays:** Before the charter is granted?

**Mr. Scott:** Before and after the certificate is granted.

**Senator Hays:** Then you do look at those who may be applying for a charter at this point?

**Mr. Scott:** I would assume that would be one of the things.

**Senator Hays:** Have you done this?

**Mr. Scott:** I do not believe I know more about these people than has been stated in this committee.

**The Chairman:** It has been said that you have talked to the person who may be the head of this bank. Is that right?

**Mr. Scott:** Yes.

**The Chairman:** And without asking you to disclose his name, is he a man of banking experience and ability and integrity?

**Mr. Scott:** I have no reason to doubt that.

**Senator Cook:** Would it be fair to say that your department would pay particular attention to a bank in its formative years, more so than you would to a well established bank?

**Mr. Scott:** Yes.

**The Chairman:** Are there any other questions? Are you ready for the motion? Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** The committee meets again tomorrow morning at 9.30, at which time we will discuss the tax bill.

The committee adjourned.





THIRD SESSION—TWENTY-EIGHTH PARLIAMENT  
1970-71

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 38

TUESDAY, OCTOBER 5, 1971

WEDNESDAY, OCTOBER 6, 1971

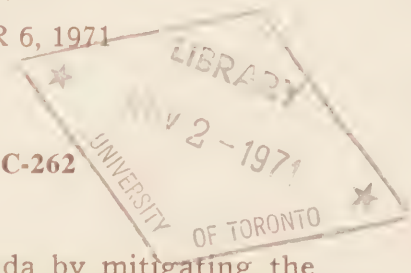
Complete Proceedings on Bill C-262

intituled:

“An Act to support employment in Canada by mitigating the disruptive effect on Canadian industry of the imposition of foreign import surtaxes or other actions of a like effect”

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Orders of Reference

Extract from the Minutes of Proceedings of the Senate,  
October 5, 1971.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Forsey, seconded by the Honourable Senator Lafond, for the second reading of the Bill C-262, intituled: "An Act to support employment in Canada by mitigating the disruptive effect on Canadian industry of the imposition of foreign import surtaxes or other actions of a like effect".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Forsey moved, seconded by the Honourable Senator Heath, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Tuesday, October 5, 1971  
(42)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 8:00 p.m. to consider the following Bill:

Bill C-262, "An Act to support employment in Canada by mitigating the disruptive effect on Canadian industry of the imposition of foreign import surtaxes or other actions of a like effect".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Burchill, Gelinas, Grosart, Isnor, Molson, Smith, Sullivan, Walker and Welch—(13).

*Present, but not of the Committee:* The Honourable Senators Forsey, Heath, McNamara and Molgat—(4).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Director of Committees, Assistant Law Clerk and Parliamentary Counsel.

## WITNESSES:

### *Department of Industry, Trade and Commerce:*

The Honourable J.L. Pepin, Minister;

Mr. L.F. Drahotsky, General Director, Office of Industrial Policy Advisor;

Mr. R.E. Latimer, General Director, Office of Area Relations.

Amendments to Clause 6(1) and Clause 7(2) and the possibility of inserting a review procedure in the Bill was discussed.

At 10:00 p.m. the Committee adjourned to the call of the Chairman.

Wednesday, October 6, 1971.

(44)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 11:20 a.m. to further consider:

Bill C-262, "Employment Support Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Gelinas, Giguere, Haig, Hays, Isnor, Lang, Molson, Smith, Sullivan, Walker and Welch—(21).

*Present, but not of the Committee:* The Honourable Senators Heath and Laird—(2).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Pierre Godbout, Director of Committees, Assistant Law Clerk and Parliamentary Counsel.

## WITNESSES:

### *Department of Industry, Trade and Commerce:*

The Honourable J.L. Pepin, Minister;

Mr. L.F. Drahotsky, General Director, Office of Industrial Policy Advisor.

Upon motion it was Resolved that Clause 6(2) be amended, Clause 7 be amended by adding thereto a new sub-clause (3) and that amendments be made to Clause 21.

*NOTE:* The full text of the amendments appears by reference to Report of the Committee immediately following these Minutes.

Upon motion it was Resolved to report the said Bill as amended.

At 12:20 p.m. the Committee adjourned until 3:00 p.m. this day.

## ATTEST:

Frank A. Jackson  
*Clerk of the Committee.*

# Report of the Committee

Wednesday, October 6, 1971.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-262, intituled: "An Act to support employment in Canada by mitigating the disruptive effect on Canadian industry of the imposition of foreign import surtaxes or other actions of a like effect", has in obedience to the order of reference of October 5, 1971, examined the said Bill and now reports the same with the following amendments:

1. *Page 3*: Strike out subclause (2) of clause 6 and substitute therefor the following:

"(2) Not more than two-thirds of the members of the Board at any time may be members of the Public Service within the meaning of the *Public Service Employment Act* but a vacancy occurring in the membership of the Board that has the effect of temporarily reducing the number of members of the Board who are not members of the Public Service below one-third of the members of the Board does not invalidate the constitution of the Board or impair the right of the members to act if the number of members is not less than a quorum."

2. *Page 3*: Immediately after subclause (2) of clause 7, add the following as new subclause (3):

"(3) The Chairman shall preside at any sittings of the Board at which he is present and shall designate one of the other members to preside at any sittings of the Board at which he is not present."

3. *Page 8, clause 21*: In lines 9 and 11 strike out the words "fiscal year" and substitute therefor the words "annual quarter".

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Tuesday, October 5, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-262, to support employment in Canada by mitigating the disruptive effect on Canadian industry of the imposition of foreign import surtaxes or other actions of a like effect, met this day at 8 p.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have one bill for consideration this evening, Bill C-262.

We have with us the Minister of Industry, Trade and Commerce, the Honourable Jean-Luc Pepin; Mr. L. F. Drahotsky, General Director, Office of Industrial Policy Advisor, and Mr. R. E. Latimer, General Director, Office of Area Relations.

Following our usual practice, I think we should first ask the Minister to make a statement.

**Honourable Jean-Luc Pepin, Minister of Industry, Trade and Commerce:** Mr. Chairman and honourable senators, my statement will be rather short, Senator Forsey having done a remarkable job in introducing the bill, a bill which is slightly complicated and is introduced in, I will admit, rather complex circumstances. I am sure that all honourable senators have read the bill, that they have listened to those who spoke in the debate, that they have read the debates in the other place and, no doubt, the reports of the committee of the other place which considered the bill.

If I were to introduce it now very rapidly I would simply remind honourable senators of the permanent character of the bill itself, which character Senator Forsey emphasized extremely well. I would also remind honourable senators that even if the bill is of a permanent nature, it is not temporary application, to deal with the current crisis. As soon as the surcharge disappears, obviously the bill will no longer apply.

I would emphasize that its purpose is to maintain employment. In view of some of the things that have been said, I would point out that it applies equally to all parts of Canada. It may very well be that because of the concentration of industry in Ontario and Quebec the actual benefits will be higher, on a provincial basis, in Quebec and Ontario than they would be in, for example, Western Canada.

However, I can assure you that when the provincial ministers of industry and commerce attended a meeting that I called for the purpose of discussing the U.S. surcharge they were very keen to see this bill apply in their respective provinces. Despite, what might seem to an

Ontarian, its rather small size, the benefits of this bill to, for example, Prince Edward Island, will be very important in Prince Edward Island terms. I think one has to bear all these things in mind. The effects in Prince Edward Island, though immensely smaller in dollars than the effects in Ontario, will be quite large, for Prince Edward Island. All the provinces were most interested in seeing this bill passed. Mr. Evans from Manitoba, for example, expressed dissatisfaction with some aspects of the bill, but he has not called for their non-application in Manitoba; you may be sure of that.

I repeat that it is not a profit maintenance measure. If there is no likelihood of significant export dislocation at a plant, assistance will not be provided simply for the purpose of making up the reduced profitability of a company on account of the import surcharge. The profits of a company is not the preoccupation of this bill.

Senator Forsey emphasized, as both I and my Parliamentary Secretary did, that this is not an export subsidy measure. A company receiving assistance is not obliged to maintain its level of exports for the purpose of this program. It does not matter where the products are sold, whether abroad or in Canada. In the other place I indicated that there were six or seven possibilities opened to a company receiving assistance under this bill. A company can use the money to effect a change of products. A company can simply add to inventories. A company can develop markets elsewhere. A company can do a number of things.

**Senator Forsey:** Faire de la peinture.

**Hon. Mr. Pepin:** Faire de la peinture si elle le préfère.

**The Chairman:** On that point, Mr. Minister, the purpose of the bill is to maintain employment, but if a company is going to change various products, it will have to spend money to do so. The money that it will spend will have to be its own money, because the only maintenance it gets out of this fund is the grant to maintain employment.

**Hon. Mr. Pepin:** I will come back to that in a moment. Senator Manning was emphasizing the difficulties of implementing this bill. Some of us have thought of that, too. It is not news. I will come to that in a moment, if you do not mind. Let me try to finish first the few ideas I wish to express.

Obviously, as Senator Forsey also said, this will not solve all the problems faced by Canadian industry in general—not even the problems arising out of the wide-ranging economic measures recently announced by the United States. Senator Forsey emphasized the word “mitigate”—in good English and in good French, too, “mitiger”.

Already damage is being created, particularly in terms of the uncertainty which exists in Canada-United States trade relations, because of these U.S. measures. A number of companies are possibly not pushing as hard their exports to the United States as they would have otherwise. A number of people in the United States may very well feel that this is a great message to them, from high above, that a new psychology has to be implemented. So, damage is actually being done. The only thing the bill can do is try to limit the damage done to employment in Canada.

**Senator Isnor:** Should it not be the other way, that they should be putting a special effort into it?

**Hon. Mr. Pepin:** Yes, but when you do not think that the benefits will be as high as they have been in the past, or were expected to be, it is human for people to tone down a bit on the efforts they were making.

**Senator Walker:** I missed what you said. I understood you to say "when the surtax was withdrawn". What effect will that have? You said something about that earlier.

**Hon. Mr. Pepin:** As the bill concerns the surtax, when the surtax is withdrawn the implementation of the bill will stop.

**Senator Walker:** Yes.

**Hon. Mr. Pepin:** I cannot tell you that implementation will stop on the very hour the surcharge is removed because there probably will be a cleaning up job to do, but that is the general idea. If a similar bill is to be invoked again, the Government will have to demonstrate that there is another crisis, that there are circumstances similar to this, as indicated in the long title of the bill.

**The Chairman:** And most likely provide money.

**Hon. Mr. Pepin:** Yes. I presume that on that occasion it would be done, as the bill exists, by special estimates.

**Senator Walker:** Would it be by order in council or would you have to go to Parliament?

**The Chairman:** I am not sure. Would you develop that, Mr. Minister? I am not sure whether it can be done by estimates, because the bill statutorily limits the amount to \$80 million and limits it to 1971-72.

**Hon. Mr. Pepin:** The difficulty we had here was perhaps to pass this as general legislation and not mention money and go for supplementary Estimates to get the money. We thought that it would be more democratic to put that particular amount of money needed for the next six months in the bill, with the clear understanding that when that period of time is over, or even if not enough money is being provided by this bill, the Government would have to go the supplementary Estimates way to get more money.

**Senator Walker:** You would have to go before Parliament for more?

**Hon. Mr. Pepin:** Yes.

**The Chairman:** There is a question we can settle at that time, whether you can go by way of Estimates at that time, where there is a statutory limit in the bill; but that is not the subject-matter tonight.

**Senator Benidickson:** No, but the Government Leader referred to a ruling in the other place, in the House of Commons last year, about limiting the power of legislation by limiting the amount which can be voted. I have not checked to find out what he meant by that, but that is what he said.

**Hon. Mr. Pepin:** Senator Benidickson, this bill will obviously be used in very extraordinary circumstances. As you cannot anticipate extraordinary circumstances as you do for ordinary circumstances, for which you anticipate in departmental budgets, obviously you must have a supplementary Estimate to cover these extraordinary, abnormal situations.

**Senator Forsey:** That is what I suggested, in answer to a question by the Leader of the Opposition in the Senate; and the Leader of the Government said that on account of this ruling last year in the House of Commons, that I was not aware of, it would not be possible to proceed by way of putting something in the Estimates, and I was rather surprised.

**Hon. Mr. Pepin:** If the chairman is right in what he has just said, or in what he has said as being a possibility—which is, if it is true that the Government cannot vote extra money for the period of time which is covered by the bill, then obviously we would have to come back to Parliament to get extra money—

**Senator Walker:** You would just amend the act. In the case of the National Housing Act—I was the minister responsible for several years—if we wanted more money, we amended the act and increased the amount.

**The Chairman:** I only interjected the question when the minister said that this was permanent legislation. Parliament retains control by virtue of the fact that they may have to come back for money from time to time—and that is a good feature.

**Senator Benidickson:** Even within the current year.

**The Chairman:** Yes, and that is a good feature.

**Senator Benidickson:** Yes.

**Hon. Mr. Pepin:** I would have thought that, even for the six months coming, even with the amount of money allocated to it by the bill, if things should turn worse than we have anticipated, and the possibility of getting more money through supplementary Estimates was still open, it would be done in that way—but if I am not right, we will do what the law says, obviously.

**Senator Walker:** It is a question of the way to do it and that is not our task now.

**Hon. Mr. Pepin:** I do not want to state again what the three eligibility criteria are. You remember these.

**Senator Benidickson:** No. That was referred to. Someone said in our debates that you recited in committee, for the House of Commons, that there were three basic principles, but they are not stated in the bill. Can you put them on record here?

**Hon. Mr. Pepin:** I will read them. The first criterion for eligibility is that the surtax has caused or is likely to cause



a significant reduction in employment at the plant. The word "significant" there is the important word. As I said in the House, and it was repeated here, the size of the plant has no relevance. What is "significant" in a plant employing ten people may be one or two; and what is "significant" in a plant employing a thousand people may be fifty less or more. We have given a lot of discretion to the board in these matters, because it is not always easy to define these things. I will come back to the discretionary aspect of the bill, if you wish, later on.

The second criterion for eligibility is that no less than 20 per cent of the plant's 1970 output must have been exported to the country imposing the surtax and was of a class that would now be subject to the surtax. As was explained, section 15 of the bill foresees the possibility that exceptions might be made, even to that 20 per cent rule or to the other criteria.

**The Chairman:** Where is the 70 per cent provided? Is that by regulation?

**Hon. Mr. Pepin:** The 20 per cent is in the regulations. We have to establish a difference here between what is in the bill and what is in the regulations. We tried to put as much in the bill as could be covered by the bill; but this 20 per cent basis is bound to change from one situation to the other, so we kept that for the regulations.

**Senator Aird:** You think that 15 gives you sufficient flexibility?

**Hon. Mr. Pepin:** 20 per cent.

**Senator Aird:** No. Section 15 of the bill?

**Hon. Mr. Pepin:** Yes. As matter of fact, some people have said this gave the board and the Government too much flexibility. What we are saying is that there may be hardship cases. There may be a company exporting 15 or 18 per cent in Cornwall, or in some place where unemployment is very high, and in these circumstances we wanted to keep the possibility of intervening, to help it maintain employment.

**Senator Walker:** You are going to be swamped with applications, are you not?

**Hon. Mr. Pepin:** We expect over a thousand. Mr. Drahtsky and his group have a list of all the companies that would be or could be eligible. They have tried to bring it down to what is expected. It would be 1,300 in the first 90-day period, so Mr. Drahtsky tells me.

**Senator Isnor:** What is that 1,300 based on—previous business?

**Hon. Mr. Pepin:** On a survey that we conducted in the first few days following the announcement of the surcharge.

**Senator Isnor:** Is it on the basis of the previous business?

**Hon. Mr. Pepin:** Yes, on the 1970 performance. Mr. Drahtsky may explain, if you are curious, the "base period" and to the "assistance period". It is a bit complicated and I would prefer not to try it.

**The Chairman:** Mr. Minister, may I interject a question here? It appears to me that, the object of this bill being to maintain employment, if employment is reduced because the product no longer finds a market in the United States by reason of the surcharge, that means that those people who worked on the production of that product would have no work to do, because the company obviously would not go on manufacturing a product, if they had no market. Then the grant is supposed to maintain those people in employment.

**Hon. Mr. Pepin:** Yes.

**The Chairman:** Does it determine in what kind of employment?

**Hon. Mr. Pepin:** No. That is exactly the flexibility which is given to the employer.

**The Chairman:** But there are limits to the way you can shift employees, as I understand it, in these days of unions.

**Hon. Mr. Pepin:** Yes.

**The Chairman:** There is a limit to where you can direct employees to work.

**Hon. Mr. Pepin:** This point was raised in the House by the member from Kent, if I remember correctly, and my answer was that these being extraordinary circumstances, I would hope and expect that unions and employers alike would show a bit of flexibility. I suggest that this will be done.

The only case where a company will be allowed to benefit, notwithstanding the fact that the company would not maintain employment at the level of previous times, is when something rather extraordinary takes place and when the board may be asked to fix a level. I presume you are aware of the possibility of circumstances that we anticipate, such as, for example, there being a fire in a plant and only half the plant being in production as a result. Obviously, in such circumstances, you would not want to keep the company at the level of employment it had before. If the company is going through a rationalization or a modernization program, and if under this rationalization program, they need only 75 per cent of the level of employment they had previously, then in such circumstances the board has the power to fix the level at which employment must be maintained. That is, again, common sense.

**The Chairman:** I am sorry to interject, but I was looking at section 12. Section 12 provides for the amount of the grant, and it would appear that the measuring stick provided there is the amount which in the opinion of the board would be adequate to maintain employment by the manufacturer throughout the prescribed assistance period at such levels as those prescribed or specified by the board, as the case may be.

It says, "maintain employment by the manufacturer". So that would appear to me at the moment to limit the direction of the expenditure of this money and the employment to the manufacturing operations of the company at that time.



**Hon. Mr. Pepin:** That is taken in a very broad sense. The company, as I said, can do a number of things. The company can produce for the domestic market or for markets other than the US market. The company can stockpile. It can develop new products. It can paint its sheds. It can do all kinds of things.

**The Chairman:** I am not sure about painting the sheds or raking the leaves. You might run into trouble with the unions in that regard. As to stockpiling, well, that may be, but, if we are going to get into that issue, the stockpiling should be considered by the Government.

**Hon. Mr. Pepin:** Well, we still hope, and have some reason to hope, that the surcharge will be temporary. Consequently, this is not a uranium type of operation, if you know what I mean.

**The Chairman:** I know that. I am trying to figure out how you can suggest that the company should carry on manufacturing a product with the grant and maintain its employment when it would be necessary to stockpile because there is no market.

**Hon. Mr. Pepin:** If they do not consider that this is a good thing to do, then they will do something else. One has to round corners a little bit at the moment, I feel.

**The Chairman:** Except that we are spending a lot of money.

**Hon. Mr. Pepin:** Yes. You bring up the point of the behaviour of unions and I must bring up the point of the behaviour of employers. It is necessary to be intelligent. We had a good demonstration of that here from Senator Blois the other day. There was a good Canadian reaction. He said quite openly that he thought that his company could have had other ways and means to cope with the surcharge than the use of Bill C-262. So much the better, in my opinion. When I read that I applauded. I was the only plum in the room!

**The Chairman:** That is the old stalwartism that we like.

**Hon. Mr. Pepin:** Now, Mr. Chairman, if I may finish my remarks, I will be open to questions.

I have read most of what has been said in the Senate, and I notice that the point was raised that the administration of this bill would be very difficult. That point of view implied that the Government was passing the buck by throwing this to a bureaucratic board, if I remember well.

**Senator Benidickson:** With no appeal, apparently.

**Hon. Mr. Pepin:** I will come back to that particular point in a minute, if you do not mind, but my answer to the other part is that we are not passing the buck at all. We are passing a bill! Also, we have regulations attached to that bill, and the board is probably less bureaucratic than most boards. It is less, because there is an input from the outside of three members to that seven member board.

**Senator Forsey:** It could be more.

**Senator Benidickson:** Where do you find that? As I read the section, and this bothers me, there will not be any more

than four technocrats or bureaucrats; the only mandatory thing there is to put on the board one outsider as chairman. You could omit having two of the three outsiders, in other words.

**Hon. Mr. Pepin:** I could clarify that simply by saying that we are going to have three outsiders and four officials to start with.

**Senator Benidickson:** But it is not mandatory. It is simply your pledge.

**Hon. Mr. Pepin:** That is what we intend to do.

**Senator Benidickson:** I would hope you would utilize the full powers here and have at least three outsiders so that we would not run into the kind of criticism that President Nixon is receiving in the United States with respect to certain aids to industry in the emergency which labour says is not benefitting them. I would hope that labour would be represented on your board.

**Senator Forsey:** I was going to raise that very point.

**Hon. Mr. Pepin:** Bill C-262 is a typical Canadian compromise; it has some officials and some outsiders. The chairman will be an outsider. The Government has experimented in the past with this mix. We have the GAAP program, which is run that way, and it has been running well. So we are doing the same thing now. I repeat that the chairman would be the outsider.

**Senator Benidickson:** Am I not correct in saying that if this bill is passed you would be obliged by the law to appoint only one outsider, who would be the chairman. He would be the only one you would be obliged to appoint.

**Hon. Mr. Pepin:** I am afraid I had not really concentrated on this fine point, a point which Senator Forsey raised in his introduction. Concentrating on what I was trying to do, which was to get three outsiders and four officials, I did not find time to dedicate to this particular, very sophisticated point. But Mr. Drahotsky might have something further to say on that.

**Mr. L. F. Drahotsky, General Director, Office of Industrial Policy Advisor, Department of Industry, Trade and Commerce:** Mr. Chairman, the way I read the bill there will have to be three outsiders in the seven member board.

**Senator Benidickson:** Where does it say that there has to be . It only says that the chairman must be from the outside.

**Mr. Drahotsky:** I am sorry, sir, but it also says that not more than four members may be members of the Public Service.

**Senator Benidickson:** My point is that it could be five. The chairman, who must be an outsider, and four bureaucrats. That still is within the bill.

**Hon. Mr. Pepin:** You may have a good point, but what I am saying is that I am trying to get three outsiders, one of whom will be the chairman. So that is the way it is going to look.

**Senator Burchill:** There is another point. It says that there is to be a quorum of three. Would that mean that the three bureaucrats could meet without anybody from outside?

**The Chairman:** You would have to assume that notice would be given. I cannot imagine a meeting being held without notice. No, we must assume that.

**Hon. Mr. Pepin:** The point raised is a good one. We have seven members on that board and the quorum is three.

**Senator Benidickson:** You do not have to have seven.

**Hon. Mr. Pepin:** I am talking facts, not legislation. You may suppose that we will have seven, because that is our intention. It may be that the three who are going to meet at a particular moment at seven o'clock on a Wednesday morning will be three officials, because they will be the only ones available at that particular moment.

**Senator Aird:** Mr. Chairman, I think it would meet the point raised by Senator Benidickson and be in line with the Department's thinking if the words "not more than" were changed to "at least".

**Senator Benidickson:** That is what I had in mind. In addition, in section 6, subsection (3) I was proposing to put in an amendment. That subsection now reads:

The Chairman of the Board shall be appointed by the Governor in Council from among those members of the Board who are not members of the Public Service.

Now that refers to the Chairman, but I do not see anything that would make it obligatory for you to appoint three members, at least, who are not members of the public service. Therefore I was going to propose that subsection 3 of section 6 should be amended to read that the Chairman of the board and at least two other members shall be appointed from those who are not members of the public service.

**The Chairman:** Well, Senator Benidickson, in subsection 2, it says that not more than four members of the Board may be members of the public service. Obviously one would then assume that the other members would not be members of the public service, and one of them would be the Chairman.

**Senator Beaubien:** But he only has to appoint five in all.

**The Chairman:** No, seven.

**Senator Benidickson:** Not more than seven.

**The Chairman:** That's right.

**Senator Aird:** I think, Mr. Chairman, it would meet the situation if you were to change the words in subsection 2 which now read "not more than four members . . ." to, "at least . . .".

**The Chairman:** That would remove all difficulty.

**Senator Beaubien:** Why not just say seven and be done with it.

**Senator Benidickson:** I have had a suggestion from Senator Forsey, speaking on behalf of you, Mr. Minister, that

you are going to have a flood of applications, as you have indicated tonight,—1,300 in 90 days. I also think it was Senator Forsey who suggested during the debate that the board may have to divide itself into panels. Therefore I see no objection to the words "at least" because you may find that you will need more than seven to constitute three panels rather than two. If you are to deal with 1,300 applications, I would not want to restrict you to seven.

**The Chairman:** Well, Senator Benidickson, the point you raise would be dealt with if instead of the words "not more" in section 6, subsection 1 there were substituted "at least seven . . .".

**Senator Benidickson:** I would be satisfied with that.

**Senator Forsey:** I should like to raise another point, Mr. Chairman. Quite a number of remarks have been made by you and by others about possible difficulties with unions. I might remark parenthetically that unfortunately not all workers are organized. I should like to ask the Minister first of all whether in view of the fact that there might well be difficulties with unions in some cases and in view of the importance of this whole matter to organized labour, the Government is considering appointing competent and experienced labour representatives on this board? It seems to me to be highly desirable to do so if such persons can be found, and I am inclined to think that it is not impossible to find them.

**Hon. Mr. Pepin:** Well, we have three questions in front of us now and I want to be sure we remember them. I am talking now about the difficulty of administration. We are also talking about the composition of the board and Senator Forsey is asking me if one of the members will be appointed from labour.

On the last question, we are trying to do that. Fortunately or unfortunately I am also trying to get a good distribution by region and whatnot in the composition of the three outside members of the board. To be absolutely frank, one of the "labour" names I have clashes with another name I have for the same region. So I shall see Senator Forsey afterwards to find out if he has any names to suggest to me, and if anybody has some names to suggest, I shall gladly consider them. The former "Liberal-Labour" member or the House of Commons from Kenora-Rainy River may have some ideas on that subject.

**Senator Benidickson:** I pointed out the criticism that President Nixon is getting about his August 15 statement from labour who feel that his legislation provides hand-outs, as this does, to industry but that that does not necessarily flow through to labour.

**Hon. Mr. Pepin:** I am very much aware of it, and I have a Minister of Labour who reminds me of it every day.

We were talking about the composition. Do you want to come back to that later?

**Senator Benidickson:** No, but I should like your comments on Senator Aird's suggestion in due course.

**Hon. Mr. Pepin:** Can we leave it then in suspended animation and come back to it?



I was talking about the difficulties and I recognize that there will be some. I have also implied that every board in the country be it at the provincial or the federal level, has all kinds of difficulties. I just wanted to tell Senator Manning that I am quite sure that the National Energy Board and the Alberta Energy Board when they have to decide what is surplus to Canadian needs in gas or oil, also have some difficulties. So I take it for granted that this board is going to have a rather difficult task and will have to carry it out in a relatively short period of time. The only way we can solve this is by appointing good people and paying them adequately so that they will stay with us for the duration which I would hope would be very short. I want to make it clear that I have taken note of the remarks made on the difficulties of administering this bill.

Remarks have been made also on the good relations that we should maintain with the United States. This is a question of judgment, is it not?

**Senator Grosart:** Mr. Chairman, before we leave the particular issue we were discussing, I should like to draw attention to subclause (2) of clause 7. It says:

(2) Three members of the Board constitute a quorum.

In the discussions on the bill, it has been pointed out that the board may sit in two parts. Presumably this means that as long as there are three members of the board available, the board could sit contemporaneously in two parts. This raises the question as to whether the chairman of each board or each panel would be somebody other than a member of the Public Service of Canada. We are discussing a bill where two-thirds of what the Minister described as the basic criteria are in the regulations and not in the bill itself.

**The Chairman:** Senator Grosart, in connection with the point that you have raised, Senator Forsey has suggested that due to the number of applications the board may find it necessary to divide itself. There is nothing in the bill to indicate that it will sit in panels.

**Senator Grosart:** No, Mr. Chairman, but if I may speak to my point, the Minister said that this may happen, and his parliamentary secretary who piloted the bill through the committee stage said it would happen.

**Senator Forsey:** It was not original on my part.

**Hon. Mr. Pepin:** You are absolutely right.

**Senator Grosart:** This is the way the committee would function, and I am now raising the point as to whether with the committee sitting in two parts it could have three members of the public service and no member who is not a member of the public service as a chairman of one of the sections of the board. This to me is very important.

**Hon. Mr. Pepin:** The answer is that the Department at this time with the knowledge they have of industry and the knowledge of the number of cases that might come up feel that a board of seven members is sufficient, but that the board, however, might have to sit in panels for a short period of time. We have left it to the chairman, who is going to be an outsider, as everybody knows, to decide on who should chair the other panel.

**The Chairman:** There is nothing in the bill on that.

**Hon. Mr. Pepin:** There is nothing in the bill on that.

**Senator Grosart:** You may have left it to the chairman, but the chairman does not have authority under the bill.

**The Chairman:** Senator Grosart, a very simple change in the bill could accomplish that. You could provide that the chairman of the board shall preside at meetings of the board, or a member of the board designated by him.

**Senator Grosart:** I quite agree. I am not saying that this is not a situation that requires other than a minor change, but that that change ought to be made.

**Hon. Mr. Pepin:** Let us keep this in suspension again because I am not a legal expert; I am one of those non-practising lawyers. I will see if we can obtain a good answer to the question you raised, senator.

**Senator Grosart:** Mr. Minister, I seem to be raising more than one point in connection with the viability of the bill. I would like to say that I am fully aware of the problems in drafting the bill due to the urgency of the situation, and anything I say is not meant to be in any way critical. It is merely a suggestion as to how it might be improved.

**Senator Benidickson:** And in an emergency situation a fair amount of flexibility is required.

**Hon. Mr. Pepin:** This is the way I took it. I do not agree with all the remarks Senator Grosart made in his speech, but I do agree with him on that one point.

**Senator Grosart:** There is a difference in what one might say in the Senate and what one might say in committee.

**The Chairman:** You are not through with your statement, Mr. Minister.

**Hon. Mr. Pepin:** I would like to comment on the good-relations-with-the-United-States concept. I think these relations are quite good. I was not too clear on what the criticism was, and I stand here to be enlightened. Was it because we have cut our troops in NATO, or because I went to China, or because the Prime Minister went to the Soviet Union? When one analyzes the situation one realizes that the Americans are doing now a number of the things we have done a few months ago. So it is difficult to accept blame, firstly, for something which seemed to be supported by the Canadian population, and, secondly, for something that the Americans themselves have decided to do on second thought. It is as difficult for me to accept the blame for what we have done in our relations with the United States. I agree with you that there is always room for improvement. Then the question is: What is it that we should have done? Should we have abandoned unconditionally the safeguards of the automotive agreement? Should we have made it possible for them to sell more military equipment in Canada? Should we have let them run our industrial policy? What is it that we should have done to make our relations with the United States better than they are?

I stand here to be enlightened. I do not think we should panic and decide to accept "political union" just because of what is happening now. This is a difficult time and I feel



we must keep our cool. We must have healthy, strong, virile negotiations with the United States. That is still very much possible, and that is what we are going to do now.

**Senator Grosart:** Mr. Chairman, the minister seems to be directing his remarks to some remarks which I made. I assure you I did not make that suggestion. As to the suggestion that we might have brought some of this on ourselves, I do not feel that this is what is before the committee. The bill is what is before the committee. Whether we might have avoided the bill or the surcharges is another matter.

**Hon. Mr. Pepin:** I cannot help it, I am a politician too!

**Senator Grosart:** I do not feel it is necessary to enter into discussions with you on that aspect. I would like to confine my concern this evening to the bill as it is presented here.

**The Chairman:** Mr. Minister, two questions have been raised. One is to amend section 6 by changing "not more than" to "at least seven"; and the other one is to provide that when they sit in panels, the chairman shall preside, or some member of the board designated by him.

Section 7(2), relating to the quorum. The words would be added that the Chairman or a member of the Board designated by him shall preside at any meeting.

**Senator Forsey:** Would that be a third subsection?

**The Chairman:** No, it would be just an added sentence to section 2. It would read: "The Chairman or a member of the Board designated by him shall preside".

**Hon. Mr. Pepin:** May we take this under advisement?

**The Chairman:** Yes; how long would you like? We are meeting again tomorrow morning. Would you like to think overnight?

**Hon. Mr. Pepin:** What time are you meeting tomorrow morning?

**The Chairman:** The committee is meeting at 9.30 and will sit the whole morning. If you, Mr. Drahotsky or Mr. Latimer wish to interject it will be in order.

**Hon. Mr. Pepin:** I am not a great authority on parliamentary procedure, as is well known. What would be the formula? We would have to return it to the House of Commons.

**The Chairman:** Yes; the bill would have to go back.

**Hon. Mr. Pepin:** I am rather keen to get this going.

**Senator Benidickson:** We are discussing possible amendments, and I do know there is reluctance to impose the delay involved by a Senate amendment. I have been a little disturbed by the fact that "manufacturer" is defined in the interpretation section. We have listened to the debate and the proceedings in the House of Commons committee. "Manufacturer" is wisely defined there, because the bill is really for the benefit of manufacturers although in other sections, section 3, for example, the word "industry" is used twice.

In ordinary parliamentary parlance agriculture and fishing are referred to as industries, yet there have been

complaints in the press, and it was Senator Manning's point, that there is a possibility of discriminations in the regions because manufacturing is not prominent in certain areas. We were told, I think by Senator Forsey, without detail, which he is not expected to have, that there is provision to aid that section of the agricultural industry and that section of the fishing industry which do not export to the United States duty-free and are therefore subject to the surcharge.

I wonder if the minister would enlighten us, first of all as to the percentage of the agricultural industry as a whole whose exports to the United States will be subject to surcharge; similarly with regard to what is known as the fishing industry, the percentage of fishing exports subject to surcharge? Could he very briefly outline the legislation that Senator Forsey reminded us exists to enable the Government, in some parallel manner, to assist those two industries, which may have a fall-off in employment by reason of the imposition of surcharge? What portion of fishing and agricultural products is subject to duty?

**Hon. Mr. Pepin:** I will take one-half of the answer and leave the other half to Mr. Drahotsky. The concept of manufactured in the bill is borrowed from the General Adjustment Assistance Program. It has worked well there and is expected to work well here. Mr. Drahotsky can read it, but I believe Senator Forsey put it on the record.

**Senator Grosart:** No, Senator Forsey mentioned only one act, the Agricultural Stabilization Act. There are other acts involved in agriculture and, presumably, others in fisheries and perhaps in other primary products.

**Hon. Mr. Pepin:** I have established that the word "manufactured" is borrowed from the General Adjustment Assistance Program, with which some of you are familiar. It has worked well there and is expected to work well here.

The second fact I wish to place on the record is that, using this definition, it is estimated that approximately 85 per cent of agricultural products subject to the surcharge will be covered by this bill, which is a very important point to bear in mind.

**Senator Benidickson:** Because it is considered to be manufactured.

**Hon. Mr. Pepin:** Because it is processed.

**Senator Benidickson:** Yes, that phrase was used in our debate, processed and unprocessed goods in these primary industries.

**Hon. Mr. Pepin:** That is the main idea, that if 85 per cent of the agricultural products subject to the surcharge are covered by this bill, by far the major part is covered.

**The Chairman:** Mr. Minister, would you not say that all phases in the fishing industry, other than the actual catching and sale of the fish as such, are processing operations, which would come within the definition "industrial operations"?

**Hon. Mr. Pepin:** I would say that.

**The Chairman:** And would not that apply with relation to agricultural products?

**Hon. Mr. Pepin:** Let us leave that to Mr. Drahotsky; he is fairly well paid, so he must work also!

**Senator Grosart:** May I ask the minister, for clarification: I believe he said 85 per cent of agricultural products?

**Hon. Mr. Pepin:** Yes, subject to the surcharge.

**Senator Grosart:** Would be covered by the act, to simplify it. My question is: is the minister saying that 85 per cent of all primary products that might be affected by the surcharge would be covered, or is he referring only to agricultural products?

**Hon. Mr. Pepin:** I am referring only to agricultural products.

**Senator Grosart:** Would the minister enlighten us as to the situation with respect to other primary products?

**Hon. Mr. Pepin:** That is the part I am leaving to Mr. Drahotsky. Mr. Olson, on a number of occasions, has stated that he will be taking care of what is not covered by the agricultural products, by other means and other existing legislation.

**Senator Benidickson:** Was that statement made last Friday in the house?

**Hon. Mr. Pepin:** Yes, it is page 8345 of *Hansard* of last Friday, October 1, 1971.

**Senator Benidickson:** That was also referred to this afternoon in our debate.

**Hon. Mr. Pepin:** So now we have a number of questions left from Senator Grosart and Senator Benidickson. Mr. Drahotsky will endeavour to remember them and give the answers.

**Senator Heath:** Mr. Chairman, may I ask the minister a question? As we are considering this bill at the moment it might be helpful if we got this information. As I understand it this is a temporary measure. I wonder if it is part of what will become the law later to cope with more difficult problems which we have not yet felt? I think of the United States being such a big buyer of our exports, the American job incentive program and DISC, which the American manufacturers themselves are heavily underwritten by the American taxpayer. Will this be an initial part of the Government's policy to assist our manufacturing exporters, or are we just looking at it as a narrow stop-gap for the present?

An answer to that would certainly help me in considering the bill, if you could give me a little help in that direction.

**Hon. Mr. Pepin:** Let me answer that question in a cautious way. The bill is of general permanent nature, as we have established.

Other actions "of a like effect"—that is part of the title of the bill, can be covered by the bill. That is the general proposition.

Will the job creation investment credit, or whatever the name is, be covered by this in future? It is too early to say. As you know, these two programs, that one and DISC, have evolved almost on a daily basis in the United States.

Will it be what comes out of Congress at the end of the day? Will it have "a like effect"? That will be for the Government to decide when these things come out of the US Congress.

This is the sort of situation that would have to be assessed to find out if it is "of a like effect" and consequently can be brought within the provisions of the bill.

**Senator Benidickson:** I am glad that question was raised, because a little earlier you said that if not within hours, then very soon after the removal of the surcharge — you did not refer to any other possible American legislation, so I assume that you were talking about the American surcharge — this bill would become unnecessary.

**Hon. Mr. Pepin:** With respect, I did not say that.

**Senator Benidickson:** Did you not say that it would not apply?

**Hon. Mr. Pepin:** I said the application of the bill to that particular situation, being the surcharge, would come to an end.

**Senator Benidickson:** I was thinking of the question that was raised regarding the effects of DISC, which might be much worse than the surcharge, if they withdraw manufacturing from branch plants in Canada and divert it to the United States, because of the incentives that they offer if the DISC program is approved. I also wanted to make sure that when you said "the surcharge," you were talking about the United States. However, this bill might continue to take effect, perhaps by reason of the United Kingdom putting on a surcharge.

**Hon. Mr. Pepin:** Yes, indeed. But in this case there would have to be a decision by the Government, by an Order in Council, to apply this bill to that particular situation which you are now contemplating. It is not automatic. We would have to decide if the situation is the same or "of a like effect", and consequently could be dealt with by this bill.

Regarding the job creation investment credit, when this bill comes out of Congress, and if it is approved by the President, the Government of Canada will have to decide whether it is "of a like effect" and whether the implementation of Bill C-262 is a proper approach to that particular injury.

If the answer is yes, then an Order in Council will have to be passed and the bill would apply to that particular US decision.

**The Chairman:** I am not sure that it is that easy. The words "a like effect" appear also, in section 3. The primary purpose is to impose temporary import surtaxes, or to take alternative action on anything having "a like effect" or an adverse effect on Canadian industry.

You have to say what is the area affected. Here is manufacturing. Therefore, when it is by way of surtax or anything of that nature, or by way of levy or restriction, there is a limitation. The limitation is the manufacturing industry.

**Senator Benidickson:** That is why I wanted an answer regarding fish. I was recently travelling in an aeroplane with my friend the member for Churchill, who remem-



bered that I came from Manitoba. Since moving to Ontario, to The Lake of the Woods, I have had a considerable interest in the export of fresh water fish.

He said, "What is the narrowness of the word "industry," because it is really for manufacturers?" He, of course, has put up a strong plea for fishermen in the other place.

Perhaps the minister could tell me whether the export of fresh fish from Manitoba lakes and the Lake of the Woods, which are filleted, frozen, or sometimes sent fresh, is now subject to duty and therefore subject to surcharge?

**Hon. Mr. Pepin:** I will let Mr. Drahotsky answer that question. However, regarding the previous question, the decision that the Government will have to make is whether this is the same or of "a like effect", does this apply to manufacturing according to the way it is defined here; and do we cope with it by an employment maintenance program?

If the answer to those three points is "yes", we can use this bill. If it does not fit, then we must try to find other ways. Mr. Drahotsky, Senator Benidickson would like to know what will be the effect of the surcharge on the fishing industry and how is it to be taken into account.

**Senator Burchill:** Senator Grosart asked about other national products.

**Mr. Drahotsky:** I have to deal with agricultural products and fish products together, because they are covered under the same commodity classification which we use in order to establish the impact of the surcharge on these sectors.

The commodity classification or group is known as the animal and vegetable products category. It includes a wide range of commodities, including live animals, meat, fish and shellfish, dairy products, hide and skins, live plants, cereal grains, vegetables, coffee, beverages, including whiskey, and other animal and vegetable products.

In looking at this category, our analysis shows that in 1970 some 63 per cent of our exports to the United States will attract the surcharge—that is slightly over one-half.

**Senator Benidickson:** Have the words "processed" or "unprocessed" anything to do with that wide recital of commodities which you have given?

**Mr. Drahotsky:** Let me proceed to break it down as much as I can. As a rough guess, of the 63.5 per cent that will be affected in the animal and vegetable products category, close to 85 per cent are processed; in other words, are past the raw stage, and hence would be covered by this bill.

**Senator Benidickson:** Because there will be a surcharge imposed on that processed product?

**Mr. Drahotsky:** Because they are surchargeable and are at a stage of manufacture past the raw stage. The 85 per cent is the figure the minister referred to.

**Senator Benidickson:** Does the fileting of fish constitute processing?

**Mr. Drahotsky:** Yes, it does. Any manufacturing or processing operation, whether by hand or machinery, including fileting.

**Senator Benidickson:** Does gutting constitute processing?

**Mr. Drahotsky:** Gutting presumably for the purpose of the canning operation.

**Senator Grosart:** Mr. Minister, I do not deny for a minute that it is the intention of the Department of Agriculture to do this. What concerns me is that this bill, which deals with employment jeopardized by this surcharge, does not cover all employment. It seems to me that the bill should cover all employment and that we should not divide our GNP producers into sheep and goats. Why do we say we are going to cover manufactured products but not all products where employment is affected? I have some objection to the definition.

**Senator Benidickson:** Not all industries.

**Senator Grosart:** I would suggest to you that you may be on dangerous ground when we come to this retaliation business. I believe you would improve your position if you were to include all employment under this one bill. We are fully aware that there may be damage done to employment by the surcharge other than to those directly in the export business. These things could be taken care of by other acts, but I would suggest to you quite strongly—and I am not suggesting it is necessary to make the amendment now—that you give serious consideration to making this bill all-inclusive by covering all employment affected by the surcharge and not to take refuge, as I think has been done, in the fact that there had to be haste and so on.

I suggest to you that the definition of "manufacturer" is not a very good one. The definition excludes change by growth or decay. This means, as I understand it, that if someone processed a product in such a way as to lengthen its life, for example, or in such a way as to inhibit its growth they would not qualify. We all know the Japanese have a marvellous product which is now on the Canadian market and which has the effect of inhibiting the growth of a plant. Why is this excluded? We know why it is excluded under GAAP act, but the GAAP definition has been brought in holus-bolus, and I suggest to you without any careful consideration as to whether it applies to the specific circumstances here.

If you will look at clause 2 the definition of "manufacturer" definitely excludes change by growth or decay. Why? Does this mean that someone who has processed a product to inhibit decay is not a manufacturer? Surely, this is not so.

I understand why you may have brought this definition in holus-bolus, but I would suggest to you that it does not apply here. I realize you had to do these things in a hurry.

**Hon. Mr. Pepin:** The reason why we did bring it in, as I said before . . .

**Senator Grosart:** You said it worked very well in that situation.

**Hon. Mr. Pepin:** It did work very well.

**Senator Grosart:** That is the poorest reason in the world, Mr. Minister.

**Hon. Mr. Pepin:** It worked in GAAP.



**Senator Grosart:** To say that it worked in GAAP is one thing, and even to say that it will work in this situation without a careful examination of the circumstances is understandable, but it is something that perhaps we as members of this committee should question.

**Hon. Mr. Pepin:** I simply felt that we should try to cover as much of the area affected by the surcharge with this bill. When I was informed that 85 per cent was being covered and when Mr. Olson assured me that he was taking care of the other 15 per cent, I felt justifiably relaxed. I do not think you can chastise me too much for that.

**Senator Grosart:** I am not criticizing you, Mr. Minister. I agree with you that under the circumstances this may well have been necessary. I would not be making these suggestions if there had not been the stress made by yourself and others as to the permanence of this bill and the fact that once this bill is passed, then by Order in Council you could make regulations to bring anything of a so-called "like effect" under it, and also the fact that there is no appeal whatsoever from this board.

**Hon. Mr. Pepin:** If we are to have another situation "of a like effect," obviously we can amend the regulations to take better care of that set of circumstances.

**Senator Grosart:** You will have to because these regulations refer to time limits, and so on.

**Hon. Mr. Pepin:** You are right. My answer to that in the House was that a number of other important matters were and are dealt with in that way.

**Senator Grosart:** It is not a good way.

**Hon. Mr. Pepin:** It is not a bad one. If you are willing to bring back to the house every Order in Council that is of substantial importance I will agree with you, but in that event we may disagree quite strongly amongst ourselves as to what constitutes "substantial importance." If we were to bring back everything which, according to one person in the Senate or the House of Commons, is of substantial importance, the house of Commons and the Senate would not be able to do anything else than approve orders in council. That is a "raisonnement par absurdité."

**Senator Grosart:** Mr. Minister, you have made an excellent beginning in bringing the draft regulations before the committee.

**Hon. Mr. Pepin:** Yes, I thought this was a good start. We could have done it the way other countries are doing it—that is, by the side door—but we thought that this was a great event in Canada's recent history and we thought that we would share with the House of Commons and the Senate the difficulties involved. I did more than that; I brought the regulations into committee. This is not always done, as members know. I have the best possible record!

**The Chairman:** Mr. Minister, we have cross-fired on this point for a while now. The simple question is: Are you prepared to strike out the clause which excludes change by growth or decay or not, and if not, tell us why and that will settle the question.

**Hon. Mr. Pepin:** I am quite sure Mr. Drahotsky and Mr. Latimer together can answer that question.

**Mr. Drahotsky:** All I can say, Mr. Chairman, is that I am unaware and cannot conceive of an operation which would be confined solely to producing marketable products by means of growth or decay, nor am I aware of such operations constituting a sizeable or significant sector of our economy. If they do exist, I am not aware of them.

**The Chairman:** Can I put the next question to you, then? If that is your conclusion then we can safely say we can leave it out because we could not establish processing in relation to that.

**Mr. Drahotsky:** If I were the minister, Mr. Chairman, I would have answered...

**Hon. Mr. Pepin:** Pretend for a while!

**Mr. Drahotsky:** I am flattered that the only omission in this definition...

**Senator Grosart:** I did not say that.

**Mr. Drahotsky:** The only shortcoming in this definition is that...

**Senator Grosart:** I did not say that either.

**The Chairman:** Are you inviting us to find more? I should think you would try to get along with what we have been dealing with.

**Senator Grosart:** Mr. Chairman, I would like to oblige, but I just picked out one example.

**The Chairman:** We have really shaken this one, and the minister has to make a decision. Personally, in view of the answer Mr. Drahotsky made, I think that even if there were an exclusion there, what is excluded specifically would be excluded because it would not be processing; you could not have a processing operation of that kind.

**Senator Grosart:** It excludes the whole technological innovations of rust-proofing and methods of resisting metal fatigue, which is a very important scientific innovation, in which Canada is highly involved. Under this, if you process metals to prevent metal fatigue, that is to prevent decay, you do not qualify.

**The Chairman:** I do not know; it might be arguable.

**Senator Grosart:** Well, that is to prevent decay. What is preventing metal fatigue except to prevent decay? Just as it is with us senators!

**Senator Forsey:** What about:

...change including change that preserves or improves the keeping qualities of that raw material?

Surely that covers something.

**The Chairman:** Certainly it covers the things Senator Grosart has been talking about.

**Senator Forsey:** I should have thought so.

**Senator Grosart:** This could be well interpreted, and probably would be by the courts I suggest, as excluding freezing, which we have been told is included. Freezing is to prevent decay.

**Senator Forsey:** It says "improves the keeping qualities".

**Senator Grosart:** According to this it excludes any process that is intended to prevent a "change by growth or decay".

**Senator Forsey:** Are you thinking of the aging of whisky?

**Senator Grosart:** Oh no, that improves it; that would meet my point.

**The Chairman:** It seems to me from the explanation we have that striking out these exclusions would not alter the extent or scope of the definition at all. With all the other things that we say may relate, for instance change by growth, we have to look at the other language, such as:

... a physical change including change that preserves or improves the keeping qualities.

We know that if you do not improve the keeping qualities you get deterioration and decay, so they are already covered.

**Senator Grosart:** That is what I say, it is contradictory. You allow a manufacturing process that improves the keeping qualities but you do not include one that prevents decay. It does not make sense.

**Senator Burchill:** Are we finished with that?

**The Chairman:** I think so.

**Senator Benidickson:** No, Mr. Chairman. I raised the general question of industry, and said that in ordinary parlance we talk about the agricultural industry and the fishing industry. I was frankly surprised that such a high percentage of our exports of agricultural and fishery products are subject to the surcharge and duty. With respect to agricultural products, the Minister of Agriculture made a statement last Friday, which I read and thought I had with me but find I have not. It was a relatively short statement, and I think it should either be read or put in the record so that people who read our record know what we are talking about. That would deal with agriculture.

Nobody has told us what help will be given to the exporters of fish that has been processed and has been subject to duty on entering the United States, and is now subject to the surcharge. I am thinking particularly of the fresh water fish from Western Canada and Northern Ontario, but I am sure the Atlantic senators will have a problem there too.

**Mr. Drahotsky:** Of our exports of fish and shellfish in 1970 to the United States, about 35 per cent would have attracted the surcharge had it been in effect in 1970. Practically all of these products that would be affected by the surcharge, or are affected, are processed fish products: filleted, frozen, and chilled. It is our view that practically all—we are not aware of any exceptions—would fall under the purview of this legislation and would benefit from it.

**Senator Welch:** You have discussed fish. Now would you tell us about fruit?

**Hon. Mr. Pepin:** With respect to fish, I was going to say that at the moment the prices are particularly good.

**Senator Benidickson:** You are not suggesting they are good just because we have had a recent Jewish holiday, are you? I am told by the fish industry that that has a great effect on fish prices.

**Hon. Mr. Pepin:** I can say that frozen cod, I think it is, has gone up in price from 19 cents to 44 or 45 cents in the short period I have been minister. There is no cause-effect relationship between the two facts; it is just that market conditions are much better now.

**Senator Smith:** Processed salt cod on the New York market is 64 cents.

**Hon. Mr. Pepin:** You see, it could also be understood that the exporters are in a position to absorb the surcharge on this particular item.

**Senator Benidickson:** For the record I want the other fact to appear, that the fishermen, by a very high majority vote, those that are organized—the Indians are not organized but approve—have gone on record as saying that they would like to be exempted from the marketing board that operates for the Prairie provinces. That must be because of price, that the net return to them is not what they thought they got prior to the institution of the marketing board.

**The Chairman:** This is not part of this bill senator.

**Senator Benidickson:** They are exporters; practically all their products are exported to the United States, and they are processed products.

**The Chairman:** But they want not to be subject to the marketing board.

**Senator Benidickson:** That is a different question.

**The Chairman:** That is an entirely different question.

**Senator Benidickson:** When it comes to price betterment currently that the minister describes, that apparently cannot apply to freshwater fish of Northern Ontario, because those in the industry are not satisfied with the prices they are getting now under this new arbitrary marketing board compared with what they were getting two or three years ago, before the marketing board was in operation. I do not know what goes on with the Atlantic exporters.

**Hon. Mr. Pepin:** We have established that they are covered under this bill.

**Senator Welch:** Now may I have an answer?

**The Chairman:** Now let us have an answer on fruit.

**Mr. Drahotsky:** Perhaps I might give the information on the type of products in the fruit category that may be affected: fresh apples, which would be taken care of under the programs of the Department of Agriculture; frozen blueberries, which would be covered under this legislation; fresh grapes other than hothouse grapes, which presumably would be covered by the programs of the Department of Agriculture.

**Senator Welch:** Processed apples?

**Mr. Drahotsky:** Processed apples do not appear to be affected by the surcharge. There may be another answer. Either they are not affected or they are not a big item in our overall export sales to the United States, but they would be eligible under the bill.



**Senator Benidickson:** Inasmuch as the statement by the Minister of Agriculture last Friday was not in answer to a question but was a formal statement, which if my recollection is correct was not long, could it be agreed that it either be read or be made an appendix to our minutes?

**The Chairman:** Is that the wish of the committee?

**Hon. Senators:** Agreed.

See Appendix "A"

**Senator Burchill:** We have heard about fish, agriculture and food.

**The Chairman:** And fruit.

**Senator Burchill:** Now, what about lumber?

**Hon. Mr. Pepin:** If I can establish first that pulp and newsprint are not surchargeable, consequently, the bill does not apply.

**The Chairman:** Does that answer your question, Senator?

**Senator Burchill:** No.

**Hon. Mr. Pepin:** Indeed, you want to know about other forest products.

**Senator Burchill:** Yes, because I have an inquiry from the Canadian Lumbermen's Association.

**Mr. R. E. Latimer, General Director, Office of Area Relations, Department of Industry, Trade and Commerce:** On lumber, most of the lumber we sell in the United States, there will be a reduction in the United States tariff, we expect, under the final implementation of the Kennedy Round cuts; and on the assumption they go ahead with that, they would then be duty free and not subject to the surcharge, as of January 1, 1972.

**Senator Molgat:** Would there be a reduction or an elimination?

**Mr. Latimer:** An elimination of the tariff; and with the elimination of the tariff the surcharge does not apply to these free items. That is the expectation.

**Senator Burchill:** A manufacturer told me the other day, who had a plant shipping 65 million feet, the production of that plant, to the United States, that they will be subject to \$4 a thousand under this.

**Mr. Latimer:** Precisely so, as long as there is a duty in the United States on lumber. If the United States does what we expect it to do, which is to eliminate the remaining U.S. tariff in accordance with their obligations under the Kennedy Round, on January 1st of 1972, they will then be duty free and because they are duty free they will thereby be exempt from the surtax.

**Senator Burchill:** You expect that to happen on January 1, 1972?

**Mr. Latimer:** Yes.

**Hon. Mr. Pepin:** In the meantime, what you have in mind is eligible under the bill, because obviously it is processed. I might add to this, that the surcharge in this particular instance is not as high as 10 per cent. As a matter of fact, it

is more in the area of 4 per cent, because the surcharge can never be higher than U.S. tariff "column 2", which in this particular case limits the surcharge to 4 per cent. So it is eligible, it is only 4 per cent, and the prices are fairly good at this time.

**The Chairman:** We have had quite a run at this bill. If we think in terms of putting all this together, we have two questions outstanding, which the minister wants to think about overnight. They would involve an amendment to section 6, where we substitute "not more than" where we say "at least 7" members of the board; and in section 7(2) where we add to the sentence by saying that the chairman or a member of the board designated by him shall preside at such meeting. The minister is going to think about those. Subject to that, is the committee ready to approve the bill?

**Some hon. Senators:** Agreed.

**Senator Grosart:** No, sir. Before the motion is put, I would like to raise one other point.

**The Chairman:** Very well. Which section is involved?

**Senator Grosart:** Perhaps it might involve section 17. It involves the whole series of sections which deal with a manufacturer making an application. There is provision for the board, under certain circumstances and in certain situations, to go outside the act. The board may waive the three basic criteria, if it so wishes. The board may, in effect, appeal from the provisions of the act. I suggest there should be an appeal permitted to a manufacturer who is refused payment. At the present time, he would be subject to a decision by a board, the majority of whom almost certainly will be public servants. He may disagree with the decision of the board and he at the moment has no right of appeal. The minister was right to call attention to the section of the bill which says that the board shall operate under the direction of the minister. This would presumably mean, and the minister has said so, that a manufacturer could appeal to him, and he would give sympathetic consideration. At the same time, I think the minister weakened his case when he said he had never given directions to a board and, by implication, he never would. My suggestion is that there should be a right of appeal. Perhaps the minister would put in a right of appeal, perhaps to a board, perhaps to a federal court, perhaps to a judge designated by the federal court.

I suggest to the minister that it is terribly important that a right of appeal be written into the bill. A manufacturer may disagree entirely with the decision of this board—which, I say, again may be dominated by civil servants. The manufacturer feels he has been badly treated. Where does he go? The minister says he may come to him and that he could deal with the board. I suggest that in an act as sweeping as this, which gives tremendous power to the board—not only temporarily but permanently, if orders in council so expand it—that there should be written into the act a right of appeal.

I am going to ask the minister to consider this.

**The Chairman:** Are you suggesting a right of appeal from any decision of the board, with due regard for pretty strict time limits?

**Senator Grosart:** Those are details.



**The Chairman:** Say, to the president of the Federal Court or a judge designated by him? If the minister will not take the responsibility, it should go outside.

**Senator Grosart:** May I expand a little on this? I am fully aware of some of the problems. I am fully aware of the fact that this board will have a fantastic number of applications, that it must have authority to act with expedition. But this applies to the highest court in the land, it applies to divorce courts and to any other court. On the argument that the board will have a lot of work to do, that it will mean that some promptness to its decisions will be requisite, applies to any decision of any court or of any body corporately known.

In putting forward this suggestion, Mr. Chairman, I would like to go a little beyond this, because we have the suggestion to the minister that he consider certain amendments to the bill. I see some problems, problems of expedition and other problems, if we were to insist on an amendment, or on some amendments to the bill here, so that this bill would have to go back to the House of Commons. The minister might think that this could open up the whole kettle of fish again.

**The Chairman:** A can of worms.

**Senator Grosart:** I say a kettle of fish and not a can of worms. The fish would be covered here but the can of worms would not.

**Hon. Mr. Pepin:** The can of worms is eligible!

**The Chairman:** The can would be processed.

**Senator Grosart:** The can would be processed, but the can of worms that I am speaking of is a raw product.

**Hon. Mr. Pepin:** Uncanned. You are being candid!

**Senator Grosart:** If the Minister feels he can accept the suggested amendments, he could simply give assurance to the committee that the act would be administered in conformity with the suggestions and that in due course—and by that I mean if the act was invoked again—in due course consideration would be given to these amendments. I personally would be satisfied with that. I should like, if I could, to get acceptance from the Minister of some of the suggestions we have put forward without putting him to the long process of taking the act back to the Commons, even if he agrees with some of the suggestions that have been made. I put that forward in connection with my suggestion, which is very fundamental and with which I think, on reflection, the Minister might find himself in some agreement.

**Senator Benidickson:** It does not have to be long in process.

**Senator Grosart:** If I were the Minister, I would not want to take this bill back to the Commons, even with a small amendment.

**Hon. Mr. Pepin:** Perhaps I could make a few comments on that. On the first point you make, I think article 15 dealing with special cases says that the board recommends to the Governor in Council. So the recommendation to cabinet

will have to come from the board; not from me. The board studies the particular situation, and if the situation does not meet with one of the criteria, or with two or three of them, then the board makes its recommendation accordingly to the Governor in Council. I have not any authority to do that. The board will do that.

**Senator Grosart:** I am afraid that I do not get that point.

**Hon. Mr. Pepin:** I mean to say that the company which feels that it has a special case to make will not make it to me. Some members of the house were afraid that I would be the recipient of claims from companies. This is not the way it is going to be. It is going to come to the board and from the board it will go to the Governor in Council. It will go as a recommendation.

**Senator Forsey:** That applies only under section 15.

**Hon. Mr. Pepin:** Yes, sir. I just wanted to straighten that out.

**Senator Grosart:** If I may point out, Mr. Minister, this is the section where the board is of the opinion that a grant to the manufacturer would be outside the purpose of the act.

**Hon. Mr. Pepin:** That is it. I was just wondering if that was clear enough in your mind.

**Senator Grosart:** Oh, of course.

**Hon. Mr. Pepin:** All right.

**Senator Grosart:** What I object to very strongly, if I may say so, is the fact that this board can now say that in its opinion the particular grant it wants to make is not outside the act, notwithstanding the act. This board could say in effect, if I may say so, that it could not care less about the act. It could decide that, in its "opinion"—and that is the explicit word in section 15—in its opinion the application is not outside the act.

**Hon. Mr. Pepin:** That is it.

**Senator Grosart:** I might say that the draftsmanship in sections 8 and 9 is rather more careful. In section 8(2), the draftsman has said, "to the extent deemed necessary by the Board." This is a legitimate case because he is only talking about internal arrangements. And when you come to section 9, "the Board may make such rules as may be necessary," with this I agree also. It is not what the board thinks is necessary but what actually may be necessary. Therefore, the courts may decide whether it was necessary or not. Later on in section 9 it says, "may do all things that are necessary," and that again is not what the board thinks is necessary or the minister thinks is necessary but what is in fact necessary. Therefore, it is subject to review by the courts.

On the other hand, when we come to section 15 and it says that the board "is of the opinion that a grant to the manufacturer would not be outside the purpose of the act—"

**Hon. Mr. Pepin:** If it is not outside, it is inside.

**Senator Grosart:** So, regardless of anything in the act, regardless of the 17 sections or anything else, the board decides that it can say that this application is not outside the act, and that is the end of it.

**Senator Forsey:** No.

**The Chairman:** You are not reading the whole section, senator. You must realize the limitations. If they decide that it is not without the purposes of the act, then they can go ahead and give a benefit to the manufacturer. That is beneficial.

**Senator Grosart:** Of course it is.

**The Chairman:** Well, to whom do you want to give an appeal in these circumstances?

**Senator Grosart:** I am not speaking of an appeal here. I am saying that in this particular case I object to any board being able to say what is inside or outside the act.

**Senator Forsey:** May I point out, Mr. Chairman, if I read this section correctly, that it says when the board is of the opinion it may recommend to the Governor in Council that a grant be authorized. Surely the Governor in Council has then to decide. The board does not say so and so and that is the end of it.

**The Chairman:** That is right. The Governor in Council will make the decision.

**Senator Grosart:** But this board can say to the Governor in Council, "We have decided that this is not outside the act." In the natural course of events the Governor in Council or cabinet is going to take that recommendation and I say that the board should not be put into the position of being judge.

**Hon. Mr. Pepin:** Who should do it, then, the minister?

**Senator Grosart:** The board should not interpret the act by saying that this is not outside the act.

**Hon. Mr. Pepin:** The board makes a recommendation to the cabinet suggesting that this is within the purposes of the act.

**The Chairman:** Mr. Minister, what Senator Grosart is overlooking is that, where an application is made to a board, the board has to determine whether it has any power or authority under the act to hear it. All that means is that they decide they have power to hear it. That is within the scope of the authority the board has. That is certainly the primary consideration. If you want to wipe that out, then you wipe out the whole bill. No board could function unless it could assume that it had authority.

**Senator Grosart:** Of course, but why then do you give it under one section specific authority to decide that this is not outside the act? It is obvious from any general reading of the bill that this is designed to allow the board to say, "Look, the act says so and so but we want to say this is not outside the act." If you read the whole bill, that is clear.

**Hon. Mr. Pepin:** I think you exaggerate.

**Senator Grosart:** I do not think I do exaggerate, because I have never seen a bill with this kind of phraseology, and I have studied a lot of bills.

**The Chairman:** I have seen many such bills. If I had a little time I could pick them out for you. There are laws where the first function of the board is to determine whether they have authority. I think one example is the anti-dumping tribunal. They have to decide whether they have authority.

**Senator Grosart:** Every board has to decide that.

**The Chairman:** Of course. Exactly.

**Senator Grosart:** Well, every decision of the board is that it is not outside the act, but I will not argue that point.

**Hon. Mr. Pepin:** Senator, section 15 is really there to take care of cases of the type I have indicated, for example, where the company is exporting 19.2 per cent. It is not to bring in all kinds of situations that are irrelevant to the purposes of the bill.

**Senator Grosart:** Let us get back to the appeal.

**Hon. Mr. Pepin:** The appeal, of course, is a matter that was raised, as you know, either in committee or in the house. I recall at the time what was said seemed to be so reasonable that I regretted being on the side of Caesar instead of on the side of Caesar's wife, on which side Senator Grosart is at this time. The question really is who should be the authority to whom somebody would appeal from the board. You mentioned the courts. Well, the courts may receive this sort of appeal on legal grounds to interpret the law and that sort of thing, but certainly not to interpret the factual situation that exists. The honourable judge knows ten times less about the realities of the situation in which the company is than the members of the board would. I do not see why you should appeal on factual matters.

**Senator Grosart:** You would wipe out 90 per cent of corporate law, if that were true. The courts do decide facts.

**The Chairman:** Of course, you are practising law tonight too, Senator.

**Senator Grosart:** I am not practising law.

**The Chairman:** You are having a fist at it. Not a very good one, but a fist.

**Senator Grosart:** I am simply trying to do my job here as a member of the committee.

**The Chairman:** That is right.

**Senator Grosart:** It is quite irrelevant whether I am a practising lawyer or otherwise.

**The Chairman:** Well, I am not interfering with what you are saying; I am simply pointing out certain things.

**Hon. Mr. Pepin:** This is certainly a very lively committee. I am enjoying it.

**Senator Grosart:** It does not matter whether I am a lawyer or not. I am perfectly entitled, as a member of this committee, to ask the minister questions.

**The Chairman:** No one has challenged your right. You are getting excited unnecessarily.



**Hon. Mr. Pepin:** There is obviously something arbitrary about the board's having full authority to make decisions in this case. But I do not see to whom one could appeal, and I am saying that there is a *de facto* possibility of "appealing" to the Minister. I have responsibility in Parliament for a number of these boards, and I can only recite my own experience on the subject, and I have not run into too many difficulties. If a company feels that it has not received total justice from one of the boards for which I am responsible, they come to see me and I say, "Well, I shall make very, very sure that all the facts that you bring to my attention are brought to the attention of the board; I will organize meetings and I will ask somebody from my department to support the claimant in these matters if there is reason to do so." The choice I have really is between having confidence in what the board has decided, making sure that all the facts are before the board, or substituting from my own knowledge my own decision for what the board has to decided. Now, I am not that pretentious, yet. Perhaps I shall be in the future, and if that should happen, then it will be time for you to get rid of me! But I really think that the reason governments appoint boards is to make just that kind of decision.

**Senator Grosart:** But, Mr. Minister, there is an appeal from many boards, and what I am suggesting to you is minimal; I am suggesting that it should be written into the act that an appeal can be made to the Minister. What you are suggesting is that when a board rules against a manufacturer, he then starts to use some kind of political persuasion rather than being able to appeal as of right. I suggest it would help you if there was written into the act a clear short statement that an appeal shall lie to the Minister, so that any representations will come to you as an appeal and as of right, and not as some kind of backdoor political persuasion. My suggestion is that simple.

**Hon. Mr. Pepin:** Well here I am caught between two fires.

**Senator Grosart:** Speaking to your second point, this does not mean that you are destroying the effectiveness of the board. It merely means that an appeal can be brought to you as of right, and then you can dispose of it in the manner which you are describing.

**Hon. Mr. Pepin:** But then it is not a real appeal. As I understand an appeal, it means that you have the right to go to a higher authority which is going to make a decision. I think what you are talking about is another line of communication. It is not, I suggest, a real appeal, unless my understanding of the word "appeal" does not make sense. My understanding of an appeal is that when a client is not satisfied with a decision rendered, for example, by a lower court or a lower tribunal, he can go to a higher one to get a decision. So, as I say, I think what you are talking about is another line of communication. But this already exists, and businessmen know that it exists. Let me say that every so often—every month or so—I have a personal visit from some company official unsatisfied, for one reason or another, with a decision rendered by one of the boards for which I am responsible, asking me to see to it that a second look is given to the particular matter that has been decided by this board.

**Senator Grosart:** But my suggestion is quite simply that they be permitted under the act to come to you as of right.

**Hon. Mr. Pepin:** I regret that I am, as I have already said, caught between two fires. There are some people in the house and I presume there are some here who would be tempted to say that the Minister should not be given too much authority to interfere in these matters. So I have to play safe in between the two opinions. Clause 8 of the bill says, "Subject to the regulations and direction of the Minister,..." so I presume I could give that type of recommendation.

**The Chairman:** Well, Mr. Minister, suppose we put it in this way and you can think about it. Where a board decides against an applicant—and I think that is the case Senator Grosart is talking about—the person who is affected by that decision has a right to go to the Minister to have that decision reviewed. Let us get away from the word "appeal."

**Senator Grosart:** That is an excellent suggestion.

**The Chairman:** Will you think that over and deal with it when you are giving us the answers to the other questions?

**Hon. Mr. Pepin:** Irrespective of the fact that it could be in the bill, I am saying that this is the way it is now being done and this is the way I expect it to be done again. Maybe that is not as good as having it specified in a clause in the bill, but bearing in mind the timetable that you have been referring to so kindly, I suggest that this probably would be good enough for the interested parties in industry.

**The Chairman:** Now, honourable senators, we have three points that the minister is going to look at, and the third one is the question of review of an adverse decision by the board. The minister is going to consider these three points and let us have his answer in the morning. In the meantime is it the wish of the committee that all the other sections of the bill be approved?

**Senator Benidickson:** Before we come to that, Mr. Chairman, the minister has indicated, and I appreciate it, that he has read our *Debates*. I am sure he will recall that Senator Grosart said he was going to concentrate on four questions. I think his fourth question was — were better alternatives available than this bill and so on. Then Senator Martin, the Leader of the Government and a member of the cabinet said he thought there were; that the United States could have used other measures other than the surcharges, and that they would have been better employed. Now my notes say, and I have not yet read *Hansard*, that Senator Martin did not state what in his opinion these other better measures were on the part of the United States. Would the minister care to make any comment on that?

**The Chairman:** Before the minister comments, senator, and I am not going to say that he should not, I should point out that we have the bill before us.

**Senator Benidickson:** Yes, but the bill is the result of an action taken by the United States.

**The Chairman:** It arises by reason of that action.

**Senator Benidickson:** Yes, it arises by reason of that action. Now a member of the Government has suggested



that from our point of view and even from their point of view they could have done this in a better way.

**The Chairman:** Maybe the minister does not know what Mr. Martin was thinking about.

**Hon. Mr. Pepin:** I really do not care to comment on this. I assume that Senator Martin may have had in mind—and I do not know this but am merely assuming it—that the Americans could have gone the way of devaluation or something like that.

**Senator Benidickson:** I accept that answer.

**Hon. Mr. Pepin:** They could also have fought inflation the way we did in Canada.

**Senator Benidickson:** Now, Mr. Minister, referring to clause 21, my recollection is that you made a verbal commitment to the House of Commons that you would report more frequently than the bill requires.

**Hon. Mr. Pepin:** On a quarterly basis.

**Senator Benidickson:** I can see the situation arising, if you were to report only as infrequently as this bill requires, that the board might extend aid to an employer or the owner of a business and it would be a long time before the people whom this bill is supposed to help—namely the employees—would know that that industry had been assisted and they might feel that the assistance has not gone to them in the spirit of the bill. It would not be very effective if you only reported once a year, so I would like you to repeat that undertaking.

**The Chairman:** Senator Benidickson, if that is the issue, the quickest and best way of obtaining the information would be publication of board decisions.

**Senator Benidickson:** Some members of the House of Commons requested that be done. The minister compromised and said that he would not publish each and every decision, but that he would do better than clause 21 requires. Members of Parliament, as well as the employees of the industry assisted, would receive information more promptly than is provided in clause 21.

**Hon. Mr. Pepin:** I must be very clear on that, because I did not promise to give detailed, industry by industry, amounts of money by amounts of money, reports. I said, after a long discussion, that I would give quarterly reports covering sectors of industry.

**Senator Benidickson:** That means they would be anonymous, or group reports.

**Hon. Mr. Pepin:** Yes, I added to this, as I have done on previous occasions with other boards for which I am responsible, that I would entertain questions, written or oral, by members of the house or the Senate and on each occasion I would go to see the company, as I have done on a number of occasions, and attempt to obtain their consent to my revealing that they have received the assistance.

**Senator Benidickson:** Notwithstanding that, grants to industries under, shall we say the legislation of the Department of Regional Economic Expansion, are practically individually advertised and publicized.

**Hon. Mr. Pepin:** You are right; there is a different situation.

**Senator Benidickson:** There is full publicity if an industry receives a grant to encourage it to locate in an underdeveloped area, or for other reasons receives a governmental capital grant. The community knows it, the potential employees and everyone else know of it. I remember that you were cautious in that regard and did not make that full commitment.

**Hon. Mr. Pepin:** My feeling is simply that that would be publicizing that industry "X" is having difficulties, which may not be the right thing to do. These are very special circumstances.

Secondly, I am afraid that if we start along this line now, the next step would be for me to have to publicize all research and development grants and all that is done in my department for industry. I do not think this would be in the best interests of anyone.

**The Chairman:** Senator Benidickson has indicated that he accepts the minister's explanation.

Are you prepared to approve the bill with the exception of the three points which the minister will consider overnight? Mr. Minister, you could have Mr. Drahotsky come in to advise us tomorrow morning.

**Hon. Mr. Pepin:** In the case of the amendments suggested by Mr. Grosart, I have extended myself to the fullest, short of accepting the amendment; I do not think I will be accepting it.

I will report on the other two points tomorrow, that is with respect to the quorum and the seven members.

It is a matter of being courteous enough to consult the people who conducted the drafting of these provisions.

**The Chairman:** What did you say with respect to Senator Grosart's amendment?

**Hon. Mr. Pepin:** Clause 8(1), which provides:

Subject to the regulations and the direction of the Minister, . . .

Might for all practical purposes include the possibility of a company which is dissatisfied with the decision of the Board to ask the minister for a review.

**Senator Benidickson:** It has been your practice then to ask the Board to reconsider, if there is new evidence.

**Hon. Mr. Pepin:** For the reasons brought up by Senator Grosart.

In the case of the other two suggested amendments, I hope the House of Commons will gladly agree to them.

**Senator Grosart:** I am not clear, because one of the others was suggested by me. However, I would ask you to reflect on the suggestion made by the Chairman, that you write the right of a request for review right into the act. I ask you to think carefully of the very wide powers given under this act and its possible extension by Order in Council to situations we cannot even contemplate at the moment. The fact that this is a board consisting of a majority of public servants should be borne in mind. I would ask you to reflect very carefully before you reject that. I particularly

ask, if you accept my way out, if you like, that you give us an assurance with respect to these matters if you feel that for reasons of urgency, among others, this should be passed without further delay.

**The Chairman:** As I understand it, the minister will let us know his views on these three points tomorrow.

**Senator Grosart:** I just hope that at this point he will not rule out consideration of the three points.

**Hon. Mr. Pepin:** As a matter of fact, I am accepting your own recommendation *de facto*.

**Senator Grosart:** I started with that particular aspect by pointing out that you had said that "and the direction of the Minister" appeared to be a saving clause. However, this does not, I suggest, now include the right to ask for a review.

**The Chairman:** We must have some end to discussion. The committee has approved all the clauses of the bill except these three points, on which you can speak tomorrow, Mr. Minister.

The meeting is adjourned until 9.30 tomorrow morning.

The committee adjourned.

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Ottawa, Wednesday, October 6, 1971.

Upon resuming at 11.20 a.m.

**The Chairman:** We now have several amendments to consider in relation to Bill C-262. Some senators present today were not here last night, so I will briefly review what took place.

The committee approved all clauses of the bill except clauses 6, 7 and 8. Certain points raised for particular consideration were indicated to the minister, who agreed to express his views to us this morning. We expect him shortly, and I will prepare you by outlining the proposals.

With respect to clause 6(1), the proposal was to strike out the words "not more than" in the third line and insert "at least". The feeling of the committee was that the wording "not more than seven" would allow four, five, six or seven to be appointed.

Subclause 2 of the same section provides that "Not more than four members of the Board may be members of the Public Service". Unless the full seven were appointed there might not exist a reasonable balance between the Public Service representation and others. The proposal, therefore, is to substitute the words "At least" for "Not more than".

It was indicated by the minister that in the course of the operations of the board it might very well sit in panels. The question then arose as to who would be the chairman of each panel. Clause 6(3) provides that:

The Chairman of the Board shall be appointed by the Governor in Council from among those members of the Board who are not members of the Public Service.

The Chairman, if there are two panels, cannot subdivide himself and act as chairman of each meeting. Therefore our proposal was that clause 7(2) be continued to add:

"and the chairman of the Board or a member of the Board designated by him shall be the presiding officer".

I see the minister has arrived. I have informed the committee of the proposal to amend clause 6(1) by substituting for "Not more than", "At least seven . . .".

**Senator Flynn:** Would there be no limit? Is it at least seven?

**The Chairman:** At least seven; yes.

**Senator Flynn:** There would be no limit?

**The Chairman:** That is correct.

**Senator Connolly:** It would be a matter of judgment for the Government to decide.

**Senator Flynn:** Twenty members could be appointed and if some were not suitable an attempt could be made to arrange with the chairman to dispense with the services of those members. Perhaps it should be at least seven and not more than ten.

**Hon. Mr. Pepin:** I am grateful for Senator Flynn's intervention. I agree with him that the words "at least seven" would be open to all kinds of other possibilities.

We do not want to have more than seven, for the very simple reason that to do so would make it very unwieldy and difficult to operate.

If honourable senators do not object, we will state "not more than seven", and we will concentrate on other changes that can be brought about.

**The Chairman:** The words "nor more than seven" will not cure the difficulty that we see here.

**Hon. Mr. Pepin:** That is what I intend to deal with. The bill says "not more than seven". We felt that more than seven would make it difficult for the board to operate efficiently. We were however looking for a board membership sufficiently numerous to have, in effect, two panels. That is achieved by the words "not more than seven".

However, it may be that at other times five would be enough, and five is "nor more than seven", if I might sound a little complicated.

The main preoccupation of the committee last night was that of the "mix" between outsiders and officials.

I think we should devote our attention to clause 6(2) which says:

Not more than four members of the Board may be members of the Public Service within the meaning of the Public Service Employment Act.

The significance of that is that on a five-member panel, four would be officials. Under clause 6(3), the chairman would be an outsider. On a board of five members you would then have four officials, and one outsider, who would be the chairman.

I understand that honourable senators do not like that provision, that they would prefer to have three outsiders on a seven-man board, and, presumably, at least two outsiders on a five-man board.

**The Chairman:** That is right.



**Hon. Mr. Pepin:** That can be accommodated by the following amendment to clause 6(2):

Not more than two-thirds of the members of the Board at any time may be members of the Public Service within the meaning of the Public Service Employment Act.

That would cover it. If we say that not more than two-thirds should be officials, public servants, we would have two outsiders on a five-man board.

**The Chairman:** Two-thirds of seven would be four, because you would have an excess over three and you cannot fractionalize that.

**Hon. Mr. Pepin:** On a seven-man board we would have four officials; on a six-man board, four officials; on a five-man board, three officials; and on a three-man board, two officials. I repeat my suggestion, that "not more than two-thirds of the members of the board at any time may be members of the Public Service within the meaning of the Public Service Employment Act."

**The Chairman:** Senator Aird, you made a similar proposal last night. How does the suggestion strike you?

**Senator Aird:** I think it meets the consensus expressed last night. We were concerned primarily about the mix.

**Hon. Mr. Pepin:** If Senator Aird will allow me to continue, I think that for reasons of safety we should add to what I have read the following words:

... but a vacancy occurring in the membership of the board, that has the effect of temporarily reducing the number of members of the Board who are not members of the Public Service below one-third of the members of the Board does not invalidate the constitution of the Board or impair the right of the members to act if the number of members is not less than a quorum.

An outside member might resign because he has insufficient time to do the job, or because he thought it was easy and he finds that it is tougher than he expected. The board would then be unable to operate until another member was appointed.

**The Chairman:** A few more words should be included in the suggested amendment, that when there is a resignation the Government should act within a reasonable time to find a successor.

**Hon. Mr. Pepin:** That is the sort of difficulty we find ourselves in when we make changes.

**Senator Flynn:** The solution to the problem might lie in saying "at least seven and not more than ten".

**Hon. Mr. Pepin:** But that does not solve my problem, because at times I might want less than seven. If you say "at least seven", you will be ordering me to have at least seven.

**Senator Flynn:** It is possible that their appointment might be on a temporary basis.

**Hon. Mr. Pepin:** All these appointments will be on a temporary basis.

**Senator Flynn:** If you have "at least seven and not more than ten" you will always be able to maintain a balance between members of the Public Service and outsiders. Furthermore, it will solve the problem in clause 7(2) where three members of the board constitute a quorum, in that you may be able to have an outsider and a member of the Public Service.

**Hon. Mr. Pepin:** If you say "at least seven", you are telling me to appoint at least seven members. If I do not need seven and five or three are able to do the job, you are suggesting in effect that I should spend money unnecessarily, which I am sure is not your intention.

**Senator Flynn:** If they are paid so much per day that they work, the problem does not arise.

**Hon. Mr. Pepin:** I would have to appoint someone and then say to him, "I am sorry, we do not need you; stay at home."! I would suggest that honourable senators leave me the flexibility of having seven, five or three. I would also suggest that the amendment I have proposed takes care of the Committee's main preoccupation, which is to have a better "mix" between officials and outsiders.

**The Chairman:** Yes, I think it does; except that I should like to have some assurance in the bill that vacancies on the board will be filled with reasonable despatch.

**Senator Walker:** A minister might wish to control the thinking of the board, as to what province they should give it to and what amount.

**Hon. Mr. Pepin:** I think the honourable senator is unnecessarily cautious. In such a situation there would be all kinds of things happening. There would be questions in the house and there would be newspaper men reporting any abnormality. And if I tried to control the thinking of the board, the members would resign.

One day it was suggested that I was exercising an influence on Mr. Duffett of Statistics Canada. He said openly that if a minister ever did what someone had suggested I was doing, he would resign. I suggest to honourable senators that this applies also to the board.

**Senator Carter:** The minister said that he might want seven or at times only five. Will appointments be made for special problems, and what will he do if only five are needed?

**Hon. Mr. Pepin:** Let us bear in mind what Senator Forsey said on the first day, that this is permanent legislation, but is temporarily applied to a temporary situation, namely, the US surcharge. Therefore it would not be a permanent board attached to permanent legislation. It will be a temporary board attached to the temporary application of this bill.

**Senator Flynn:** You mentioned the statement made by Senator Forsey, but he was contradicted by the Leader of the Government yesterday. I put the question to the Leader of the Government and he said that you could continue with this legislation after the present fiscal year and after you have exhausted the \$80 million by different methods. The Leader of the Government in the Senate stated it would require an amendment to this legislation in order to continue afterwards.



**Hon. Mr. Pepin:** Yes, he is right.

**Senator Flynn:** Who is right?

**Hon. Mr. Pepin:** Whoever said the right thing with respect to the provision of further money after the duration of the occasion of the application of this bill. In order to have it continue beyond the present year I would have to return to Parliament to get further money. I could do that in two ways; by way of supplementary Estimates or alternatively by an amendment to the bill. I suggest that I would take the way of supplementary Estimates.

**Senator Flynn:** You are in contradiction with the Leader of the Government.

**Hon. Mr. Pepin:** No, because in both cases I would return to Parliament.

**Senator Flynn:** You would come back to Parliament by way of supplementary Estimates?

**Hon. Mr. Pepin:** It is legal.

**Senator Flynn:** It seems very curious anyway, as far as this is concerned, that you would leave sections 4 and 5 as they are and by way of an item in the Estimates continue this legislation. These sections have to be read with the rest of the bill, and it seems to me that the limit on the amount and the period of application of the bill...

**Hon. Mr. Pepin:** One does not know what the periods or amounts are going to be. That is the point of departure.

**Senator Flynn:** I have no objection to your purpose, but I do say that it is badly expressed. If you had said in section 6, for instance, that after the expiration of the present fiscal year the amount required to continue this legislation will be appropriated each year, if that was the case, we would know that this would be the method, but as it is presented now it looks as if you are hopeful that you would not need this legislation after April 30.

**Hon. Mr. Pepin:** That is it.

**Senator Flynn:** Well, all right, but do not play on both sides.

**Hon. Mr. Pepin:** I admit to that. I could have said in the bill that moneys for the implementation of this bill will be provided for by supplementary Estimates.

I think this is a moment of great importance in Canada's history and we were trying to ask Parliament to do as much in these circumstances as could be done by way of Parliamentary action, and this is why, perhaps wrongly, we put the \$80 million provision in the bill. It might have been cleaner to do it the other way.

**The Chairman:** Senator Flynn, notwithstanding the fact that the minister has said he could do it by way of supplementary Estimates, I do not think he can in this bill, the way it is drawn, because there is a limit of \$80 million. That is statutory.

**Senator Flynn:** That is my way of thinking also.

**Hon. Mr. Pepin:** If I need more money I have to go to Parliament, but I can go to Parliament in two ways: either

by asking for an amendment to the bill; or by asking for further funds by way of supplementary Estimates.

**The Chairman:** I think you can only go one way, Mr. Minister, and that is by way of an amendment to the bill.

**Hon. Mr. Pepin:** Well, let us hope we do not have to go at all!

**Senator Flynn:** In any event, you can resolve your difference of opinion with the Leader of the Government in the Senate because he assured us yesterday that it would be through the normal channels of legislation.

**The Chairman:** That can be a private exercise between the two of them.

**Senator Flynn:** Yes.

**The Chairman:** What is the objection, Mr. Minister, to providing for expedition in the filling of vacancies?

**Hon. Mr. Pepin:** I would suggest that this is taken for granted. This applies to all boards. Is there a clause in the National Energy Board Act saying that the Government should act rapidly in the appointment of members to the board? I suggest this is part of the democratic process.

**The Chairman:** In that event, Mr. Minister, the British North America Act provides for 102 senators. We are short 20 now.

**Hon. Mr. Pepin:** Let us amend the Senate Act, then! I am just saying it is always difficult to put in a bill something which should be in *all* bills. If it makes sense in one bill it makes sense to put it in all bills. I suggest if it is not in other bills it should not be in this one. Perhaps my logic is too Cartesian.

**The Chairman:** I do not think the logic holds together, Mr. Minister, to be quite frank. What you are saying is, "trust me as minister". We have to look beyond that.

**Senator Walker:** You may be promoted and then we may have some minister in whom we do not have the same confidence.

**Hon. Mr. Pepin:** Anywhere I go from here will not be a promotion!

**The Chairman:** How does the committee feel about the minister's proposal? I think it satisfies the chief concern which we had.

**Senator Molson:** Mr. Chairman, might I ask a question? Last night there was some talk about panels of the board. This does not cure that at all.

**The Chairman:** There is another amendment to cover that.

**Senator Flynn:** That is section 7(2).

**The Chairman:** Yes. Is the form of the amendment proposed by the minister acceptable in relation to subsection 2 of section 6 of the bill? Is that agreed?

**Hon. Senators:** Agreed.

**The Chairman:** What about the next one, Mr. Minister, with relation to clause 7?

**Hon. Mr. Pepin:** The next one has to do with meetings and quorum. The main preoccupation yesterday was that the chairman, when he is not presiding over the board or over a panel of the board, should appoint a presiding officer. That was the main preoccupation of the committee last night. At that time I said that this was again taken for granted, but since then I have been informed that such a clause is in the Tariff Board Act, so I cannot do the same pirouetteing as I was doing a moment ago! I am willing to give you the same thing as is in the Tariff Board Act, and that shall become section 7(3). It shall read:

The Chairman shall preside at any sittings of the Board at which he is present and shall designate one of the other members to preside at any sittings of the Board at which he is not present.

That would apply to sittings of the full board or a panel.

**The Chairman:** That will be subsection (3) of section 7?

**Hon. Mr. Pepin:** Yes.

**Senator Molson:** Where does it give authority to call a meeting of a panel of the board? How does it call less than the board? Section 7(1) states:

The Board shall meet at such times and conduct its proceedings in such manner as may seem to it most convenient for the speedy despatch of business.

Does that give authority to call part of the board?

**Hon. Mr. Pepin:** There is no reference in the bill to panels. We get this indirectly by saying that the quorum will be at least three. In other words, if the quorum is at least three and if there are seven members, then, you can have two panels sitting.

**Senator Flynn:** It would be by establishing rules of practice.

**Senator Beaubien:** It would be at the discretion of the chairman.

**Senator Molson:** You could have one panel of three sitting?

**Senator Flynn:** Yes.

**Senator Molson:** He should have authority to call less than a board, then. How does he call a meeting of a panel?

**Hon. Mr. Pepin:** He could have a meeting of the board with a quorum of three.

**Senator Molson:** How does he designate who the three members are?

**Hon. Mr. Pepin:** The chairman has to be there himself and he will preside over the meeting, but if he is not present he will have to appoint one of the other members to preside over the meeting.

**The Chairman:** Section 7(1) states:

The Board shall meet at such times and conduct its proceedings in such a manner as may seem to it most convenient for the speedy despatch of business.

It should also be provided there that the board may meet in panels.

**Senator Flynn:** It would be much more clear to me.

**The Chairman:** Suppose you said, "The Board shall meet as the whole Board or in panels".

**Hon. Mr. Pepin:** I am in a very conciliatory mood this morning. I want this bill to go through as rapidly as possible, so I will accept whatever you say. We can add: "at any sittings of the Board, in whole or in panels, at which he is not present". I think that will cover it.

**The Chairman:** No. In subsection 1 you need the authority; that is: "the Board shall meet as the whole Board or in panels at such times and conduct its proceedings in such manner as may seem to it most convenient". That would appear to cure the problem.

**Senator Flynn:** You would need a consequential amendment to subsection 2 to say that three members constitute a quorum of the board or of a panel.

**Hon. Mr. Pepin:** You are just explicating.

**Senator Flynn:** It is obvious the minister is not a lawyer.

**Hon. Mr. Pepin:** He is a lawyer but a non-practising one.

**Senator Flynn:** I did not know that. I knew you had been in the press.

**The Chairman:** First of all, is the proposed amendment to add subsection 3 acceptable?

**Hon. Senators:** Agreed.

**Senator Flynn:** "Three members shall constitute a quorum of the board or of a panel".

**The Chairman:** That would be the addition in subsection 2. Then in subsection 1 it should say: "The Board shall meet as a whole Board or in panels at such times" etc. We add those words. Is that agreeable to the committee?

**Hon. Senators:** Agreed.

**Senator Flynn:** There is one question left that was raised by Senator Molson.

**Hon. Mr. Pepin:** I have to make a correction to what I said to Senator Flynn a moment ago. I am not a lawyer. I have a diploma in law. Apparently there is a difference, and I want to correct myself at the earliest opportunity!

**Senator Flynn:** A licence in law.

**The Chairman:** What is the other point.

**Senator Flynn:** The point is that when you have a panel of three members, the rule being that you should never have only members of the Public Service, you should provide that at least one member of the panel is an outsider.

**Senator Beaubien:** We have dealt with that with the two-thirds, have we not?

**Senator Flynn:** No.

**The Chairman:** The bill in its present form provides that the chairman must be an outsider, so that as long as there is to be a meeting of the whole board or of a panel at which he is present the chairman must preside. If there



are two panels meeting he cannot preside at both, so we require in the amendment the minister submitted that the chairman shall be a member of the board designated by him. All we have to do is to add a word or so to say "an outside member of the board".

**Senator Flynn:** In the appointment of the deputy chairman.

**The Chairman:** That is right.

**Senator Flynn:** You have to do it just the same.

**The Chairman:** You add "who is not a member of the Public Service".

**Senator Flynn:** That is right.

**Hon. Mr. Pepin:** You are complicating matters.

**The Chairman:** No, we are making it easier for you.

**Senator Molson:** In effect, Mr. Chairman, you are saying that a panel of this board composed solely of civil servants may not meet?

**The Chairman:** That is right.

**Hon. Mr. Pepin:** That is what you are saying. I suggest that the presence of three members from the outside will have a permeating influence on the way the board, either as a board or as a panel, will operate. I suggest you should leave the board the possibility of making decisions exceptionally with only officials there. I am quite sure that if officials take a different philosophical line than the outsiders, this will very easily come out and will be reconciled.

**The Chairman:** If we did that the trouble would be that we would be defeating the purpose of the amendment we originally proposed, which was to ensure a proper mix. If you can have a panel composed of three members of the Public Service and operate, then we have defeated our purpose.

**Hon. Mr. Pepin:** I suggest this is not entirely true, with respect, Mr. Chairman, as they say at these meetings.

**The Chairman:** And in court.

**Hon. Mr. Pepin:** I suggest that the presence of outsiders on the board will help develop what I call the philosophy of the board. I suggest that the philosophy as determined by the board with the presence of outsiders will be implemented even if occasionally there are no outsiders on a panel to make up the quorum.

**Senator Molson:** Would not clause 8, which establishes the responsibility of the board to administer the grants and so on, perhaps mean that even though a panel was composed of civil servants, in fact the board will administer the provisions of the act, and therefore the whole board, composed of outsiders and members of the civil service, will be taking the action, even though the consideration was given by a panel perhaps composed entirely of civil servants.

**The Chairman:** I would expect—and I think there are lots of precedents for it—that where there is a board and the board sitting in panels the regulations might well provide that where a panel sits it reports to the board. What would you think of that, Mr. Minister?

**Hon. Mr. Pepin:** That is a good suggestion.

**The Chairman:** They could do it by regulation.

**Senator Molson:** As far as I am concerned, that would sound reasonable.

**The Chairman:** It is the board that approves the grant, and therefore while the panel sits and makes decisions, it reports to the board. It is like an executive committee of a board of directors; they report their conclusions to the board and the board either accepts them or does not. I think that is a matter that can be dealt with by regulation.

**Hon. Mr. Pepin:** If that were in the regulations you would not need it in the legislation.

**The Chairman:** No, you would not need to touch that.

**Hon. Mr. Pepin:** Mr. Drahotsky brings to my attention that the difficulty is that there is no legal status for "panels."

**Senator Carter:** There will be if we have the amendment.

**The Chairman:** The amendment we are proposing would provide for panels, but the panels can hear and make recommendations; it is the board that must make the decision of approving a grant.

**Senator Burchill:** They have to approve what the panel decides.

**The Chairman:** That is right.

**Senator Lang:** If you call the panels committees you get around it.

**The Chairman:** Yes, you could call them committees.

**Hon. Mr. Pepin:** How would the amendments read?

**The Chairman:** Would you go through them, Mr. Hopkins?

**Mr. E. Russel Hopkins, Law Clerk and Parliamentary Counsel:** It would read:

The Board shall meet as a whole Board or in panels at such times and conduct its proceedings in such manner as may,

and so on. Then subsection 2:

Three members of the Board or of a panel . . .

I suppose of the board, so it would read:

. . . or of a panel of the Board constitute a quorum.

**Senator Flynn:** My suggestion was that three members shall constitute a quorum of the board or of a panel. I think it is clearer this way, but it is as you wish.

**Mr. Hopkins:** I think this is the standard Justice drafting.

**Senator Flynn:** That does not impress me too much.

**Mr. Hopkins:** The say, "three members of the Board or a panel constitute a quorum". I do not think it could be misunderstood. That would be the end of subsection 2. Subsection 3 would read:

The Chairman shall preside at any sittings of the Board at which he is present.



I think it should be:

... At any sittings of the Board or of a panel of the Board at which he is present, and shall designate one of the other members to preside at any sittings of the Board or of a panel of the Board at which he is not present.

**The Chairman:** There is one question there. In order to ensure that there is at least one outsider present at a panel meeting, I think the chairman of the panel that may be appointed should be limited to an outside member of the board.

**Hon. Mr. Pepin:** I will resist that, if you will allow me. I am very eager to accommodate, but I will resist that one, because it may very well be that circumstances do not permit the coming to Ottawa of three outsiders when an urgent decision has to be made, and consequently I want to keep that flexibility, of having a quorum made up of three officials.

**Senator Flynn:** That would not be too bad if we were sure that you cannot continue with this legislation beyond April 30 next year, and that you will have to come back to Parliament, because probably you will at that time be able to prepare other amendments. It is quite obvious that this legislation has been prepared in a hurry, which in the circumstances is understandable.

**Hon. Mr. Pepin:** I do not think that time should be a criterion there. I have seen legislation that was prepared over a long period of time, that was faulty also.

**Senator Flynn:** There are contradictions in the bill, which are not important, it may be, at this time; but if you have to come back to us in about five or six months...

**Hon. Mr. Pepin:** Really, I have no intention of doing that. The bill, as Senator Forsey has said, is a permanent bill. The regulations will have to cover a particular situation justifying the invocation of the bill.

**The Chairman:** I want to point out to you, Mr. Minister, that if we accede to what you have said, and if you have three public servants constituting the panel, because you want to do something quickly, you still must have a meeting of the board in order that you may get the direction of the board as to the grant.

**Hon. Mr. Pepin:** I am quite eager to suggest to the board that they operate in the way you see fit, which is that the decision made in the panels are to be subject to ratification by the full board. I am quite willing to suggest to the board that because it would be according to the spirit of the bill; but I am not too keen to tie myself to the board to the obligation of having one outsider member on each panel when a panel is formed. I think you should leave a bit of flexibility there.

**The Chairman:** All right. We are trying to do so. Section 8 gives the authority to administer a grant to the board. The question then is, what is the authority of the panel? The panel can conduct hearings and I am sure the regulations will provide as to what the panel can do. But the panel cannot administer the grants. It could make recommendations, but the board will have to say it adopts what the panel recommends.

**Hon. Mr. Pepin:** In some ways the panel, if it meets the quorum requirement, operates as the board, in some circumstances.

**Senator Molson:** Surely there is no reason why a panel should operate as the board for more than a hearing or an investigation? Surely a panel of the board should not administer, for say 60 days or 90 days, the provisions of this bill?

**Hon. Mr. Pepin:** The purpose of the panel is that there might be a lot of work, especially in the beginning.

**The Chairman:** Many hearings.

**Hon. Mr. Pepin:** Hearings, meetings, for analysis, for discussion of a case. That is the reason for the panel. I take as very logical and very valid the observations that you have made on the usefulness of referring the recommendation or decision of the panel to the full board. I will recommend accordingly.

**The Chairman:** I do not think we need to amend section 8, because section 8 gives the authority to the board to administer the grants. That remains. We have not given the panel the authority to administer the grants.

**Senator Flynn:** That is right.

**The Chairman:** I think the regulations, Mr. Minister, should spell out the functions of the panel. I am trying to help you on that.

**Hon. Mr. Pepin:** I recognize that.

**The Chairman:** Because that will involve an amendment of the bill. Have we got the question of the panel covered well enough there, do you think?

**Hon. Mr. Pepin:** I imagine it is too well covered.

**Senator Carter:** Must the panel consist of three persons, or can the panel consist of less than three?

**Mr. Hopkins:** Three members of the board or of the panel.

**The Chairman:** Section 7, as amended, says that the board shall meet as the whole board or in panels at such times, and so on. If the board meets as a panel, you may be getting yourself in a position where it is the board, even as a panel of the board.

**Mr. Hopkins:** I would agree with the minister.

**The Chairman:** Yes. Then we have not accomplished what Senator Molson was talking about.

**Hon. Mr. Pepin:** Senator Molson presented it to me as a suggestion I should make to the board, in drafting its own rules and procedures.

**Senator Molson:** Surely the board can never get away from the responsibility of carrying out what is defined in the act. It can have panels, it can do what it likes, but in the end surely the board is responsible, and that is all the members of the board. It is not some of them, is that not right?

**Hon. Mr. Pepin:** Let us try to anticipate on the unpredictable. If the board has the practice, let us say hypothetically, of operating as panels made up only of civil servants, I would suggest that the chairman of the board, an outsider, would resent that very much; and he has all the capacity to prevent it. The chairman of the board, I suggest, will allow a meeting of a panel made exclusively of officials, only in extraordinary circumstances. He, being an outsider, will not want the responsibilities of outsiders on the board to be eroded by the development of a practice of panels meeting including only officials.

**The Chairman:** Here is the rationalization of it, Mr. Minister. It strikes me like this. The board is the top. What we say here in the amendment is that the board shall meet as a whole board or in panels. That is fine. That is providing authority. But who determines when they meet in a panel? It will be the board that will determine that. And when the board determines that they are meeting in panel, the board will provide the procedures, and your regulations will deal with that. I think we have it covered.

**Hon. Mr. Pepin:** I am being very frank, I am not sure if the regulations will cover that part of it; but the board has the right to select its own *modus operandi*.

**The Chairman:** Each time.

**Senator Molson:** Mr. Chairman, at the end of the year, the board will make a report to the minister. At that stage you are not going to get a report from a panel. You will get a report from the board. Therefore, what I am saying is that the board is responsible for all that has happened during the year, whether it did it in panel or by the whole board.

**Hon. Mr. Pepin:** That is so.

**The Chairman:** Is what we have done satisfactory?

**Senator Flynn:** Yes.

**Hon. Mr. Pepin:** You have explicitated really what was in our minds, what would have been done, anyway.

**The Chairman:** We have not tortured the bill beyond recognition. Are these amendments agreed to?

**Hon. Senators:** Agreed.

**Hon. Mr. Pepin:** Mr. Chairman, if I may, I have another amendment to suggest to you. It has to do with the reporting under clause 21 of the bill. Last evening the view was expressed that reporting once every year was not good enough. The same suggestion was made in the house. I stood up in the house and put my hand on the invisible bible and said I would report on a quarterly basis. Because of circumstances there was no time to go into it, I was unable to present it as an amendment, since the procedure did not allow me to do that. You will remember that we were at the report stage.

Therefore, if you want to help me in getting your two amendments through the house, where members of the house may very well say that I was not flexible enough to accept an amendment to clause 21 but flexible enough to accept amendments to clauses 6 and 7—they may ask why I did not accept their amendment!—I am suggesting that you explicit the suggestion made last evening and amend

clause 21 so that in place of the words "fiscal year", the bill would say "annual quarter", to put reporting on a quarterly basis. The Department of Justice recommends the word "annual quarter", which is synonymous with three months.

**The Chairman:** We have to strike out "fiscal year". It occurs twice.

**Senator Beaubien:** If in March you get the report on the March 31, it does not give much time.

**Senator Flynn:** The idea would be to make the first report at the end of the calendar year. It could be the quarter terminating on December 31, 1971.

**Hon. Mr. Pepin:** Mr. Chairman, with respect to the previous amendment on the subject of panels, because it is likely to cause legal difficulties my adviser is checking with the Department of Justice. He should be back in a moment or two.

**The Chairman:** Last night another question was raised which the minister answered immediately but was asked to reflect upon. That point is that where the board makes a decision (a) that it has not the authority to deal with the matter, or (b) that the board is against granting any benefit or relief, there should be a right in the person affected to go to the minister, as of right, for a review.

**Senator Flynn:** If it is beyond the powers of the board I suppose the Federal Court would have jurisdiction to annul the decision.

**The Chairman:** If the board exceeds its jurisdiction, of course you can go to the court. In fact, you can leave that phase of it and deal only with the phase where the applicant is aggrieved by a decision of the board, in which case he would have the right to go to the minister for a review.

**Senator Lang:** What is a review?

**The Chairman:** The minister did not like the word "appeal" and I was inclined to agree with him.

**Senator Flynn:** Even if the minister makes a review, he cannot impose a new decision on the board.

**Hon. Mr. Pepin:** Right. The minister can only ask for a review. I wish to emphasize that point.

**Senator Flynn:** He can review the case, but he would have to ask the board to change its mind. The board would not be obliged to do so.

**Hon. Mr. Pepin:** That is my understanding also.

**Senator Flynn:** We do not need to legislate on that score. We might as well leave it as it is. Anybody can appeal to the minister.

**The Chairman:** I raised the point because I was asked to last night, but my own view is that the minister, in the position he occupies now under the bill, can at any time ask the board to be kind enough to review a decision. But the board is the authority.

**Senator Flynn:** Otherwise we would have to establish a mechanism to enable the minister to change a decision of the board.



**Hon. Mr. Pepin:** If you are looking for justification of the approach, which we seem to agree on, it is clause 8(1), "subject to the regulations and the direction of the Minister". Presumably the direction of the minister would include the right to ask the board to review its decision on a case in the light of circumstances, events and facts brought to the attention of the minister.

**The Chairman:** We have raised the subject as we said we would. The feeling of the committee is that it is not practicable and is unnecessary in the circumstances.

**Senator Molson:** On the question of a split board, what does the term "panel" mean? Do we know what a panel is? Is it defined? We have had committees and subcommittees, but we have not had panels before, to my knowledge.

**Hon. Mr. Pepin:** That was Mr. Drahotsky's concern.

**The Chairman:** When referring to a board it might be more appropriate to use the word "committee" — a committee of the board.

**Hon. Mr. Pepin:** My first information was that this does not have to be covered owing to the fact that it is the normal practice of boards, for example, the National Energy Board and the Tariff Board, to sit in committee, but when the decision is made it is made by the board. The board cannot say that the decision was made by a committee and consequently the board has not taken a decision. If the board does not take it, there is no decision of the board, or there is a contrary decision of the board.

**Senator Benidickson:** Mr. Chairman, the Transport Board sometimes sends out a single representative and when he comes back he gets the approval of his colleagues.

**Senator Flynn:** The Appeal Court of Quebec sits with two panels in Montreal at one time.

**Hon. Mr. Pepin:** That is what is intended here.

**The Chairman:** Then we had better stay with the word "panel". What have you to report, Mr. Drahotsky?

**Mr. Drahotsky:** I have tried to clarify these points with the Department of Justice. I am told that the term "panel" has no legal meaning, unless so defined in one way or another. I have also been reminded that this question arose on a number of occasions when the bill was being considered in cabinet committees. The consensus reached, including the agreement reached in the Cabinet Committee on Legislation, was that clause 7 should be taken in conjunction with clause 9, empowering the board to make such rules as may be necessary for the conduct of its meetings, the management of its affairs and the performance of its duties and functions, and that those two clauses do provide adequate authority to the board to operate on a two-panel basis, and to organize its activities and its deliberations in any way it would consider most expeditious. Thank you, Mr. Chairman.

**Senator Beaubien:** Mr. Chairman, the Companies Act lays down that notice has to be given to directors. That means all directors. All directors are invited to meetings. If that procedure were followed here there would be no real problem. If all directors are told that the meeting is going

to take place and are advised in time, then they are going to turn up.

**Senator Flynn:** But if everybody wants to sit on the same panel, what will happen then?

**Hon. Mr. Pepin:** They will be directed by the chairman which panel they are to sit on, and I would suggest that the chairman would try to get in his panels the same kind of mix he gets on the board. That stands to reason.

**Senator Molson:** According to section 9 it sounds to me as if the rules that the board operates under with respect to panels, in other words, how the panels are made up and how they are called to meetings and things of that sort, would have to be set out in the board's own rules.

**The Chairman:** Senator Molson, we only got on to this question of panels because the minister introduced the subject by saying he would want the board to sit in panels, and we were trying to find some way whereby he could have authority to do that. If he does not want that, but feels he has enough authority under section 9, then that becomes his job. I think that under that section, the board can make any rules it wants to make. The board can simply say, "You, you and you shall act as a section of the board to deal with this matter." But then that section must go back and report to the board.

**Hon. Mr. Pepin:** I suggested that very strongly at the time.

**Senator Lang:** I should like to move that the bill be reported without amendment, Mr. Chairman.

**Mr. Chairman:** But we have agreed to some amendments.

Is it the wish of the committee that in the amendments we delete all reference to panels?

**Senator Flynn:** I am very happy the Minister has found the Senate useful in proposing the amendment he had no time to push through in the House of Commons.

**Hon. Mr. Pepin:** I think that the discussion has been helpful to me in the sense that I will suggest to the Chairman when I meet him after he is appointed that he should try to develop in the panels when they meet the same kind of mix that he has in the board itself. I will suggest that, but I did not want him to be tied to the obligation of doing that in exceptional cases.

**The Chairman:** Shall I report the bill as amended?

**Senator Benidickson:** What amendment was agreed on?

**The Chairman:** The amendments we talked about last evening to section 6, section 7 and section 21. In section 21 we are changing the fiscal year to each annual quarter.

**Hon. Mr. Pepin:** And in section 7 a new paragraph 3 has been added.

**The Chairman:** I will read it for you.

**Senator Benidickson:** Has the committee agreed to Senator Aird's suggestion that the words "at least" should be included in section 6 sub-section 1?



**The Chairman:** No, but subsection 2 has been amended. The Minister has furnished us with a form of amendment which would read:

Not more than two-thirds of the members of the Board at any time may be members of the Public Service within the meaning of the Public Service Employment Act, but a vacancy occurring in the membership of the Board that has the effect of temporarily reducing the number of members of the Board who are not members of the Public Service below one-third of the members of the Board does not invalidate the constitution of the Board or impair the right of the members to act if the number of members is not less than a quorum.

Believe me, it does make sense.

**Senator Benidickson:** It is fairly easy for it to follow the principle in the original bill.

**The Chairman:** Except if the board of directors decide that the board is going to sit in sections, for instance, and they designate three members who are public servants, whatever decisions or recommendations they are going to make, it will still be the board itself which must afterwards administer the grant. We have not changed that. Is that clear?

**Hon. Mr. Pepin:** I agree, and I thank the committee for a very good hearing.

**The Chairman:** We will struggle to report the bill this afternoon, and we can say that the amendments made have been made with the consent and approval of the minister.

We will adjourn now until 3 o'clock this afternoon, when we will continue our hearing in connection with the private bill to establish the United Bank.

The committee adjourned.

## APPENDIX "A"

Statement of Minister of Agriculture,  
October 1, 1971.

**Hon. H. A. Olson (Minister of Agriculture):** Mr. Speaker, I want to make a brief statement providing further information on agricultural assistance programs designed to cover unprocessed agricultural products which will not be eligible for assistance under Bill C-262, the Employment Support Act. You will recall that I gave notice of this assistance when I spoke on second reading of Bill C-262 on September 7, 1971.

I can advise that the Agricultural Stabilization Board and the Agricultural Products Board have been authorized to come forward with individual commodity programs designed to help producers adversely affected by the surtax. The programs will take any one of several forms, namely, purchase of the product, deficiency payments or payment to distributors for the benefit of producers. In this latter connection distributors to be eligible must have been exporters of the unprocessed product to

the United States in the base period, must demonstrate that the price paid to farmers for raw products was maintained at a level consistent with that which would have been expected in the absence of surtax, that distribution volume and employment were maintained. I say the latter because employment in the agricultural distributing industry is important as well as in the agricultural processing industry.

As with processed products there will be no requirement that exports to the United States be maintained.

I am issuing a press release today inviting applications from the agricultural industry both from producer groups and distributors. Applicants are asked to provide basic data relative to the criteria and on the impact of the surtax on their operations to supplement the information already accumulated by the department.

In conclusion, I want to say that I am very conscious of the need to put these programs in place promptly and consistent with the need of those affected and the international situation.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

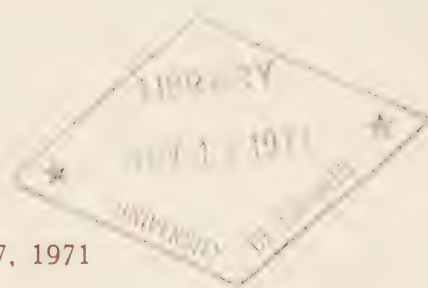
No. 39

THURSDAY, OCTOBER 7, 1971

Third Proceedings on:

“Summary of 1971 Tax Reform Legislation”

(Witnesses—See Minutes of Proceedings)





THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Thursday, October 7, 1971.

(46)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to further consider:

"Summary of 1971 Tax Reform Legislation".

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Gélinas, Giguère, Haig, Hays, Isnor, Lang, Molson, Smith, Sullivan, Walker and Welch. (21).

*Present, but not of the Committee:* The Honourable Senator Heath.

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant.

## WITNESSES:

Mr. Arthur A.R. Scace, Partner,  
Law Firm of McCarthy and McCarthy.

Mr. Stephen C. Smith, Partner,  
Law Firm of McCarthy and McCarthy.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, October 7, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** With respect to the order we intend to follow this morning, we will first take general matters relating to estates, real estate and corporate acquisitions, and Mr. Scace is going to deal with that. Following that we are going to deal with international taxation, and Mr. Smith will handle that.

You will recall that yesterday we had a fairly extensive discussion on the question of multi-national and international income, and over the next three weeks we shall be having several briefs on that aspect. Therefore, it will be important this morning to get as good a grounding in this as we can.

Mr. Scace, would you care to take over now?

**Mr. Arthur R. A. Scace, Partner in the Law Firm of McCarthy & McCarthy:** Thank you, Mr. Chairman. In the programs which we have given we have parcelled out estate planning or matters relating to estates as a separate item, and last week we touched on a number of things which are important in that particular area so that to the extent we have already done that I think I will gloss over it unless you would like to go back and delve into it in somewhat greater detail.

**The Chairman:** You mean we should have a refresher course this morning.

**Mr. Scace:** If you like.

**Senator Benidickson:** Some of us need it.

**Mr. Scace:** When we did capital gains we started off with a summary. Perhaps we might do the same thing this morning. The basic changes, so far as estates and death duties are concerned, are as follows: First, estate and gift tax are to be abolished, and we will have more to say about that as it is clearly the most important aspect of this area. Second, with the exception that in the case of distributions to a spouse or to a qualifying trust in favour of a spouse, there is a deemed realization of all capital assets on death and when a gift is made, and this is the substitution for the gift tax and the estate tax. Third, the attribution rules are altered in order to take account of the imposition of the capital gains tax. Fourth, as we mentioned last time, there is a deemed realization when you

cease to be a resident of Canada. In other words, when you emigrate from Canada there is a deemed realization at fair market value. There are, of course, certain exclusions from that and it will not cover taxable Canadian property. Finally, and I think this is an area where you may be receiving a number of briefs, the law concerning the taxation of trusts is now much more extensive and much more complicated, and a number of people in the trust field think that it is possibly quite inadequate.

If I may, I will go through these items. First there is the abolition of estate tax. The provision abolishing it is found in Part II of Bill C-259, and it says that the Estate Tax Act does not apply in the case of the death of any person whose death will have occurred after 1971. So if you can make it to January 1, 1972, there will be no estate tax.

**Senator Molson:** If we pass the bill.

**Mr. Scace:** In its place we get a deemed realization on death, as I said. You find that provision in section 70(5) of the bill.

As a review of what we looked at last time, there are two aspects of the deemed realization. First, if you are dealing with non-depreciable capital property, the deemed realization is at fair market value. Similarly, the beneficiary acquires at fair market value. Second, if you are dealing with depreciable capital property, you have the midway point rule. In the legislation the deemed realization price, or the deemed disposition price, is undepreciated capital cost plus one-half of the difference between fair market value and undepreciated capital cost. Similarly, you get an acquisition at that same price.

**Senator Connolly:** Will you say that again?

**Mr. Scace:** Yes, sir. In the case of depreciable capital property, it is undepreciated capital cost plus one-half of fair market value minus undepreciated capital cost.

**Senator Connolly:** It is the old story, isn't it, adding it in and then subtracting it?

**Mr. Scace:** Well, if you had an asset which had cost \$100 and an undepreciated capital cost of \$80, and on death the fair market value was \$200, your calculation would be \$80 plus one-half of \$200 minus \$80 which is \$120, so then it would be \$80 plus \$60 which is \$140.

I think we had examples of this calculation last week, but what you would get here is recapture between undepreciated capital cost and original cost, so there would be recapture between \$80 and \$100, and between the \$100 and the deemed realization price of \$140, that would be a capital gain and applying your normal rule, one-half of that would be a taxable capital gain and you would include it in your income.

**The Chairman:** So that \$20 would go into income?

**Mr. Scace:** Twenty dollars would be the taxable capital gain, that is right.

**The Chairman:** And \$20 would go into income by virtue of recapture at full income rates.

**Mr. Scace:** At full income rates, that is right.

**Hon. Mr. Connolly:** Just to make it crystal-clear, that undepreciated asset could for example be a share of stock or a bond that had been purchased for \$100 and then dropped to \$80.

**Mr. Scace:** No, sir. Here we are talking about depreciable capital property, that is property upon which you are entitled to take capital cost allowance. In the case you are talking about of non-depreciable capital property, you do not have to go through this calculation, there is a deemed realization at fair market value.

**Senator Connolly:** That makes it abundantly clear.

**Mr. Scace:** So you would not have this item here of undepreciated capital cost and the deemed realization would take place at \$200 if this were not depreciable capital property and that would be the acquisition price, and in that case there would be a \$100 capital gain and a \$50 taxable capital gain.

**Senator Lang:** Mr. Scace, taking the fair market value less the undepreciated capital cost, does the person acquiring the asset have to take into account the undepreciated capital cost?

**Mr. Scace:** No, sir. There is a different rule where you have that situation, but the formula is much the same. Where your fair market value is less than undepreciated capital cost, the rule is fair market value plus one-half undepreciated cost minus fair market value. They just switched it around. Let me just show you how that would look. In that case you have an asset with a cost of \$100, an undepreciated capital cost of \$80 and a fair market value on the day of death of \$50, so you would have \$50 plus one-half of undepreciated capital cost of \$80, minus fair market value so you would end up with \$50 plus \$15 which would equal \$65.

**Senator Lang:** I do not see the equity in that. Do you?

**Mr. Scace:** That may be a common complaint, senator.

**Senator Beaubien:** If a man were not feeling very well and he had some property, it would be a great thing for him to get out of it before valuation day and leave nothing but cash.

**Mr. Scace:** It would be a good idea. I think the rationale to this—if we complicate it just a little more—is that under the present law if you hold a depreciable capital asset, then on death if the asset passes by will, there is no recapture and the donee acquires a fair market value. Now because of that treatment, I think they decided that somehow they had to make a compromise which was somewhat less than the rigour of a fair market value realization, and for that reason you get the midway point rule, I think, which is merely a compromise.

Now this does create a problem, and I think we mentioned this last week too. As I said, if you have a depreciable asset now and \$100 is the cost and \$80 is the undepreciated capital cost, when you die and leave that asset by will, then the fair market value is \$200. There is no recapture on your death of this \$20 in capital cost allowance that has been taken—that is the difference between which the beneficiary acquires, \$200, which is fair market value, and that becomes his base for capital cost purposes. With these new rules you can get, as I have shown, recapture and that recapture will be retroactive. As I said last time there are methods of avoiding that retroactive recapture, but it still requires reorganization of your affairs.

**Senator Burchill:** How do you get at the undepreciated capital cost? You know the capital cost but how do you get at the undepreciated capital cost?

**Mr. Scace:** The undepreciated capital cost is a book figure or an historical figure. Say you bought an apartment building for \$100, you are entitled to take capital cost allowance on that apartment building at 5 per cent. So in year number 1 with 5 per cent of \$100 being \$5, the undepreciated capital cost would be \$95.

**Senator Burchill:** You would have to figure out all that?

**Mr. Scace:** Yes, but you would know it because you would have been taking it every year. That would be no problem.

**Senator Connolly:** So that \$80 in that example is what would be left after you have taken your depreciation?

**Mr. Scace:** That is right.

**Senator Burchill:** But what about an art collection?

**Mr. Scace:** An art collection would not be depreciable property. To be entitled to capital cost allowance, the property must be purchased for the purpose of producing income. I suppose it might be possible to acquire a piece of art for that purpose, but I think that in most situations it is unlikely.

Now if we can give you a comparison of the rates of tax between the Estate Tax Act as it was and what we will get under Bill C-259 with the deemed realization on death. Under the Estate Tax Act the rates started at 15 per cent on the estate sum if it exceeded \$20,000, and it went up to a top rate of 50 per cent where the estate exceeded \$300,000.

For Ontario purposes—and my calculations have been based on Ontario—because you had a 50 per cent provincial credit to give account to the Ontario succession duty, you could view the Estate Tax Act rate as being halved, so the top rate—for an Ontario estate at least—would have been 25 per cent under the Estate Tax Act. Now you turn to Bill C-259 and with the combined federal and provincial rates of tax, the top marginal rate is approximately 61.1 per cent. Now with the deemed realization on death, you are only taxing capital gains and therefore you may view that top rate as being halved, because there is only half recognition of a gain and therefore the top rate on death would be 30.55 per cent of one-half of 61.1 per cent. So if you stop there it appears that the maximum rate has gone up by approximately 5½ per cent, but it is based on the capital gains which have accrued but which have not been realized. Theoretically, the tax base under the bill must be



considerably smaller than the tax base under the Estate Tax Act. The only situation in which the base might be the same would be where you started off with no assets, or your whole assets had been invested and you never realized a gain. So you are starting from zero and upon death, in effect, all of your assets would represent unrealized capital gains. The other possibility, which is equally unlikely, is that if the tax base on property received by bequest or gifts prior to 1972 is nil, that is, if all of your property had been inherited or received by gifts prior to 1972, your whole estate might be subject to deemed realization on death.

**Senator Hays:** Would not all farms be in this situation where a farmer starts with zero and goes through his entire lifetime ...

**Mr. Scace:** Many farmers inherit their farms.

**Senator Hays:** No, starting from zero with the Farm Credit Corporation and a small downpayment and working for 40 years which many farmers do; his whole assets are subject to capital gain. I would suggest that perhaps 90 per cent of the farmers are in this situation.

**Mr. Scace:** That could be correct, senator. I am not very familiar with farms. He would be entitled to deduct his costs.

**Senator Hays:** Yes, he would do that on income tax.

**The Chairman:** His operating costs.

**Senator Cook:** That would only apply after the valuation date of the farm.

**Mr. Scace:** Yes.

**Senator Hays:** And he goes through his entire lifetime and then he dies. He is starting from zero. If you checked the percentage of all farmers, I think you would probably find 90 per cent are in this category.

**Senator Beaubien:** Mr. Scace, anyone who owns any kind of property today, if no change has occurred between the value at the date of his death and the valuation date, there is no tax.

**Mr. Scace:** That is right.

**Senator Beaubien:** It does not matter how you have obtained it. If you should die round the end of January and your property is worth \$100,000, and on the valuation date it was worth roughly \$100,000, there is no tax.

**Mr. Scace:** That is right.

**The Chairman:** It is deemed realization gain. It is attached to the deemed realization and your starting point is as of January 1, 1972.

**Senator Hays:** Hon. Mr. Phillips said that he did not feel that farms should be subject to the capital gains tax. This is probably what he had in mind. They start from zero and they face this inflation their whole lifetime.

**The Chairman:** This is what we were saying.

**Senator Hays:** This would be a good opportunity to back up that statement.

**The Chairman:** Yes, to reinforce what we have already said. Apparently, they did not hear us the first time.

**Senator Beaubien:** I think this is a point we ought to stress very heavily. We look at the capital gains tax and we are not very much afraid of it because, after all, we are not going to live that much longer. We are dealing with a change in valuation between some time before the end of the year and whenever a person dies. We are leaving a terrible legacy for the poor people who are starting to earn money now and have to battle through their lives and who turn out to be successful and are able to leave money to their children; and because they are successful they are going to get clobbered by this bill.

**The Chairman:** Senator Beaubien, "clobbered" is a relative term. As I understood Mr. Scace, the clobbering might consist of a difference in rates, as compared to the estate tax if it continued, of the order of 5½ per cent.

**Mr. Scace:** That is right.

**Senator Beaubien:** Except in the case of the inheritance of money where it all has to be paid.

**The Chairman:** Do you mean by will?

**Senator Beaubien:** Yes.

**Mr. Scace:** There is no problem after we get into the system. Once someone inherits something, or receives something by gift after the system starts the acquisition price is fair market value or there is this mid-way point rule in the case of depreciable capital property. However, it starts with a base so I do not think there is a problem.

We have made some calculations, which clearly show that the federal tax cost of dying on most reasonable assumptions will be much less under the new system. There is just some concern during the transition, but you have pinpointed it correctly, that if you are worth \$100,000 on December 31 and die on January 1 there is zero tax to the federal Government. If you do that, your beneficiary acquires the property at \$100,000 and moves on.

**Senator Molson:** I thought you said, though, that there was a stage where property acquired by will would attract tax on the whole amount.

**Mr. Scace:** That is right, senator; I said if we are right with respect to gifted and inherited property acquired prior to 1972 a situation could exist in which the tax base would be almost equal to that under the old Estate Tax Act. In that case, if the rate is 5½ per cent higher, there could be a higher tax.

There are three considerations: one, as I have indicated, we may be wrong in our conclusion; I hope we are. Secondly, the amendments may cure this particular difficulty; we hope they will. Certainly the Department of Finance is aware of it. Thirdly, it is open to anyone to take the fairmarket value election and cure the deficiency.

This is an interesting area, because although we may discuss what the federal Government says it intends to do, the \$64,000 question is what the provinces intend to do. That is the real issue.

**Senator Cook:** This is perhaps just a practical question, but now if someone dies the executor files a return, values



the assets and so on. How will it work practically on his deemed realization? Does that put the onus on the department? Who reports the transfer of the property?

**The Chairman:** I expect they would check the values as they do now for an estate.

**Mr. Scace:** You would be required to file an income tax return, as opposed to an estate tax return, senator. Therefore you would have to show what assets you had, what the costs were and what their values were at the date of death.

**The Chairman:** I expect also, Senator Cook, that the staff presently in National Revenue, in the Estate Tax Section dealing with valuations, etcetera, would simply be transferred to this phase of administration.

**Senator Cook:** Who files the deemed realization? The legatee, I suppose.

**Senator Molson:** It will be much simpler to die before valuation day.

**Mr. Scace:** Senator, I suggest that if you are considering it, you wait until January 1.

We have made calculations, in which we had to adopt a number of assumptions. However, assuming these provisions are implemented on a federal level and assuming, for instance, that Ontario does not change its statute and on the reasonable and fairly realistic assumptions on an estate of \$300,000 there is a saving of \$32,000 in tax; on an estate of \$500 million, there is a saving of \$77,000; on an estate of \$1 million, there is a saving of \$179,000. That illustrates the order of magnitude, assuming the federal Government does what it says and the provinces do not make any change.

**The Chairman:** Have you assumed some kind of mix in those \$300,000, \$500,000 and \$1 million estates?

**Mr. Scace:** We have assumed it is all non-depreciable capital assets. The assumptions are quite complicated but, I think, fairly realistic given a normal estate.

**Senator Cook:** That is assuming no deemed realization, is it not?

**Mr. Scace:** We are comparing what would happen under the old system and what would happen under the new system, given certain assumptions. These assumptions result in a considerable saving in tax; the federal tax cost of dying is much reduced under the bill and the total tax cost of dying is considerably reduced.

**The Chairman:** Are you comparing the estate tax and the income tax at deemed realization on the gains?

**Mr. Scace:** That is right.

**Senator Cook:** We will pass that section.

**The Chairman:** I should think everyone would be in favour of that.

**Mr. Scace:** There is one interesting twist to the deemed realization on death. Clause 70(5) appears to apply only to capital properties, that is non-depreciable capital properties and depreciable capital properties. It does not appear to apply to inventory or trading assets. A common exam-

ple of an inventory or trading asset would be a piece of land, the profit from the sale of which would be taxed in full. Since it is not included in clause 70(5) it does not appear to be subject to the deemed realization at death. Consequently there could be the anomaly that at death it would be argued that a particular asset is a trading asset and would have been taxed in full on sale, as opposed to the normal asset, where it would be said it is a capital asset and the receiver is entitled to capital gains treatment rather than full inclusion. Again the department is aware of this; I do not know if they will do anything about it.

**The Chairman:** Are you recommending that everyone seek to develop a trading asset position about the time they discover they are soon to die, or have a pretty good idea they are in the terminal stage?

**Mr. Scace:** I am not making any recommendation, senator; I think you can draw your own conclusions.

**The Chairman:** It might be good to have some trading assets though.

**Mr. Scace:** It would not hurt.

**The Chairman:** No.

**Mr. Scace:** As I have said, the abolition of the estate tax and the substitution of the deemed realization on death is really a political question. The reason it came about was that essentially an estate tax is an unpopular tax. The federal Government was collecting it and then in most instances remitting 75 per cent of the amount collected to the provinces.

I do not have the up-to-date figures, but if we said the net return to the federal Government was \$100 million per year, we would not be too far out.

So for a relatively small amount of money, the federal Government was taking the blame for what was a very unpopular tax. The Government therefore decided to get out of the field, as it was not worth the candle. Certainly the abolition ran counter to what everybody expected.

If we look at the House of Commons report—and I do not know whether it is wise to bring it up in this forum . . .

**The Chairman:** Oh, yes.

**Mr. Scace:** The House of Commons, for instance, said that the estate tax exemption should be increased significantly. There should be no estate tax on estates less than \$150,000 and, at the top rate of 50 per cent, should only bite in at \$800,000.

I think everybody expected some compromise along those lines, but clearly we were not ready for the abolition.

There is a little story on the subject of abolition. Perhaps the man most surprised by it was a friend of mine, a professor at one of the Toronto law schools, who had the misfortune two or three days before June 18 of completing a definitive manuscript on estate tax. On the night of June 18 he phoned me and said, "Tell me it is not so."; and I had to tell him that unfortunately it was.

Apparently the story has a happy ending. He is a very resourceful man and is now offering a course at the law school in legal history and using the manuscript.

Addressing myself to Senator Beaubien and Senator Molson, this may be a real political issue if it ever comes out. There has been surprisingly little comment on it. If a man who is worth \$100 million today should have the misfortune to die, or if his beneficiaries should be so unfortunate, his family would be looking at a federal estate tax of approximately \$25 million. If he should die on January 1, that \$25 million would be completely obliterated. There would be no tax whatsoever.

If he lives for a period of time into the new system, then some tax will be exigible on one-half of his post 1972 capital gains, but certainly a lot less than \$25 million.

**Senator Cook:** Has Ontario come up in favour of abolition of succession duties?

**Mr. Scace:** It is hard to know what Ontario is going to do. From reading their publications and budgets over the last two or three years, most readers have interpreted them as meaning that they intended to get out of the field.

It seemed clear, when Mr. McKeough was commenting after June 18, that he was very surprised. I think that Ontario's position now is that they still want to get out of the succession duty field, but they will wait until the capital gains tax on the deemed realization at death gets fully on stream. So it is taking a bite at estates.

Certainly I think it has slowed down their timetable for getting out of the succession duty field.

**The Chairman:** I think we can assume that if they do, they may follow the lead of the federal authority and find another way. The federal authority has found that deemed realization is a way of producing income. I do not think that if Ontario gets out of the succession duty it means that it is a plus for the taxpayer in the sense that there will not be any tax on dying in Ontario. I think they will find something else for part of it or perhaps all of it, because they have to have money.

**Mr. Scace:** With Ontario it is not too much of a problem. They already have a succession duty administration. If they want to increase their rates, it is simply a matter of passing a bill. The procedures are there.

I do not think it is too much of a problem with most of the wealthy provinces. But if we take a province like Prince Edward Island, it is impossible to see them imposing a succession duty. The cost of administering it would far outweigh any tax collected. It would merely impose a social tax, and would clearly be a loss leader from a revenue point of view.

**Senator Cook:** Would you include Newfoundland?

**Mr. Scace:** I was speaking of the smallest province. I did not want to get into details. Certainly there are some provinces that cannot afford a full-blown succession duty and collection procedure. They might pay for it and undergo the cost, but it would not make any economic sense. It might make some social sense.

**Senator Connolly:** Mr. Scace said that in the event of death, after the system comes into effect, instead of filing an estate tax return, a special modified income tax return would be filed showing the situation in respect of a decedent's estate on the date of his death and giving the market

value of all his assets. I take it that the simple process after that would be for the department to assess a gift tax?

**Mr. Scace:** They would assess an income tax.

**Senator Connolly:** Yes, they would assess an income tax. Would it be income deemed to have been realized in the year that he died?

**The Chairman:** Deemed realization.

**Senator Connolly:** Assuming that it was a very substantial increase over his normal income, would there be any alleviation?

**The Chairman:** You mean, could they apply the averaging?

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** You have to relate that to the values at valuation date and tie it into the valuation date.

**Senator Connolly:** I would like Mr. Scace to summarize what he has detailed for us here. Could we direct our attention firstly to this question of a great increase in, a doubling of, the income in the year in which he died?

**Mr. Scace:** Let us take an example and let us make it one that fits entirely into the new system. Let us assume that in 1973 a man buys an asset for \$1 million. That is his cost. He had cash, he buys the asset, and dies in 1980. That is the year of his death. That asset would then be worth \$2 million. That is the fair market value.

His gain is \$1 million, and his taxable capital gain is \$500,000. The tax on that, if we assume a marginal rate of tax of 60 per cent, would be \$300,000.

Let us assume that we continued under the old system, and the man died with property worth \$2 million. If the federal estate tax on that \$2 million was 25 per cent, the estate tax would be \$500,000. So he is, in fact, \$200,000 better off.

**The Chairman:** His estate is.

**Mr. Scace:** Yes, his estate is; his beneficiaries will be. He does not really care any more.

There is a liquidity problem on death, but there always was a liquidity problem on death. You either have to pay the taxes on the assets realized or you purchase insurance to meet the tax cost.

**Senator Connolly:** So that in the year 1980 there will be a tax of \$300,000 to pay?

**Mr. Scace:** Yes, in 1980.

**Senator Connolly:** In other words, he has income in that year or a taxable capital in the amount of half a million dollars?

**The Chairman:** Plus whatever income his estate may have.

**Senator Connolly:** Plus whatever income he had. This is an enormous increase in income, even for a man in that category, I should think. Is there any alleviation for it under the act?



**Senator Lang:** He has the same problem under the Estate Tax Act now.

**Senator Connolly:** I realize that.

**Mr. Scace:** Mr. Smith and I were just conferring as you were asking the question, senator. We will try to get you an answer. I am not sure whether the general averaging provisions under Section 118, or the ability to purchase an income averaging annuity contract under Section 61 would apply under those circumstances.

**Senator Connolly:** You have a liquidity problem here and you have to solve it somehow. That is the normal thing; you have that under the present system, but under the new system you still have a tax of \$300,000.

**Senator Lang:** He would have had \$500,000 under the old act.

**Senator Connolly:** I know that, but there is an enormous increase in his income.

**The Chairman:** Senator Connolly, perhaps Mr. Poissant can make some comments in relation to this.

**Mr. C. Albert Poissant, Tax Consultant to the Committee:** I think the general averaging provisions apply. If I remember correctly, in the year of death the requirement would be 100 per cent of the previous year's averaging and not 110 per cent. It is 100 per cent in the year of death, so the general averaging provisions would apply. The general averaging provisions apply in certain instances, and one of them is that your income for the year must be at least 110 per cent of the previous year's average, but for the year of death they have removed this requirement of 110 per cent and instead it has to be 100 per cent.

**The Chairman:** You find that in section 118(3).

**Mr. Poissant:** Yes.

**The Chairman:** We have answered your question, Senator Connolly, as best we can.

**Senator Connolly:** I am very grateful.

**Mr. Scace:** The problem with the general averaging provision is that we have never done a calculation based on figures of this size. Certainly with more normal income figures the general averaging provision does not produce much of a tax saving. If I had to guess I would think you were only talking about a tax saving of about \$20,000. I do not believe it would be a great saving.

**The Chairman:** The income as a result of death would be the normal income of the person who died up to the date of death, plus the capital gains realized on death. The sum total of those would really have to explode or balloon in order to produce a substantial excess of income for that year in order for the general averaging provisions to apply. In how many estates is that likely to occur? Whenever it does occur it is quite important.

**Senator Beaubien:** Mr. Chairman, we are not aware of what the provinces are going to do, so that really we are looking at only half of the equation.

**Senator Molson:** From that point of view anyway.

**The Chairman:** So far as the provinces are concerned, all we can do is what we did before, and that is state in our report that we seem to be starting at the wrong end and that really some agreement should be reached with the provinces before the legislation can proceed.

**Senator Beaubien:** The provinces have been getting 75 per cent, have they not, of all of the death duties collected? The provinces that have no estate tax or gift tax will be wanting to get something back.

**The Chairman:** The revenue that might come from the imposition of succession duties, less the cost of administration, might be reasonably negligible. Those provinces have an economic problem, and I doubt if they are going to solve it by taxation.

**Senator Connolly:** They probably have to solve it by transferring payments from the federal treasury.

**The Chairman:** I would think that would be so. However, it is not part of our job at the moment.

**Hon. Mr. Phillips:** The deemed realization on capital gains could offset succession duties. You are dealing with the poorer provinces and they may never reach the replacement and, in any event, if they do it will take some years. That is why the provinces have already indicated to the federal Government that they feel there should be a postponement of the cancellation of succession duties until the deemed realization on capital gains is in full flight. No one seems to be paying any attention to the payments.

**The Chairman:** They may get transfer payments in relation to the amount of the deemed realization and the tax thereon. However, that is not a problem we can speculate on at this time. We may decide that we should say something about it as being one of the questions still hovering around, which will be bothersome and for which some solution should be found.

**Senator Connolly:** Presumably, that kind of thing is going to be dealt with at the federal-provincial meeting or at the ministers of finance meeting.

**The Chairman:** I am glad you added the word "presumably," because I do not know and I would not want to speculate on what conclusions might be reached.

**Senator Cook:** If they are worried about the revenue, perhaps it could be done by bringing down the scale year by year. It would only take ten years, if the scale was reduced by 10 per cent a year.

**The Chairman:** Can we get down to our more immediate problems? Mr. Scace, what is the next area?

**Mr. Scace:** The next area is gift tax and gifts. Rule 14 of the Income Tax Application Rules apparently abolishes gift tax. It states that Part IV of the former Income Tax Act is continued in force but does not apply in respect of gifts made after 1971. Reading that alone it is clear that gift taxes will apparently be abolished.

**Senator Connolly:** What page are you reading from?

**Mr. Scace:** Transitional Rule 14 at page 412. Part IV states that the former act is continued in force but does not apply in respect of gifts made after 1971.



I have used the word "apparently" because if you turn to page 384 and particularly Section 245(2), that particular section was in the old act as section 137(2) and in addition it had subparagraph (c) which has been deleted.

**Senator Connolly:** I missed your reference.

**Mr. Scace:** Page 384, Senator Connolly, Section 245(2). That section used to be Section 137(2) of the existing act, and the only change that has been made is the deletion of subparagraph (c). It is a purely inadvertent technical drafting error by deleting subparagraph (c). If you leave section 245(2) in the way it is now and you make a gift, the amount of the gift must be brought into the income of the beneficiary.

If you care to read it through, it seems reasonably clear that that result would apply. It is not intended. The Department of Finance is aware of the problem and we understand they are going to clear it up. It is essential that that matter be rectified before passage.

The abolition of gift tax in many ways is more significant than the abolition of estate tax. If a man is worth \$10 million on January 1, there will be no estate tax, no deemed realization on death, but there will be succession duty when he dies. On the other hand, if there is no gift tax, he can give the whole of his estate away to his intended beneficiaries and, provided that he survives the recapture period, in the various provincial succession duty statutes—in Ontario and Quebec it is five years—all death duties can be entirely avoided.

This raises another interesting matter with respect to the federal Government and the provinces. Clearly, if the provinces are going to stay in the succession duty field in some fashion, they must have a gift tax, in order to preserve the integrity of the succession duty. Otherwise, one could just walk through the succession duty, except in those circumstances where the donor does not survive the recapture period.

It seems to me that at least in the case of Ontario, Quebec and British Columbia, the three succession duty provinces, it would not be an unwise bet that they will bring in a gift tax before January 1, 1972.

**Hon. Mr. Phillips:** And subsequently they could make it retroactive.

**The Chairman:** You mean, abolish the five-year period?

**Senator Molson:** Do not give them ideas!

**Mr. Scace:** If they abolished the five-year recapture period, that would open it up even further. Without the five-year recapture period, if you did not have it when you die there would be no succession duty, but the recapture period would be a sort of going back to net it in. That would not do it; that would be worse.

**The Chairman:** Then they should make it ten years?

**Mr. Scace:** Ten years, or indefinite.

**Senator Burchill:** If the provinces retained the succession duty and the federal gift tax is done away with, how will that affect it? Then you would be able to give your whole estate away, according to that.

**Senator Beaubien:** You have to live five years, at least.

**The Chairman:** The amount might be included in your estate if you did not survive the period that they have provided for. In Ontario, it is five years. But if they made that ten years, they would surely catch more people.

**Mr. Scace:** One could make the period the whole lifetime.

**The Chairman:** Yes.

**Senator Burchill:** Some provinces have their own succession duties. For instance, New Brunswick has.

**Mr. Scace:** It has none.

**Senator Heath:** May I ask Mr. Scace about the British Columbia legislation on this? Is it not possible that the British Columbia government have made their gift tax retroactive just recently? I think they tried to do this, if it was for a charitable institution, just to get a bite out of a very large estate that was left, as in the case of a donor to a medical school.

**Mr. Scace:** It is about a year since I went through the British Columbia succession duty act completely, but I think it was a year or a year and a half ago that they did change their law on charitable bequests on death. It had to be a charity within the province, I think. They restricted the ambit of charitable gifts. Whether that was done deliberately against one particular estate I do not know but certainly there was legislation in that area.

**Senator Heath:** Was it retroactive?

**Mr. Scace:** It might have been made retroactive. It could very well have been. I know that was one particular amendment generally that they did bring in.

**Senator Heath:** I see why our chairman is concerned that we should look at the provincial actions before we move.

**Mr. Scace:** The provinces are a very important factor in this issue. There is no question about that. It makes planning very difficult. All you can do is assume that the federal Government will go through with it, make your plans on that basis, but keeping a very close eye on the provinces. If, as you suggest, and as Hon. Mr. Phillips suggested, they make their legislation retroactive, you could end up having done something on January 1 and find that, with retroactive provincial legislation, it was either of no effect or it resulted in a position that was completely undesirable from your point of view. I can foresee somebody with a large estate giving a substantial part of it to his children, with the thought that he would avoid all death duties and gift taxes; but if they made it retroactive so that there was a substantial tax bill involved, he never would have done that. I would hope that if they make it retroactive they will at least give you the opportunity of being able to unwind it, but that may be somewhat hopeful.

Continuing on, if gift tax is abolished, there will be a deemed realization at fair market value of all gifts. That is in section 69(1)(b) (ii). In that case, there is no distinction between depreciable property and non-depreciable capital property.

In the case of both the deemed realization on the making of a gift and the deemed realization on death, there is an

exemption if the property is transferred to a spouse. The transfer may be either absolute to the spouse or to a qualifying trust for the spouse. In order to qualify, the spouse must be entitled to receive all of the income of the trust that arises before his or her death. No person except the spouse can obtain any of the capital of the trust prior to the spouse's death. In those cases, on death there is a tax-free exemption on the transfer. In the case of non-depreciable capital property, the property goes over at its adjusted cost base. In the case of depreciable capital property, the transfer is at undepreciated capital cost.

On that case, I think we went through a number of examples on the last occasion, as to how it would operate. The reference there is section 70(6) in the case of death and section 73 in the case of gift.

Where you have a gift to a qualifying trust, on the death of the spouse there is a deemed disposition at fair market value. This is very much like the present exemption under section 71(b) of the Estate Tax Act, where you get an exemption going in but on the spouse's death there is a realization at fair market value.

**The Chairman:** Who pays the tax on that deemed realization at the spouse's death?

**Mr. Scace:** I think it is the spouse's estate.

**The Chairman:** I would think so, because otherwise it would make a mess of the original estate, would it not?

**Mr. Scace:** We are really into the same old problem we had with the Estate Tax Act, where very complicated exoneration clauses were required in the will. The same will continue under the new bill.

The next topic is the attribution rules. We have had the attribution rules on the statutes for many years. These you will find in sections 20, 21 and 22 of the present act.

**Senator Isnor:** Before you go on with that, would you briefly give us the situation in respect to gift taxes at the present time?

**Mr. Scace:** Yes, sir. The gift tax at the present time is found in Part IV of the Income Tax Act. If you make a gift, unless you fall within certain exemptions, there will be a tax payable. In addition, it is a cumulative calculation so that if you make a \$10,000 gift, for example, in year one you pay tax on that, and if you make another \$10,000 gift in year two the tax is computed on the \$20,000 less the tax on the \$10,000 for the prior year. So you are always moving up the rate schedule. The most important exemptions under the present gift tax provisions are that there is an exemption on the transfer to a spouse, either absolutely or by means of a qualifying trust; there is a \$2,000 exemption in the case of a gift to an individual or specific kind of trust for an individual; and, in addition, there is a \$10,000 gift of an interest in real property where that property is a farm and it is given to a child for farming. Essentially, those are the main aspects of the present gift tax.

**The Chairman:** Senator Isnor, the effect is that if you are accumulative in your gifting, for instance \$5,000 this year, \$10,000 next year and \$20,000 the year after, then they accumulate them to determine the rate in each year. For example, if you make a gift of \$5,000 in the first year the

rate is 10 per cent, I believe. If you make a gift of \$10,000 the following year, where the rate would normally be, say, 12 per cent, the rate is determined on the basis of adding the \$5,000 and \$10,000 together, so that you would look at what the rate would be on \$15,000, and that is what you would pay on the \$10,000 on the next year.

**Senator Isnor:** How many gifts of \$2,000 each can you give at the present time?

**Mr. Scace:** On the exemption of \$2,000 you can make any number of gifts. You could make a \$2,000 gift to everybody in this room.

**Senator Beaubien:** Hear, hear.

**Mr. Scace:** I would recommend that, senator.

You cannot give two \$2,000 gifts to the same person in one year and get the deduction. You would end up by paying tax on \$2,000.

**Senator Isnor:** But there is no limit to the number of \$2,000 gifts you can make in a year.

**Mr. Scace:** That is right.

**The Chairman:** Keep that in mind, senator.

**Mr. Scace:** We were just dealing with the attribution rules. Under the present act, if you transfer property to your spouse or to a person under the age of 19 the income on the transferred property is attributed back to the transferor. The income belongs to the transferee, but for the tax purposes the transferor must include that income in his income and pay tax at his rate. That is the present situation. Those rates, looking at straight income, are included in the bill.

In addition, however, there are certain complications which are necessary because of the capital gains tax. The first complication is in relation to a transfer to a spouse and is found in section 74(2). Thereby, if a person transfers property to a spouse after 1971, then any capital gains on the transferred property will be attributed back to the transferor. I stress that it is after 1971. If you transfer property today, although the normal income would be attributed back, capital gains will not be attributed back. They only start picking up the capital gains on transfers after 1971.

**The Chairman:** You had better start gifting right away, if you want to get the benefit of that.

**Mr. Scace:** Secondly, for some unknown reason there is no capital gains attribution where a gift is made to a person under the age of 19. All you will get is the normal income attribution. I don't know why that was left out. Perhaps it was left out by mistake, or one possibility is that because tax might be payable on the transfer, whether it was a sale or deemed realization, they don't have to attribute back capital gains on the transferred property. I just do not know. In any event, it is not dissimilar to the situation where the transfer is to a spouse.

**The Chairman:** Well, it is not a specific exclusion, is it? It is just that they do not cover it.

**Mr. Scace:** They do not cover it, that is right.



**Senator Hays:** Suppose a person makes a down payment on a house for a one-year old child. The house belongs to the child. It is amortized over 25 years. It can be rentable and paid out in the 25th year. How is this earning handled in so far as the child is concerned?

**The Chairman:** You mean the rental income?

**Senator Hays:** Yes.

**The Chairman:** It is the father's.

**Senator Connolly:** It is the donor's.

**Senator Beaubien:** If the child is not related to the donor...

**Mr. Scace:** It does not matter whether the child is related or not. So long as the person is under 19 years of age no relationship is required.

In the circumstances you indicate, Senator Hays, where there is an absolute transfer to the child there will be attribution. What you would undoubtedly do in that case is transfer to a trust so that if you ever wanted to sell the property you would not have the problem of the child not being able to give title on a conveyance. So you would put it into a trust and there would be attribution again. There are methods of avoiding attribution by using both a trust and a corporation, but that gets somewhat complicated.

**Senator Hays:** So this has not changed.

**Mr. Scace:** No, sir.

**The Chairman:** Senator, I thought you were going to suggest a gift of \$2,000 each year from age 1 to age 21.

**Senator Benidickson:** That would be quite normal.

**The Chairman:** Yes.

**Senator Hays:** But the earnings would not build up capital for the child.

**The Chairman:** The earnings would be the earnings of the donor.

**Senator Cook:** They would be taxable.

**The Chairman:** Yes. They would be taxable as the earnings of the donor, although they could go into the account of the donee.

**Senator Hays:** Well, does inflation change the original capital cost? Would the capital gain also be the responsibility of the donor? If so, suppose the donor dies?

**Mr. Scace:** No, sir. Under the present statute there is no capital gains tax so there is no problem. As I have just said, with transfers to infants or to persons under the age of 19 there is no attribution of the capital gain. There is only the ordinary income, and we don't know why that is so.

**Senator Connolly:** But there is attribution for gifts, even the exempted gifts, for people over 19.

**Mr. Scace:** If the person is over 19 there will be no attribution at all.

**Senator Connolly:** Of capital gain?

**Mr. Scace:** Of ordinary income or capital gain. It is only when a person is under 19 that there is attribution. So if you gave it to your one-year old child there would be attribution until the child reached the age of 19, and then the attribution would cease.

**Senator Connolly:** Just to be clear, Mr. Scace, under the new system, if a gift is made to a child, a son or daughter, who is over the age of 19, the income earned on that gift is not attributable to the donor.

**Mr. Scace:** You are referring just to a child over 19?

**Senator Connolly:** Yes.

**Mr. Scace:** That is right. Under the present act and under the new act there is no attribution over 19.

**Senator Connolly:** But when the gift is to a spouse there is attribution of income?

**Mr. Scace:** Right, so long as they remain husband and wife.

**Senator Connolly:** So if a husband makes a gift to his wife, the income earned on that gift is attributable to the donor and is included in his income indefinitely.

**The Chairman:** So long as the asset remains in existence.

**Senator Connolly:** Now, under the new rules, what is the situation?

**Mr. Scace:** Under the new rules what you have just said remains, plus if a capital gain is made on the property it is attributable to the donor as well.

**The Chairman:** That is in relation to the spouse?

**Mr. Scace:** That is right. You are now allowed to split income. You can split assets but not income.

**Senator Hays:** But there is an exemption of \$1,000.

**Senator Connolly:** You get a lot of people asking about these things, and I suppose there is a heavier onus on a donor under the new system because the donor increases his income by the capital.

**The Chairman:** By the attribution of the capital gain.

**Senator Hays:** If you go back to the same example I gave and if you give the child \$2,000, and the parent is the custodian and he decides in his wisdom to put a down payment on some real property that he thinks is a good investment, then the earnings of this real property is computed in the donor.

**The Chairman:** But if the donor sold that property and made a capital gain, the capital gain would not be included.

**Senator Hays:** If he was under 19.

**Mr. Scace:** That is the point. They have not attributed capital gains under 19. One thing they also have not done is to allow the attribution of capital losses in the spouse situation, and I think all you can do is query that.

Turning now to trusts, the law on trusts has been made extremely complicated but perhaps not complicated



enough. As I indicated those people working daily in the trust field feel there are a number of matters not covered that should be covered. This becomes extremely complicated and I do not know if you would just like me to pick out the problem areas.

**The Chairman:** Let us have the general incidence and then the problem areas.

**Mr. Scace:** All right. The taxation on trusts will remain much the way it is now in that income will come into the trust and be taxed, although if it is payable to a beneficiary there is a deduction to the trust. The same will be true for capital gains. The imposition of the capital gains tax does not complicate that aspect too much. However, one very serious problem relates to what they call the taxation of accumulating income on an *inter vivos* trust. Where you have accumulating income in an *inter vivos* trust, that income will be taxed at the greater of the personal rates of tax or at 50.7 per cent.

**Senator Connolly:** The personal rates of tax of the beneficiary?

**Mr. Scace:** Of the personal rates schedule. The trust is considered to be an individual and the personal rates apply to the trust. So the minimum rate of tax is 50.7 per cent and it could go up to 61.1 per cent which is the maximum personal tax rate.

This is a clear penalty on many existing *inter vivos* trusts. They had to try to alleviate the penalty in some fashion, and they state that it will not apply to a trust established before June 18, 1971, if it was resident in Canada on June 18, 1971 and without interruption from there on, but did not carry on in active business and, most important, has not received any property by way of gift since June 18, 1971. This may be a trap for many people because trusts were established under the Gift Tax Legislation so that you could take advantage of the \$2,000 exemption and in a gift to an individual where the individual was a minor and you established a qualifying trust under section 112(3) of the Income Tax Act. Many of those trusts provide for accumulating the income with vesting before age 40. They will be exempted so long as no contribution is made to them after June 18, 1971, so people should have stopped making contributions and should not make any more contributions this year or in the future.

**Senator Benidickson:** But was that not subject in many jurisdictions to the donor living for a certain period of time after the gift to the trust?

**Mr. Scace:** To avoid estate tax and succession duties, that is right, sir. But this is looking at the income tax consequences of it.

**The Chairman:** But you said in most trusts to which you referred that to avoid this you should not make more contributions to the trust this year, next year or any succeeding year. But supposing in the period from 1871 down to this year there have been contributions?

**Mr. Scace:** That is no problem, because contributions will remain as trust assets. The accumulating income on those contributions or the trust corpus will continue to be income of the trust and will be taxable at normal personal

rates. It will not be subject to this penalty. Now it is conceivable that the normal rates will get up as high as the personal tax, but then again they may not. But there is this trap.

**Senator Lang:** If you make a contribution after June 18, do you destroy the whole trust?

**Mr. Scace:** That is right. The accumulating income of the trust will then, starting on January 1, 1971, be subject to this minimum 50.7 per cent tax.

**Senator Benidickson:** So if instead of giving \$2,000, or whatever the non-taxable gift may have been over the year, to a minor under the age of 19, you had been giving it to a trust, an individual trust for each child, do you say that from June 18, 1971, there is a danger in continuing to make a similar gift to that trust—that you should give the cash to the individual?

**Mr. Scace:** That is right. The trust income is accumulating. If the trust income is distributed annually, there is no problem.

**Senator Benidickson:** That is a real trap. I have not read very much about it in the financial papers.

**Mr. Scace:** If you read the "raspberry books", the Government's summary, you will find a mention of it, but it is a trap.

**The Chairman:** Let us move on.

**Mr. Scace:** There are a number of new definitions in the trust area. You should be receiving many briefs on this. There is a new concept of a "preferred beneficiary". A preferred beneficiary is someone who is closely related to the settlor, the spouse of the settlor, or a grandchild of the settlor. The importance of the preferred beneficiary is that an election may be filed whereby the accumulated income of the trust can be taxed to the beneficiary. You will find it in section 104, subsections 14 and 15. The purpose of this is to avoid high tax rates on accumulating income while in the trust. Unfortunately, the law concerning this election is very imprecise. The total amount upon which an election can be made is defined at great length and, perhaps, inadequately in section 104(15). There are a great many problems involved in this particular area. You should be receiving a special submission, if not from the Canadian Bar Association, then from a certain group of lawyers on that particular topic. It is a problem area.

In relation to the capital gains and trusts, the most important aspect is the 21-year deemed realization on non-depreciable capital assets in a trust. This is a corollary or an adjunct to the deemed realization on death of a spouse where you have a qualifying trust. If the assets are transferred to a qualifying trust for a spouse, upon her death there is a deemed realization at fair market value. If there is a succeeding life interest, or any other trust, there will be a deemed realization every 21 years of the non-depreciable capital assets. I suppose that this is somewhat similar to the five-year re-valuation rule for shares of widely-held Canadian companies which you found in the White Paper; although, it is certainly for a longer period of time. It may not be an unfair provision.

**Senator Connolly:** And it is a rule against perpetuities.

**Mr. Scace:** The rule against perpetuities could have an effect here, yes.

**The Chairman:** What section is that?

**Mr. Scace:** Section 104, subsections 4 and 5.

**Senator Connolly:** The only difference between this and the rule against perpetuities is that there is a revaluation.

**The Chairman:** Let us not get into a discussion on the rule against perpetuities.

**Mr. Scace:** For the 21-year deemed realization for non-depreciable capital properties at fair market value, and for depreciable capital properties, the calculation is the mid-way point rule, as it is at death. It is the same thing. I think you may have problems of liquidity when this deemed realization occurs. You will also have difficulties where established trusts are already in existence and will extend beyond the period of 21 years after the implementation date. I think that all you can do there is perhaps to wind the trust up, or make an application under the various provincial statutes to vary the trust in order to change the provisions so that this 21-year rule cannot apply.

**Hon. Mr. Phillips:** I would assume the 21-year rule creates problems for the younger lawyers rather than the older lawyers.

**Mr. Scace:** I guess that is correct, sir.

**The Chairman:** Only to the extent that the younger lawyers would have a longer space of time in which to look at the problem.

**Mr. Scace:** And to look at it again.

**Hon. Mr. Phillips:** Yes, and to attempt to solve it.

**The Chairman:** I expect the older ones would still have to look at these problems.

**Mr. Scace:** There are also very complicated rules in relation to the beneficiary of the trust. There are two new terms brought into the bill—one is income beneficiary, the other capital beneficiary. There are very detailed provisions for determining the costs of the various interests. In the case of capital beneficiary, you have to determine the capital gain if the capital interest is sold.

However, those are the most serious problem areas in relation to trusts. The law concerning deceased persons is more or less the same as it was under the current act with one interesting addition, allowable capital losses—that is, one-half of a capital loss—may be deducted in full against any other income in the year of death. Therefore, if there are substantial capital losses in the year of death on the deemed realization they can be adjusted against any other income, as provided in section 71. In addition, net capital losses may be deducted against any other income in the year of death and the immediately preceding year, as provided in section 111(2).

**The Chairman:** That means that capital losses which it was not possible to take care of otherwise cannot be accumulated.

**Mr. Scace:** If there were enormous capital loss, or a net capital loss position, it is conceivable that the income in the year of death or the immediately preceding year would not be sufficient. However, it is hard to know; we have not seen this in practice. I think that in most circumstances the net capital loss position would probably be eradicated at death. It may not, but I would hope that if an inequity does result and it appears that this is not the case, the application of these rules will be liberalized, and perhaps extended for some years.

**The Chairman:** What are you thinking of when you say "liberalized"?

**Mr. Scace:** In particular that the net capital losses could be deducted against other income, not only in the year of death and the immediately preceding year, but possibly in the preceding five years. There could be a provision to allow the total to be adjusted against other income.

**Senator Connolly:** Before they finally put your file away.

**Mr. Scace:** That is right. Mr. Smith last Wednesday discussed registered retirement savings plan.

If you have any particular interest in tax havens I think generally it can be said that they will not be as useful under the new system. If the tax cost of dying is reduced there will not be as much advantage in moving to a tax haven. Section 48, which is the departure tax imposes a penalty for moving to a tax haven. Therefore, depending on the amount of accrued gains, you may decide not to move. However, right now may be a very propitious time to move, or early in the new system, before capital gains have started to accrue.

In relation to insurance, this is all in the estates area, as we mentioned last week, insurance is not subject to capital gains tax. Therefore it is now probably a more interesting investment vehicle. However, if the tax cost of dying is reduced there is probably less need for insurance to cover Senator Connolly's problem of liquidity when the tax is due on death. So these aspects apply both ways.

There is also a problem in relation to key-man insurance. Under the present statute, if a corporation has taken out key-man insurance it goes into capital and can be withdrawn from the corporation tax-free, provided that the undistributed income in the company has been first taken out. However, under the new bill it appears that the only way to take out the proceeds of key-man insurance is by way of taxable dividend. Therefore this is a disadvantage under the new bill, as opposed to the old act. The department is aware of it; we do not know whether they plan to do anything about it.

**The Chairman:** By "taxable dividend", do you mean that the whole amount would be income?

**Mr. Scace:** Income to the shareholder, as opposed to its now being a tax-free receipt.

**The Chairman:** Income to the person receiving, not to the company?

**Mr. Scace:** No, not to the company. It merely relates to getting the money out of the company.

Estate freezing will continue to exist under the new law. However, it will be freezing against provincial succession



duty, if any, plus the tax on capital gains accrued on the assets rather than against federal estate tax. It will be an attempt to avoid the capital appreciation and deemed realization on death. Freezing will be less attractive under the new bill, since the very act of freezing will trigger the capital gains tax to the extent there is any appreciation. The assets must be transferred at fair market value and if that value exceeds the cost there will be a capital gain tax, whereas now they can be transferred without fear of capital gains tax.

**Hon. Mr. Phillips:** Mr. Scace, this may not be relevant for the committee with respect to this bill as such, but very relevant in relation to its overall duties.

Are you aware of any studies with respect to the issue of the very point you have discussed—that is the consequences of individuals or corporations building up cash positions, rather than buying equity or securities in Canadian companies and thereby stopping investment by Canadians in Canada, which would bring about the suffocation of our economy or an invitation to outside capital?

You are touching on a very crucial point. When people invest in securities at large in Canada, they are facing deemed realization on death. If they put investment in money as such, there is simply no further increase; money is money, whatever its purchasing power.

**The Chairman:** Or if they put it in bonds.

**Hon. Mr. Phillips:** Yes; money being money and bonds being equivalent to money. That is one thing.

By buying into the equity of the company this problem is invited, thereby stifling the economy and inviting foreign capital.

I am only putting the question to have it on the record to indicate the seriousness of the point, and as an indication that this committee may well wish to consider that whole question in relation to certain bills, when it becomes the subject of legitimate study.

**Senator Beaubien:** Putting it into equities would only attract cash, if it were capital gain.

**Hon. Mr. Phillips:** Exactly.

**Senator Beaubien:** So the money is not taxed if there is no capital gain.

**The Chairman:** If it is kept in money it is guarded against the capital gains problem. If it is in bonds it is substantially guarded against the capital gains problem. If it is put into equities the same guard is not up.

**Senator Beaubien:** Maybe I am a little stupid, but supposing I have half a million dollars and keep it in cash, there is no capital gain. If I put the half-million dollars in stock and it increase to \$600,000, there is a capital gain on \$100,000. However, I am still better off than if I had the cash. The \$500,000 is worth \$600,000; sure, there is capital gains tax on \$100,000, but if I keep it in cash, when I die it is worth half a million.

**Hon. Mr. Phillips:** But you are taking the risk on your half a million dollars, and you do not know if you will have the capital gain. You relate your ultimate tax consequences on death; whereas, if you put it in equity stocks, you do not

know where you are going. You take a risk, and you are deliberately, through deemed realization, bringing about a situation where you are cooling off equity investment by Canadians.

**The Chairman:** Senator Beaubien, all that you are illustrating is that, depending upon the amounts available, you may have a substantial problem or you may have a problem that you relate to keeping the cash even after paying taxes, so that it would still leave you a little more money.

I think Senator Phillips was talking about an investment company which had accumulated cash and put it into equities or gains in volume in the course of ordinary operation. With regard to the \$500,000 that you are talking about and limiting the capital gains to \$100,000, if you put it into securities, shares, and have a capital gain on death of \$100,000, then obviously, even by paying tax on the capital gain, you would have more money than if you just kept the cash.

**Senator Cook:** Is not the only answer to Senator Phillips' problem that of no capital gains?

**Hon. Mr. Phillips:** Either no capital gains or no capital gains other than on a true realization by disposition at arm's length, other than relationship to trusts, where legitimately the question of perpetuity of rule should apply within reason.

In our Senate report on the White Paper we took the fundamental position that there should be no tax other than on actual realization. We succeeded up to a point. We are now talking about deemed realization.

**Senator Beaubien:** Deemed on death.

**Hon. Mr. Phillips:** Yes. We succeeded up to a point. I am making the point before this very important committee that on this very crucial issue we are inviting a situation in Canada where we are deliberately discouraging equity investment and at the same time are inviting foreign capital to penetrate further.

**Senator Cook:** Does not that situation apply to any country that has capital gains?

**Hon. Mr. Phillips:** I think I would prefer not to go into that today. It is important enough to record the point.

**Mr. Stephen C. Smith, Partner in the Law Firm of McCarthy & McCarthy:** What Senator Cook is saying, I think, is that if at the present time you make a capital gain in an equity investment you pay zero tax. If you receive interest income you pay tax at full personal rates.

The tax bill changes that. Instead of being zero tax, your capital gain is at half tax. The incentive has gone from being the whole of the tax to being only half of the tax.

**Senator Hays:** If interest rates are high, you more or less have to put it into a 9 per cent bond, because you will be paying 46 per cent profit . . .

**Hon. Mr. Phillips:** Or sit on the bank deposit.

**Mr. Scace:** That more or less closes the general area of estates. There are many problems facing the legal community, but I think that many of them are soluble.



**The Chairman:** The second item is international taxation. Mr. Stephen Smith will develop that.

**Mr. Smith:** Mr. Chairman, in the subject of international taxation, there are really two quite separate topics. On the one hand you have taxation of Canadian residents on their incomes derived from foreign sources, and on the other hand you have taxation by Canada of people who do not reside here. Those are two different topics.

I must apologize if my outline is a little sketchy. I will try to avoid becoming mired in some of the drafting complexities, and will give you what I think is the general effect of it, rather than becoming too involved in the detailed provisions.

The best place to start is probably the Government's summary—this red book—which accomplished the summarizing of it in three pages. It took CCH 56 pages to deal with it in their detailed analysis; so honourable senators will see the difference between a summary treatment and a detailed one.

In broad outline, the main features of the system remain the same, although some details have been changed. Canadian residents will still be taxed on their world incomes. There is no change in that as a basic principle. Non-residents will still be taxed on their income from business and employment in Canada, and Canada will continue to impose a withholding tax on various kinds of payments to non-residents, the most notable of which are dividends, interest, royalties, and payments of that sort.

The red book summarizes the main changes. As you know, under the present act you have a credit—I am now talking about the foreign income of Canadian residents—for taxes that you pay to a foreign country when you receive income from that country in Canada. There have been some modifications to that credit which improve it for Canadian residents. Firstly, foreign taxes that are paid on business income, which are in excess of the available credit in any year, because of disparities in the rates between countries, will be available to be carried forward for up to five years, and deducted later from business income from that country. That is a change in the direction improved equity for the Canadian taxpayer.

The second main change is that after 1975 the foreign tax credit on investment income of individuals will be limited to 15 per cent. If any country should impose a greater withholding tax—that is, on a payment out of their country to a resident in Canada—that excess will be treated as a deductible expense to the Canadian investor, which is not such generous treatment as giving him the full credit.

The third major change is that under the present foreign tax credit, the credit is for taxes paid to a foreign sovereign country. For example, in the case of the United States it is for taxes paid to the US federal Government. No credit is given for state taxes. If you pay an income tax to New York State, the present credit does not pick that up.

The new legislation gives credit for such taxes. It will be recognized either as a deductible expense or as income tax subject to the credit, depending on their treatment in the foreign country.

For example, the United States allows state taxes as a deductible expense to its residents and such taxes will get the same treatment here.

Those are the main changes in the foreign tax credit. I will come back to them later.

The next major area for Canadian residents involves a concept which the summary deals with under the heading "Foreign Affiliate".

As honourable senators probably know, under section 28 of our present act, Canadian residents have for many years been able to get a deduction for dividends received from a foreign company, when they own more than 25 per cent of the voting shares. That would enable someone in Canada to set up a company abroad and earn either investment income or active business income abroad, perhaps pay no tax on it abroad in the foreign subsidiary and bring it home, claim a deduction for the full amount of the dividend and pay no tax. The Government obviously feels that that is unfair. It would enable someone who happened to be able to do that to pay no tax whereas another Canadian resident who earned the same type of income in Canada would be subject to the full rates of tax. The way the Government got at that in the bill was to introduce the concept of a foreign affiliate. A foreign affiliate's income, to the extent that it is investment income, is going to be attributed to the Canadian shareholders and be taxed to them. There are other changes with respect to active business income.

A foreign affiliate will be defined as a company that is controlled by a Canadian taxpayer either by himself or together with a related group of people, or one where a Canadian taxpayer owns 25 per cent of the voting shares or 50 per cent of any particular class of shares; also, where a Canadian taxpayer owns 10 per cent of the voting shares, he may elect to have it treated as his foreign affiliate.

**Senator Molson:** Would you repeat that, please?

**Mr. Smith:** If a Canadian taxpayer owns 10 per cent of the voting interest he may, if he wishes, elect to have it treated as his foreign affiliate; it is not automatic.

**Senator Molson:** That is a change from the 25 per cent.

**Mr. Smith:** Yes. There are several changes.

**Senator Molson:** That is a decided change.

**Mr. Smith:** Yes, that is right. Under the new legislation dividends received by a Canadian corporation from a foreign affiliate will be exempt from tax if they are paid out of profits earned before 1976. The point of that is to give Canada a chance to renegotiate its foreign tax treaties; that is the purpose for the five-year period of exemption.

**Senator Gélinas:** Would you mind repeating that, please?

**Mr. Smith:** Any dividends received before 1976 will be exempt from tax provided that they are paid out of profits of the foreign affiliate which it earned prior to 1976. That is a transitional period in order to give the new tax treaty system a chance to be built up.

After the transitional period, dividends will also be exempt if they come out of a country with which Canada has a tax treaty. Where they do not come out of a tax treaty country, then they will be exempt from taxation to the extent of the level of tax they bore abroad.

Another matter is the problem of tax sharing.

**Hon. Mr. Phillips:** Mr. Chairman, may I put a question to Mr. Smith?

Do you not find that treatment rather strange under two headings? For example, compare it with a dividend income received by a Canadian corporation from another Canadian corporation. If the recipient corporation is a private corporation it is subject to a 33½ per cent payment immediately as against the receipt of income from an affiliate where you have five years without being subject to any tax whatsoever before you are obliged to distribute.

**Mr. Smith:** Yes. I will come back to that.

**Hon. Mr. Phillips:** And do we not find a further extraordinary situation with respect to the taxable income under heading 2—that is, when a Canadian company in due course gets a dividend from an affiliate in a treaty country the recipient company is free of tax whereas in Canada the recipient company of a dividend from another Canadian company is subject to an automatic tax of 33½ per cent provided it is a private company? Am I right in my comparison, and do you not find it strange?

**Mr. Smith:** There are a number of extraordinary results and they come, I think, from the direction in which the Government started. I will work through the details in a moment.

**Hon. Mr. Phillips:** I apologize; I may have interrupted.

**Mr. Smith:** There is also a transitional period designed to give relief where a Canadian investor has gone into a developing country on the basis of getting tax concessions from that foreign country; that foreign country, in other words, is not levying any tax. The transitional rule which will be enacted by regulation at a later date will enable dividends from such a project to be brought back tax-free as they would now, provided that they are in respect of projects which one fully committed before the end of 1975.

**Senator Connolly:** We had this yesterday, Mr. Chairman, from the Chamber of Commerce delegation, as I recall.

**Mr. Smith:** I will just run through the other changes in outline fashion and I will come back to them.

Foreign business corporations, as you know, are being phased out over five years. The general rate of withholding tax is going to remain at 15 per cent until the end of 1975 and then it will increase to 25 per cent unless it is reduced by treaty. The existing exemptions from withholding tax on Government bonds are continued where they were issued before 1976, and also the exemption on interest payable to certain foreign charitable organizations that register will continue, generally speaking.

The idea that a degree of Canadian ownership will reduce non-resident withholding tax is preserved, and it gets reduced by 5 per cent from what the withholding tax would otherwise be. In other words, if you have a withholding tax of 15 per cent it becomes 10 per cent, and if you have a withholding tax of 25 per cent because there is no treaty, it becomes 20 per cent.

**Senator Connolly:** What are those circumstances again? There is a 25 per cent withholding tax on dividends paid into a country with which we have no treaty?

**Mr. Smith:** That is correct.

**Senator Connolly:** And you say there is an automatic reduction by 5 per cent?

**Mr. Smith:** Yes, where you have a degree of Canadian ownership in the company paying the dividend. That was brought in by Mr. Gordon, the former Finance Minister, in 1963. You had to have at least a 25 per cent Canadian equity interest in the corporation. That was the time that several United States companies went public in Canada and sold 25 per cent of the stock to the Canadian public and hence had their withholding tax rate reduced from 15 per cent to 10 per cent.

**Senator Connolly:** It is reduced from 15 per cent to 10 per cent?

**Mr. Smith:** Yes. If the withholding tax, because there is no treaty, is 25 per cent it will be reduced to 20 per cent, but otherwise it will continue to be a reduction from 15 per cent to 10 per cent.

**Senator Connolly:** This is to increase Canadian ownership?

**Mr. Smith:** It increases Canadian ownership in the foreign-controlled company.

**Senator Connolly:** Yes, in the Canadian company paying the dividends.

**Mr. Smith:** That is right, the Canadian company paying the dividend. The dividend is being paid to the non-resident from the Canadian company. It is a Canadian company as well as having a Canadian ownership interest. Certain pensions will be subject to withholding tax that have not been subject up to now. There is some revision in the branch tax, to have it follow the treaty rate. There is a provision called the thin capitalization rules, to prevent a Canadian corporation which is foreign-owned from reducing its taxable income in Canada by the payment of foreign interest charges to its foreign parent. The rule there is that, to the extent that the interest is paid on debt which exceeds three times the share equity of the non-resident, the interest will be proportionately disallowed as an expense to the Canadian corporation.

**The Chairman:** It will be treated as a dividend.

**Mr. Smith:** That is right. The final change—going through it in a summary way—is that non-resident owned investment corporations will now be subject to tax at 25 per cent, starting in 1976 and the income of the NRO would include capital gains to the same extent as if the NRO were a non-resident person. That is, just certain types of capital gains. The tax on those capital gains will be refunded when dividends are paid out to the non-resident shareholder. There is also a requirement that the NRO'S must be 100 per cent owned by non-residents.

If I may go back and look at some of the details, the most difficult concept is the foreign affiliate. As I said, there is a multiple definition of a foreign affiliate. You find it in section 95(1)(b). Basically, you have three ways in which a company can be a foreign affiliate of a Canadian taxpayer. Where the Canadian taxpayer controls it directly, or through a group of people who are related to him, then the foreign company becomes his foreign affiliate.



Where he has at least a 25 per cent voting percentage, which is a defined term in section 95, or if he elects, where he has a 10 per cent voting percentage, it becomes his foreign affiliate. Similarly where the taxpayer and other non-arm'slength residents have a 50 per cent "equity percentage", which is again a defined term, the company becomes his foreign affiliate.

"Voting percentage", as it implies, merely looks at the number of votes that are available. If you control something through a chain of companies, it will look down through the chain. For example, if you own half of the subsidiary and that subsidiary owns half of another company, you follow those percentages down and finally you have got 25 per cent at the bottom.

**Senator Molson:** May I ask what the object of subsection 4 is there, the election of 10 per cent?

**Mr. Smith:** I think that is to give someone an option of having it treated as a foreign affiliate, where that turns out to be more advantageous to him.

**Senator Molson:** Is it possible it would not be more advantageous than his getting the dividends without tax?

**Mr. Smith:** It depends on the nature of the foreign affiliate's income. I will get to that. There are some places where it is difficult to pick up the foreign tax credit for the foreign withholding tax, and you might want to have it treated as a foreign affiliate for that purpose.

**Hon. Mr. Phillips:** May I interrupt Mr. Smith, through the chair? And for the first five years, Senator Molson, exempt. As long as you distribute at the end of the five year period, it cannot be touched on.

**Mr. Smith:** The "equity percentage", which is defined in section 95(4), looks at the percentage you have of any particular class of shares you have in the foreign affiliate. It takes the portion you have of the class, of each class, and you take the highest percentage. The effect of it is that you may find, in a foreign affiliate where there are a number of different classes of shares and a number of different Canadian residents, holding different classes of shares in varying proportions, they may each end up with a participating percentage which is greater than 100, all told, when added up.

Many honourable senators have the Commerce Clearing House (CCH) analysis of the bill. You will find an example of that at page 225, where they worked out a complicated example and end up with that result.

The result of that is that you could find more than 100 per cent of the foreign affiliates' income had been attributed to various Canadian taxpayers, which is an extraordinary result. It can hardly be intended, unless it is intended merely as a deterrent to using foreign affiliates at all—which could hardly be the government's intention. One has to think that it is probably just a drafting error and that the section would have to be re-worded.

It should also be noted that not only can a corporation be a foreign affiliate; a foreign trust can be a foreign affiliate, too. The obvious intention of that rule is to prevent Canadian taxpayers using a foreign trust as a convenient place to put foreign investment income and avoid Canadian taxes. So such trusts are treated as a foreign

affiliate corporation, and you look at the beneficiary's interest. It can either be an income interest or a capital interest. Again, you can find that, where you have a life tenant and a remainder man, they are each deemed to have 100 per cent of the foreign affiliate—which again produces an anomalous result.

**Senator Connolly:** You will look for an amendment, presumably?

**Mr. Smith:** Yes. Getting away from the definition, and looking at the result of the definition, once you have a foreign affiliate, the Canadian shareholder must include in his income his equity percentage of all the foreign corporation's passive income. That is basically income of an investment nature or income that could not be characterized as an active business. That income is included in the Canadian shareholder's income, regardless of whether or not it has been distributed. It is deemed to have been distributed to him.

There is a notch provision, or, rather, there is a deduction of \$500, so that people who have small amounts of income from such companies will not be bothered with the complexities of it. When I referred to "passive income," that is a short form for "foreign accrual property income" and it is defined in section 95(1)(a). As I said, basically it is the net income from investments in property other than active businesses, and net capital gains except on property used in the active business.

There is no definition of "active business" in the bill, but there is a fair amount of jurisprudence in Canada now under the personal corporation sections as to what is an active business, so presumably that will be of some help.

Now, you get a deduction for the underlying foreign income taxes. That is given under section 113(3).

**The Chairman:** So there would be no benefit of having a foreign affiliate in a tax-free country.

**Mr. Smith:** No. That is right as it regards passive income, and it is even worse than that. To get the foreign tax credit, when you later pay out a dividend from the foreign affiliate, if the dividend is paid out in the same year as the passive income was attributed, you get the credit. If it is paid in a later year it appears that you do not. The result would be that the total taxes, both foreign and Canadian, that are paid are greater than if you had merely received that foreign investment income directly as an individual instead of through your foreign affiliate.

That is really a problem of timing, but it will be quite serious where you do not control the foreign affiliate, but it is controlled by people who are not Canadian residents and who do not care when the dividend is paid. It could prove expensive for you.

**The Chairman:** The foreign tax credit is only available to the Canadian shareholder in relation to the earnings of the particular year, which may be paid out, or, if they are not paid out, if they are held, it would still be his income for that year.

**Mr. Smith:** Right.

**Senator Molson:** Without tax credit.



**The Chairman:** Yes. He would have a tax credit. As I understand it, if you pay out in the year in which the earnings are made, you would get a tax credit.

**Mr. Smith:** Yes.

**The Chairman:** But if they are not paid out in that year, then the Canadian shareholder is taxed as though he had received the income less the tax credit.

**Mr. Smith:** Right.

**Senator Molson:** There is no tax credit.

**Mr. Smith:** No, it is just included in his income.

**Senator Connolly:** Not less the tax credit!

**The Chairman:** It is an off-set of the tax credit.

**Senator Connolly:** The tax credit is not going to be available to him until the year in which the tax is paid.

**The Chairman:** I am talking about the tax this foreign affiliate would pay on its earnings in that foreign jurisdiction. If it pays out those earnings in the year in which they are made the Canadian recipient would be entitled to a tax credit, but the position I am citing is that, if they are not paid out in that year, nevertheless, the percentage of earnings of that company related to the shareholding of the Canadian shareholder would be deemed to have been received by him. Now, what happens to the tax credit then that represents taxes paid by the foreign affiliate? Is the credit still available, even if the dividend is not received in that year?

**Mr. Smith:** No, it really is not. You have to get it in the same year in order to pick it up.

**Senator Connolly:** You cannot get the credit, I suppose, until you know how much the tax is.

**The Chairman:** But what I am pointing out is that, if the foreign affiliate has earnings in a year, it pays taxes. I assume that the earnings then that are attributed to the Canadian shareholder in that year, if no dividends are paid, would be a percentage of the net earnings after taxes in the foreign jurisdiction.

**Mr. Smith:** Perhaps it might help if I gave you an example. Suppose you have a foreign affiliate that earns \$100 from investments. Suppose in the foreign country there is a 25 per cent tax on that investment income earned by the foreign affiliate taxed to the foreign affiliate so that you have \$25 coming off. That leaves \$75. You pay that \$75 as a dividend to the Canadian shareholder. Suppose there is a withholding tax of 15 per cent, which would be roughly \$11, which would leave the Canadian shareholder roughly \$64. Now that is the cash that he has. Under the foreign affiliate rules you have again the \$100 income earned by the foreign affiliate, and under section 113(3)(a) you take off the \$25 tax that the foreign affiliate pays, and again you have the \$75 available as a dividend. Now, section 90(2) says that you have a dividend, when paid out of that \$75, which has already been included in your income so we will not tax you on that. We will give you zero tax.

**The Chairman:** If we stop right there, what you are saying is that, since the Canadian shareholder is taxed on the

amount still in the hands of the foreign affiliate, then when it is actually paid out to him there is no tax.

**Mr. Smith:** Yes, that is right.

**The Chairman:** Are there any questions on that point?

**Senator Carter:** Does that mean he gets the \$75 dividend instead of the \$64 as in the previous example, because there is zero tax as against \$11 tax?

**The Chairman:** No. The foreign country may have a withholding tax as well. Therefore, whatever is paid out in dividends, when it reaches the Canadian shareholder, is less by the amount of the withholding tax. If it is paid out in the year in which the earnings are made, the tax credit provision applies.

**Senator Lang:** Mr. Chairman, in that example if the tax on \$64 in Canada was 15 per cent, or equivalent to \$11, then there would be zero tax. In other words, if the Canadian tax on the \$64 was \$11, then there would be zero Canadian tax. Is that right?

**The Chairman:** In Canada, no.

**Senator Molson:** What about the refund of the withholding tax?

**Mr. Smith:** I think perhaps I misled you in the first place. The foreign income of the affiliate which is attributable to the taxpayer, the \$75, is already taxed at the shareholder's marginal rate in Canada.

**Senator Connolly:** Whether he gets it or not, the year in which it is earned abroad he pays tax on it at his own marginal rate.

**Mr. Smith:** That is right.

**Senator Connolly:** And he gets no credit for that \$25 foreign tax paid?

**Mr. Smith:** He gets that; it is the foreign withholding tax for which he does not get credit at that point.

**Senator Connolly:** He gets credit for the \$25 foreign tax paid?

**Mr. Smith:** Yes, he does. The underlying foreign tax is in the foreign affiliate. It is the foreign affiliate's after-tax income that is being attributed to him. Say his marginal rate is 50 per cent, then he would pay half of that \$75.

**Senator Cook:** From what you say he pays the marginal rate on the \$75 whether he gets it or not, but when he does get it, he does not pay any more tax.

**Mr. Smith:** That is right, but neither does he get the credit for the foreign withholding tax—the \$11 that I had in that example—unless that is paid in the same year. But if he has different years, he does not pick it up.

**Senator Connolly:** You are saying there is a trap here and there is an anomaly here.

**Mr. Smith:** Yes, there is a timing problem.

**Senator Connolly:** But the amendments should pick this up.

**Mr. Smith:** Yes. The trouble is that the more you try to do with these foreign affiliate rules, the more complex they become, and they are as complex as they are because they are trying to look through a chain of foreign companies and tax the money here to the same extent that they would be taxed had the money been earned here. But it is more easily said than done.

**The Chairman:** The way the government proceeds now in relation to these situations where you have passive income in the hands of a foreign affiliate is that they have been taxing the Canadian owner on the basis that there is an agency relationship, and that the foreign affiliate is an agent of the Canadian company, and therefore they have been attributing all the income of the foreign affiliate to the Canadian company and have been making reassessments on that basis.

**Hon. Mr. Phillips:** We are back to the question that when you play around with deemed-to-be-income and deemed-to-be-realization, we become involved in all kinds of complexities.

**Senator Connolly:** But in the case that you, Mr. Chairman, and honourable Mr. Phillips have been discussing, the Canadian taxpayer gets credit, does he not, for the foreign tax paid?

**Mr. Smith:** By the foreign affiliate.

**The Chairman:** He gets that because it is only the net that is attributed to his income. The net is whatever the income is less the tax paid in the foreign jurisdiction.

**Mr. Scace:** Mr. Chairman, one of the interesting points here—apart from the mechanics of how this is done—is the intention of the legislation and the intention of assessments which are currently being issued, and the whole philosophy appears to become completely contrary to the US philosophy in their DISC Program—Domestic International Sales Companies—and that bill is currently, I understand, before the US Congress. It is strange to me and to many of us—and the Chairman and honourable Mr. Phillips and I have discussed this—that Canada should be going one way when our major trading partner appears to be going the other way.

**The Chairman:** Under the DISC Program in the United States it was turned down a year ago by Congress, but I understand it is coming up again and the implications are that it may succeed this time. Therefore domestic companies operating outside the United States and generating income get a tax reduction on that income in their domestic returns.

**Hon. Mr. Phillips:** I should like to remind you, Mr. Chairman, and all honourable senators that we went into this whole thing in our examination of the White Paper and we brought up the tax expert who had previously been the head, I think, of the Internal Revenue in the United States to explain the handling of this so-called offshore and permissive income and the abandonment by the United States of the originally proposed rigorous rules and the treatment presently given to which Mr. Scace refers. We went to the trouble of explaining all that in the proceedings of this committee and now it has been ignored.

**Senator Cook:** Is the only reason that a taxpayer would not get credit for the withholding tax in a subsequent year because it would be administratively difficult?

**Mr. Smith:** It is just the way the bill is drafted. It gives it to him in the same year as a part of the foreign tax. But if it is in a subsequent year, it just says the dividend is tax free but meanwhile he has paid the foreign withholding tax which is lost.

**The Chairman:** If you look at it broadly and if you need any simplification, surely if they need any statutory support for the present method they are following, that is that they establish what they regard as an agency relationship, and you do not like it, then you can make a contest in court, and it would appear that in a lot of the cases of passive income in a foreign affiliate, it might very well be concluded as a matter of law that this is an agency. If you look at how the operations are carried on, it may well be that in many of them the Canadian company really operates the foreign affiliate and all the management and direction and everything else comes from Canada. It might in those circumstances be regarded as an agent. Presently the department is assessing the income or the earnings of that agency as being the earnings of the Canadian company which has established this and which is giving all the management and direction to the operation. Some of them may even just have a bookkeeper or a trust company office or something like that. So they do not need this legislation in order to deal with that situation. This is what we said in our report on the White Paper. We said that there is ample provision in the present law to deal with that kind of situation.

**Senator Cook:** I may be somewhat slow but how does that justify not giving credit for the withholding tax paid in other years?

**The Chairman:** It does not justify it.

**Mr. Smith:** I think that is just an anomaly in the legislation which might be corrected.

**Senator Connolly:** May I ask a question in connection with the DISC Program? In the example the net income to the Canadian would be \$64.

**Mr. Smith:** Unless he gets credit for the \$11 by getting the dividend in the same year.

**Senator Connolly:** Perhaps I am under a misapprehension, but let me do it my way and then you can correct me.

Let us assume that the net income is \$64 to the Canadian parent. Under this program would that \$64 be reduced by \$25 plus \$11, and his net income reduced by \$36?

**The Chairman:** I do not know whether you can use those figures or not. The idea is that income that comes in from the off-shore operations is subjected to a lower rate of taxes in the United States than domestic income of the same company.

**Mr. Scace:** Could I illustrate this?

**The Chairman:** Yes, certainly.

**Mr. Scace:** Let us take as an example a Canadian company that manufactures pencils, and it has a cost per pencil



of \$1, and a selling price of \$2. You have a profit of \$1 and, let us assume a 50 per cent tax, of 50 cents. So you have a net per pencil of 50 cents. What a number of Canadian companies have been doing is to set up an international sales company in a tax haven country. You have a Canadian parent company and an affiliate in a tax-haven country. They would still manufacture the pencil here for \$1. It would be transferred to that tax-haven country, let us say, at \$1.20 or whatever would be a fair market value at that level of commerce. You have a profit of 20 cents in Canada plus a 10-cent tax. The international sales company in the tax haven country would sell the pencil on the foreign market at the prevailing price in that market. It has a \$1.20 tax cost, a \$2 selling price, which is the same as the selling price in Canada, and an 80-cent profit. Now, under the present situation, that 80-cent profit can be paid back as a dividend tax-free. The net profit in this case to the Canadian company is 80 cents plus 10 cents, or 90 cents as opposed to having the whole operation in Canada where the net profit would be 50 cents. As the Chairman has stated, the Department of National Revenue is endeavouring to assess this, although I do not think we have had one litigated to this date.

**The Chairman:** They are in the process now.

**Mr. Scace:** Yes, there may be an agency relationship here and that may be the net result. There are two ways of looking at this. It reduces the Canadian tax, and there is more after tax brought into the Canadian company. The reduced taxes may permit the foreign affiliate company to sell at a lower rate and more competitively on the foreign market. If that is the achieved result, then this is very useful.

What Mr. Smith has been talking about is that this 80 cent income from the foreign affiliate company in the tax haven country will be distributed when earned in the tax haven country; and you will eventually get it back subject to the technicalities which you find in this type of situation. So, while we were more competitive in the foreign market under the present system, we will be less competitive under the new system.

We do not know what the United States law will be in the future. I understand it is even better than the particular situation we are talking about because you do not have to set up a non-resident company. You merely set up another U.S. company and this company handles your foreign sales. You get reduced taxes on the foreign sales. So you achieve the same, if not better, results without these complexities. To the extent that this makes a United States company more competitive on the foreign market, we are at a disadvantage either with the assessments that are being issued now, or with having to set up a foreign affiliate company.

**Senator Connolly:** Certainly we should draw this very clearly to the attention of the officials in the Department of Finance.

**Mr. Scace:** The problem is, senator, this may also be an illegitimate device. Companies established in tax haven countries have been used merely as holding companies for assets which would otherwise be situated in Canada. All they are trying to do is to reduce Canadian taxes. The difficulty is to provide something that would permit a

legitimate sales organization to exist where it would be better off in a foreign market. That is a very tough thing to do.

**Mr. Smith:** The tax bill attempts to be neutral as to source of income, whether it is Canadian or foreign, whether earned in a tax haven or in a high tax jurisdiction. The answer of the Department of Finance would probably be that if the Government considers an export subsidy program is required it would design something that did just that, without all the side ramifications such as those involving portfolio investors.

It could be said that the present system is broad-brush and inefficient in that it provides subsidies for exporters to foreign markets, but also in other cases, where it is not desired to subsidize.

**The Chairman:** The answer is that the difference between those two cases should be recognized. We dealt with this in our report on the White Paper, at page 76, paragraph 7.

**Senator Connolly:** Would you read it.

**The Chairman:** Yes. It states:

Your Committee rejects in their entirety paragraphs 6.20 and 6.21 of the White Paper and concludes that the introduction of equivalent provisions to Subpart F of the United States Internal Revenue Code would be a grave error.

This was the old U.S. legislation. We are not referring to the DISC program.

... The Committee has concluded on the basis of the briefs presented to it that Subpart F has proven to be an inordinately complicated and inefficient tool in the United States, and that current legislation is being directed to substantially reduce or eliminate many of its effects.

This is the DISC program.

... The Committee recommends that rather than the enactment of new legislation to control so-called tax avoidance on passive income (which the Committee is convinced can be controlled under the present legislation by stricter administration) legislation be introduced, such as that now contemplated by the United States for Domestic International Sales corporations, ...

That is the DISC.

... in order to aid Canadian exporters to compete adequately with their counterparts in foreign countries.

The trouble is that under the method of dealing with it a bigger stick has been used, or a wider sweep is being made. I illustrated to you some of the cases they are aiming at. For instance, a Canadian company might establish a foreign affiliate, in which it invests. That affiliate might be operating in a jurisdiction where there is no tax. In that case a tax-free dividend would be received by the Canadian company from the foreign affiliate in respect of that investment income. That is termed passive income. This, undoubtedly, is the type of situation that may have spurred the proposed changes in the law. However, it does not distinguish between the deserving—shall I put it that way?—and the undeserving.



We consider this to be an error and thought that these situations could be dealt with within the limits of the present law and its actual administration, which is carried on by the department.

**Mr. Smith:** A distinction must be made between the two cases. Under this bill, income from the foreign affiliate which is of the general character of investment income becomes attributed automatically to the Canadian resident, whether or not it is distributed. Where it is active business income it is not attributed, but when it is paid out as dividends the foreign tax credit provisions in effect tax it to the extent that it has not borne tax abroad. It has to be raised to the level of the Canadian tax. That is the obstruction to the foreign sales subsidiary. It is that taxing it in Canada on the payment of the dividend to the extent that it has not been taxed abroad. Of course, there is not too much scope for just accumulating it abroad, because if there is no business in which to invest it it would have to be invested in portfolio investments, producing passive income which would be attributed.

The distinction is between an export subsidy arrangement and a taxing statute which ignores that and attempts to treat all Canadian resident taxpayers in the same way, regardless of the source of their income.

**The Chairman:** The net result of this may be that the so-called tax havens abroad, such as Nassau in the Bahamas and others where there is no income tax, which are looking for income, might very well now introduce income taxes because if the operation earns income there and pays taxes here, it will receive a credit.

The only difference is that if the tax imposed in the tax haven is lower than the Canadian rate, the credit will be only what is paid there. In those circumstances the income would be subjected to the excess, being the difference between the foreign rate and the Canadian rate.

**Senator Desruisseaux:** We would then be at a disadvantage with the American companies operating offshore.

**The Chairman:** This is your competitor in the foreign market. It certainly looks this year, according to the assessments which have been made, that some steps will be taken to increase the efficiency, operations and earning power of domestic companies operating entirely outside the United States. It is planned to assist them in their selling. The income derived from these operations will be subject to a lower rate of tax than will their domestic income. How are we to meet that competitively? One way would be to do likewise; another would be by way of an export subsidy, which is a long and involved process and may create problems in the foreign jurisdictions.

**Senator Molson:** Is there not also a complication with respect to GATT?

**The Chairman:** Yes.

**Senator Molson:** So that it enters other fields, so to speak?

**Mr. Smith:** Nothing need be done before the end of 1975. This transitional period, in essence, preserves the present treatment. Therefore nothing disastrous will happen in 1972 and there will be three years to see what happens to Canadian exports.

**The Chairman:** You know the difficulties in removing it once it is in the statute. This is the time to sound the alarm.

**Mr. Smith:** Mr. Scace reminds me that my remarks assume that the activities of the foreign sales company produce "active business income". Maybe there is room for debate as to whether they are in fact active business income.

**Hon. Mr. Phillips:** I would like to make one point to the senators: it is with respect to the section we handled on foreign source. We insisted that the department had authority under various sections of the Income Tax Act, which we quoted chapter and verse at page 75 of our report, to institute proceedings against offshore companies where the issue involved tax avoidance or tax minimization. We pointed out that we had heard of a number of companies who were obliged to form corporations in foreign jurisdictions because of the law of that particular country.

All these sections having been quoted, we believe that this committee has convinced at least the Department of National Revenue that it has the authority, because it has in fact instituted proceedings by way of assessment against a substantial number of Canadian companies which have offshore companies. The presumption is that the assessments would not have been issued without the support of the legal section that there was authority so to do, which is the very position that we took in our report in chapter 6 on taxing international income.

**Mr. Smith:** The whole field of foreign affiliates is very complex. Perhaps, by way of relief, I could turn to another topic and look at Canadian income of non-residents. There have been some minor changes in the definition of non-residents in the sense that there is an expansion of the deemed residence rule to include any corporation incorporated in Canada which becomes resident or carries on business in Canada at any time after 1971.

There is a big change in the income that is taxed to a non-resident in that certain capital gains are pulled into the tax base.

The key there is whether the taxable capital gains are in respect of what the act terms "taxable Canadian property". That is defined in section 115(1)(b). Basically it is real estate situate in Canada, capital property used in a business in Canada carried on by the non-resident, shares or interests in Canada private companies, shares in a public Canadian company if the non-resident, within a five-year period, owned 25 per cent of the shares in any class, an interest in certain Canadian partnerships, and an interest of 25 per cent in certain mutual fund trusts.

The big exception, obviously, is shares of public Canadian companies where there is less than 25 per cent interest in a class. The reason for that is one could not police it.

Obviously they have included in the tax base those kinds of property where they think they can make a capital gains tax on a non-resident stick.

I have already pointed out the change in the withholding tax rates. There are really two topics that are of greater importance than the others. One is the thin capitalization rule which I mentioned a little while ago, where the ratio of non-resident equity to debt exceeds one to three—that

is, the debt cannot be more than three times the equity. The equity is the capital plus the surplus that the non-resident has an interest in.

It is designed to prevent an artificial or unwarranted reduction in the income of the Canadian subsidiary of a foreign parent. It would be easy to capitalize your Canadian subsidiary so that no income is earned in Canada by that subsidiary, merely by putting in all of the capital required by way of debt, charging a high rate of interest on it, and hence wiping out the subsidiary's profit.

The thin capitalization rules are intended to obtain for Canada a fair share of the income generated by the subsidiary.

The other topic that I wish to mention is the non-resident-owned investment corporation. In the past they have been used largely by foreign investors who wished to have some presence in Canada and yet did not wish to pay a tax penalty for having some presence here.

For example, if a European manufacturer wishes to set up a joint venture in Canada to exploit some natural resource, it requires some debt capital. He could merely buy the bonds from a Canadian company and would suffer a 15 per cent withholding tax on interest payments to him.

The non-resident-owned investment corporation concept allows him to put those bonds in a Canadian company which is taxed at 15 per cent, the same as the withholding rate, and, when the dividend is paid out, to get the interest out of the Canadian NRO and back to his country. There is no further tax, no withholding tax, at that point.

The changes affecting the non-resident-owned investment corporation are contained in section 133. We should also look at section 59 of the transitional rules.

The rate for NROs will remain at 15 per cent until 1976. There is a minor change in the qualification. It used to be that 95 per cent of the shares had to be owned by non-residents. Now it will be 100 per cent. However, that is not really of any consequence.

One change is that in future, in order to comply, the NRO must always have been an NRO. Under the new system you will not be able to take an existing Canadian company and change it into an NRO merely by selling shares to a non-resident and having that company lapse. It must be incorporated and start out business by electing as an NRO. You can create an NRO if you amalgamate a group of companies, but only if each of the amalgamated companies is an NRO.

The big change is that the NRO will have to include in its income capital gains on taxable Canadian property. Those will be taxed initially at a rate of 25 per cent, with a refund when the money is paid out later as a dividend. However, only one half of the tax is refunded and the shareholder will pay withholding tax on the balance.

The changes are significant enough to have scared off many non-residents who own NROs. In our own practice many European investors having NROs have already made plans to move them out of the country. It is not so much the rules themselves, as the fact that they fear it is the first step to taxing them in full on their capital gains.

Portfolio investors worldwide who are investing not to control or exploit natural resources but merely to get a return on their money are easily stampeded, and that stampede seems to have started.

**The Chairman:** It does represent a loss of revenue to Canada.

**Mr. Smith:** I am not sure to what extent the changes may have been motivated by a feeling in some other countries that the NRO was an avenue for tax avoidance by, say, a UK or European resident. It may be that Canada felt that it had to cut down the advantage. But it does seem to be slightly less generous treatment and possibly enough to discourage the use of NROs by that kind of portfolio investor.

That is a very rough and brief treatment of some of the highlights of the treatment of non-resident Canadians with respect to their foreign companies.

Are there any questions on that?

**Senator Lang:** Mr. Smith, could you compare the treatment of non-residents by Canada with, say, the United Kingdom's treatment of non-residents and the United States' treatment of non-residents?

**Mr. Smith:** I believe the United States has treated non-residents less generously than we have for quite some time. I am not sure what the treatment is in the United Kingdom. I do not think the NRO concept, for example, is paralleled in other high tax jurisdictions. It has been a vehicle of convenience for foreign investors where Canada was not losing anything, but it enabled the foreign investor to exploit Canada's tax treaties in a way that perhaps the country in which he is ultimately investing may not have intended. Once you had an NRO in Canada then it was a Canadian taxpayer and entitled to the benefit of our treaties. It did not hurt us but it may have been resented by some of our trading partners.

**The Chairman:** Foreign investment in Canada might not otherwise have come in. It did attract substantial foreign investments in Canada.

**Senator Lang:** Does the United Kingdom or the United States attempt to tax Canadians on capital gains made in their respective countries?

**Mr. Smith:** All these provisions are subject to treaties, but in the case of an NRO . . .

**Senator Lang:** Apart from NROs altogether, it seems to me to be a highly artificial operation to attempt to tax capital gains on a non-resident person. Is there reciprocal legislation in the United States?

**Mr. Smith:** Most of our treaties contain a provision that capital gains will only be taxed in the country in which the taxpayer is resident. For example, the Canada-United States tax treaty states that it is the right of the United States to tax a United States taxpayer who is earning capital gains in Canada, and, similarly, a Canadian taxpayer earning capital gains in the United States pays his tax in Canada.

Taxing a resident of the United States on his Canadian property is required in this bill, so it would require an



amendment to that treaty. I cannot imagine why the United States would agree to such an amendment, but that may not be what the Government is concerned about. They may be trying to tax the non-resident who is sitting off in a tax haven some place.

**The Chairman:** Before we adjourn I would like to put a reference on the record. We deal with this question in our report. You will find it at page 60, paragraph 16. I will not read it because I presume that every senator is familiar with it.

The only subject matter we have not dealt with is the resource industries. I think that is something which we can postpone consideration on until we get closer to the date when there will be some submissions.

**Senator Burchill:** Or until we get the amendments.

**The Chairman:** We do not know what the amendments may be. I do not feel that the amendments in relation to the mining industry will vary the thrust of the bill to any extent. I think the aspects that the mining companies operating internationally are concerned with are the ones having to do with the earnings that they make there and how they will be treated if they bring them home. I know that is the thrust of Alcan who are coming in towards the end of October. Their main concern is the impact on their income available in Canada after the taxation bite under this bill has taken place; that is a substantial matter for them. The Massey-Ferguson Company will also be making submissions and I am satisfied that that will be the thrust of their submissions. These companies are faced with a situation where they may, in many of these foreign jurisdictions, have companies that are national, so it hardly relates to the business of deliberately setting up a business for certain tax purposes.

I would like to express our appreciation to both Mr. Scace and Mr. Smith for what they have done.

**Hon. Senators:** Hear, hear.

**The Chairman:** We have sittings for next Wednesday and Thursday. On Wednesday of next week we will have the

Canadian Federation of Agriculture and the Canadian Construction Association. On Thursday of next week we will have the National Association of Canadian Credit Unions, the Co-operative Union of Canada and the All State Insurance Company of Canada.

We may increase the number for next Wednesday because we have only two down. When we dealt with the White Paper we were able to do six and sometimes eight in a day; we ran from 9 o'clock until 5 or 5:30. I see no reason yet for sitting at 9 o'clock—but, we may!

**Senator Cook:** A number of them will have points that are repetitions, will they not?

**The Chairman:** Yes. What I find is that if you have the other people sitting here during the submissions by the first people, then, they will find that most of the points in their representations are covered in the earlier ones and, as a result, they do not take very long with their submissions.

We are preparing studies. We still have not given up hope that we will get the proposed amendments earlier than having to wait until the section-by-section consideration in the committee of the whole. If we do not receive them in good time it may imperil the coming into force date of the bill. We are not going to be stampeded into dealing with a tremendous number of things that are dumped in our laps. If we do not get them in advance the purpose of setting up this committee at this time will have been defeated. The purpose of having the committee sit at this time was to expedite the consideration, so that we could meet the effective date of the bill. I believe the committee's feeling is that it is not going to be stampeded into rushing through a bill such as this.

**Senator Cook:** I agree. In any event, they will make it retroactive.

**The Chairman:** We will now adjourn until next Wednesday morning at 9:30.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

## Banking, Trade and Commerce

The Honourable **SALTER A. HAYDEN**, *Chairman*

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No. 40

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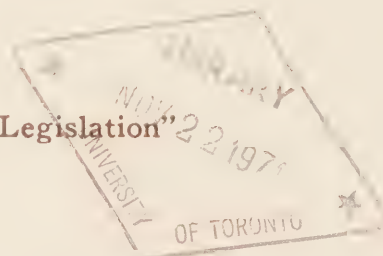
WEDNESDAY, OCTOBER 13, 1971

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Fourth Proceedings on:

"Summary of 1971 Tax Reform Legislation"

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

“With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as many be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.”

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, October 13, 1971

(47)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to further consider:

"Summary of 1971 Tax Reform Legislation"

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Haig, Isnor, Lang, Macnaughton, Molson, Walker and Welch. (17)

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant.

## WITNESSES:

*Canadian Federation of Agriculture:*

Mr. Charles Munro, President.

Mr. David Kirk, Executive Secretary.

At 11.40 a.m. the witnesses were excused and the Committee proceeded to the consideration of Returns, Assessments and Appeals, as prepared by Mr. Poissant.

At 12.15 p.m. the Committee adjourned.

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(48)

At 2.15 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Haig, Isnor, Lang, Macnaughton, Molson and Welch. (15)

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant.

## WITNESSES:

*Canadian Construction Association:*

Mr. Robert C. T. Stewart, P. Eng., President,  
and President, Cameron Contracting Limited.

Mr. S. D. C. Chutter, General Manager.

Mr. K. V. Sandford, Taxation Officer.

At 3.40 p.m. the Committee adjourned until Thursday, October 14, 1971, at 9.30 a.m.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, October 13, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, our program for today is as follows: we shall hear the Canadian Federation of Agriculture this morning, and if there is any time left over, Mr. Poissant is going to make a short presentation on some points. Then this afternoon at 2.15 we shall hear from the Canadian Construction Association.

We have with us, representing the Canadian Federation of Agriculture: Mr. Charles Munro, President; and Mr. David Kirk, Executive Secretary.

**Mr. Charles Munro, President, Canadian Federation of Agriculture:** Mr. Chairman and honourable senators, the Canadian Federation of Agriculture has been concerned on a number of points in the tax reform proposals as proposed by the Minister of Finance, although in general terms we found many of his proposals acceptable. However, in reviewing the legislation we did make a final submission to the minister on August 30, and I assume that you have received copies of the submission that we made. I do not know whether you desire us to read that submission or not.

**The Chairman:** Well, it is not very long and I think you will want to be sure of covering all the points raised, so perhaps it would be better for you to read it.

**Mr. Munro:** The only other alternative would be to take the brief and go through it point by point. I would accept your judgment on the matter, but certainly, when dealing with a document as massive as the tax legislation I do not think that we can really summarize it adequately, and in fact I think it is summarized fairly precisely in the document.

This submission consists of three parts, the first one dealing with farm business taxation.

May we make the following representations for changes or clarification in the tax proposals as contained in Bill C-259:

**The Family Farm Corporation.** One general point we would like to make is that all provisions applicable to farmers as individuals should in principle be applicable to family-held farming corporations. We suggest there be some general provision in the law providing for this. This requires definition of what a family farm corporation is.

We would suggest perhaps that 80 per cent of all shares require to be held by members of the family, and 80 per cent of the income to the corporation be from the farming operation. This can be important in many connections.

**Transfer of a Farm within a Family, whether by Sale or Inheritance, without Realization of Capital Gains.** There is, as we understand it, absolutely no provision for farms to be transferred within a family, except to a spouse, whether by sale or inheritance, without immediate realization of capital gains. This would be true of the sale or transfer of a farm to a son, or inheritance by the son of the farmer. We have been informed that this problem can be avoided in many cases by good estate planning through incorporation of the farm, and this may well be so. Even in such a case the death of the son, the holder of common shares in an incorporation, prior to that of the father, could result in realization of taxable capital gains while the father was still in active charge of the running of the farm, creating severe financial problems.

**Senator Beaubien:** Mr. Chairman, may I ask a question of the witness?

**The Chairman:** Certainly.

**Senator Beaubien:** Mr. Munro, why would a man who owns a farm and desires to turn it over to his son not have to pay tax, while the man who owns a small business and turns it over to his son or desires to leave it to his family would? What is the difference here? Surely, if you own a business and want to leave it to your son, that is a good idea. Why would one get off tax free in this situation and the other person have to pay tax?

**Mr. Munro:** We are not suggesting that.

**Senator Beaubien:** You are suggesting there would be no capital gains, or no tax if it is turned over to his son.

**Mr. David Kirk, Secretary, Canadian Federation of Agriculture:** The incorporation arrangements we are referring to, as we understand it, are available in any situation for general incorporation. These are not special farm provisions. These are forms of incorporation, as I understand the general principle, where the owner of the farm, or the owner of the small business can incorporate that business, and the owner of the farm or of the small corporation would, in fact, take his equity in the form of voting preference shares. The capital gain would accrue to the common shares which would be held by the son. In that way, when the father disposes of his assets, there would be no capital gain on those assets. We are informed that this is common practice in business; and we are not referring to special farm provisions.

**Senator Beaubien:** Is there a provision where you can turn over the shares of your business to your son without any tax?



**The Chairman:** Mr. Poissant.

**Mr. C. Albert Poissant, Tax Consultant to the Committee:** Are you suggesting that if a farm was held by the family farm corporation it would not attract tax? The shares given to the son at the time of the death of the father would attract capital gains tax, as Senator Beaubien has suggested, and the shares that were given to the son, in the place of the farm or in the place of the grocery store, do attract tax.

**Mr. Kirk:** I am not a corporation tax expert, but the information that we received from a very competent gentleman whom we consulted with and who has been involved in estate planning for farms and other businesses is that if a farmer or a grocery store owner owns a business and he wants his son to go into business with him, he can incorporate that business and he can issue shares which the son would hold which, initially, would have little or no value because he would have issued the full equity value in that business and that will be represented by fixed value preference shares which would also be voting shares. Therefore, the equity holding of the farmer or the businessman would, in fact, not appreciate in value because they are fixed value shares and the capital gains will not be realized until, of course, the common shares are sold. I am not sure how this would work at the time the son would wish to hand it down to his son. I am informed that it can be done, but I do not know how.

**Senator Beaubien:** Mr. Chairman, may I ask Mr. Poissant if there is anything that would prohibit a farmer incorporating, just as a small businessman can incorporate?

**Mr. Kirk:** There are possible disadvantages in the farming corporation. One disadvantage is that it is a complicated and difficult procedure with obligations that many farmers do not want to undertake. They do not want to run a corporation. The second point is the problem that can be created even if you have incorporation in terms of the capital gains tax prior to the death of the father; and the third problem, of course, is that the equity of the father is, in fact, fixed. This limits, under certain conditions, obviously, the retirement position of the father.

**Senator Connolly:** How does the father's interest become fixed? Is he taking a debt security?

**Mr. Kirk:** He takes preferred shares.

**Senator Connolly:** Well, they could vary.

**Mr. Poissant:** They would not normally vary unless they are redeemable at a premium. In this case, the common shares would vary, but very little, because the bulk of the assets transferred to the corporation were given by way of preferred shares to the father. It is true in such a case that at the time of death of the father there would be no realization because the common shares are held by the son.

**Senator Connolly:** They are held by the son.

**Mr. Poissant:** Yes.

**Senator Cook:** Mr. Chairman, is this the point that Senator Beaubien is making, that in the case of the small businessman who, in fact, does carry out this procedure

and does take the preference shares and gives the common shares to his son, and in the other case where you have the farmer who does exactly the same thing, he incorporates the farm and takes the preference shares and gives the common shares to his son—are you suggesting that in both cases if the son should die before the father, that is the son of the small businessman or the son of the farmer, there should be any difference in the treatment of the two sons respectively?

**Senator Beaubien:** I wonder if there is any difference.

**Mr. Kirk:** When we said there was no difference, we meant that this incorporation provision is a generally prevailing position. Our position is that a transfer, without incorporation, without realization of capital gains, in a family should be permitted. That has been our position throughout. We feel that it should be permitted in the case of farms for reasons which we feel are sound for the maintenance of the family farm. If a case can be made for a small grocery store owner, fine. We are making a case for the farms.

**The Chairman:** Let us assume that the father decides that he is going to incorporate and he turns his farming assets into this company and takes the preferred shares. Let us also assume that the son buys the common shares. At that time, I would assume the farming assets would go into the company at their fair market value. The equity would be represented by the common shares; but the equity is something that would have to develop at that stage. There would have to be incremental increases. But at the moment, I would say, the value of the common shares that the son would buy and own outright would be very nominal. The son would really be getting in on the ground floor of the operation, if there is any increase in value. As the father's shares are redeemed, of course, there would be more opportunity for that value to develop.

**Senator Connolly:** I think that this is a wonderful example. Would you follow it right through? In the event that the preferred shares are redeemed, and thereby increase the value of the common shares, until the preferred shares have been completely redeemed—what does the witness have to say in regard to this situation?

**The Chairman:** The son owns and controls the company?

**Senator Connolly:** Yes, but I am thinking of the capital gains.

**Mr. Kirk:** No, the son would simply have to find the money to buy these shares or receive them as a gift. I am talking about the preferred shares. There would be no capital gain on the preferred shares.

**Senator Connolly:** No, I would like to stick to the Chairman's example. The preferred shares have now been redeemed and the common shares are owned by the son. In other words, he owns the farm and the company. What is the capital gains situation which the son would face regarding those shares?

**The Chairman:** On disposal?

**Senator Connolly:** Yes, that is what we are concerned about.

**Mr. Kirk:** That is right. No, we are not concerned about the avoidance of the payment of capital gains tax should the farm go outside of the family. We are not concerned about the permanent avoidance of the capital gains tax. We are concerned about the realization of capital gains during the operation of the farm while it is within the family and the maintaining of the farming business as an on-going business without being completely disrupted by this transaction.

**Mr. Munro:** And the maintaining of farming as an on-going business, without being completely disrupted in the transaction.

**Senator Cook:** Capital gains on death?

**Mr. Munro:** No, capital gains on the business passed out of the family into other hands.

**Senator Cook:** You are not objecting to that?

**Mr. Munro:** No.

**Senator Cook:** You are objecting to capital gains on death in the family?

**Mr. Munro:** Yes, we want a deferral.

**Senator Connolly:** After the shares are regained, the son is in the same position as was his father when he incorporated. Therefore, in fact, he owns the farm. Do you want to carry it another generation and issue preferred shares to him?

**Mr. Munro:** I am personally a major shareholder in an incorporated farm. I understand from my legal counsel that this can go on for generations if the family wishes to continue farming.

**Senator Connolly:** The company can continue; it has an indefinite life. What is the situation when the preferred shares have all been paid off and the farmer, who now owns all the common shares, wishes his son to take over? The grandson would then be involved.

**Senator Cook:** He just sells to another company.

**Senator Connolly:** That is precisely what I wish to hear from the witnesses; another company must be incorporated which would repeat the exercise originated by the farmer.

**Senator Beaubien:** Is a farmer now in any way at a comparative disadvantage to a grocer if he incorporates?

**Mr. Munro:** No; not as against the grocer.

**Senator Beaubien:** Then you are against this new tax; do you think the farmer should have a special deal?

**Mr. Munro:** We have not asked for a special deal; we have only asked that Canadian farmers can retain the equity, for the various reasons set out in this brief. We ask that they be allowed to continue, not that they should have any different position from that of a grocer. We are arguing our position and have not taken up the cry on behalf of the grocer; we think he should look after himself.

**Senator Cook:** Can you advance any reasons why your position is different, or should receive consideration over

that given the small family business? I just wish to be helpful. You say that the small family business can look after itself, which is true enough; I am not asking you to argue their case. However, what is the philosophy behind the contention that you in fact should escape and they possibly pay, as the situation now prevails?

**Mr. Kirk:** There are two aspects: the philosophy, about which farmers feel rather strongly is, first of all that there is a very strong case on social in addition to economic grounds for making it possible for families to continue farming their land. We do not make any apologies for that case.

The second point is that with the typically low returns and very high rate of technological development involving continually increasing capital requirements it can be extremely disruptive to the farm business if capital gains must be realized by the family and withdrawn from the farm. It means that they must dispose of farm assets or incur a large debt load.

Were a similar type of case to be made in a city context we consider it would be the responsibility of those involved to make the case. We make it on grounds of the nature of farming and the desirability, socially in addition to economically, of a stable farming structure. This structure is unstable enough as it is and we do not wish to increase its present instability.

**Senator Cook:** Capital gains tax is not much of a hardship in cases of farms and farm equipment which do not increase much in value, because there is little on which to pay the tax. However, what is your solution to the situation in which a farm passes from father to son and becomes more and more valuable, with more and more equipment? The son may become a millionaire several times over by reason of the increased value of the land and equipment and yet pay no capital gains tax.

**Mr. Kirk:** He cannot realize that million dollars without paying capital gains on it; that is definite.

**Senator Cook:** That is true, yes.

**Mr. Kirk:** The other reply is that exceedingly few people arrive in that position.

**Senator Connolly:** As I understand the witnesses, they say that there is more to the problem of a family farm than economics. Their argument is that in addition to tax considerations there is the social aspect of the maintenance of the family farm, as opposed to the maintenance of the family business referred to by Senator Beaubien. They state that it is more desirable to maintain a family farm and for social reasons, therefore, the rules for the family farm should not be the same as those for the family business. Is that a reasonable summary of your position?

**Mr. Poissant:** The point made by the witnesses is really that the incorporated farm presents no problem. At the top of page 2 of their brief it is stated that if by any chance the son were to die before the father, then to a certain extent there is a return to the father and there should be no deemed realization in that case.

The other point flows through normally, because it has already been given some time previously by way of the



common shares. However, it would return to the father if the son were to die first. The witnesses are really asking that the flow back be free of capital gain, which is something new. The first part was solved through the incorporation but now they ask that what was done 10 or five years previously be undone and the farm flow back to the farmer, if he is still active on it, free of deemed realization.

**Mr. Kirk:** That is part of our request. We also say, in the remainder of page 2 of the brief, that we indeed think that the principle of deferring deemed realization as long as the farm remains in the family should be followed even if there is no incorporation. There will be farmers who simply do not wish, or neglect to incorporate.

**The Chairman:** We are talking about two things. One is incorporation, what flows from that, and what they would like to have happen there; and then, as I understand it, they are also talking about the situation, "Well, if we do not want or do not like to incorporate, we should have these benefits as individuals." If the benefits are available to the same extent that they are to anybody else if you incorporate a farm, then that is one situation.

What Mr. Kirk seems to be concerned about is that the son may hold the common shares and the father, who has turned the assets into a limited company, may hold the preferred shares. If the son dies, the common shares will represent the ownership of the farm. But the father, if there is any quantity of preference shares still outstanding, has a pretty strong toehold in relation to his financial interest in the farm.

It is felt that if the son dies first, those common shares should be able to go back to the father without attracting any deemed realization.

Unless a lot of the preferred shares have been redeemed, I doubt if in most cases there would be any substantial value attached to the common shares at that time.

They may represent the equity, but equity is a variable thing. It depends what you can get for it after you pay off the preferred shares.

It is hard to make a ruling of that kind, because you are really granting an exemption from capital gains tax.

I am not saying that it is not possible to do so. Parliament can write the law in any way it wishes, but it has to have good grounds for doing so.

Mr. Kirk suggests that the farm is a kind of entity and is an asset in a way that has value to the country more than simply the value of the piece of property. Keeping people on the farms and keeping farms operating leads to a healthy community.

**Senator Connolly:** And social conditions.

**The Chairman:** Yes, and social conditions would urge it. Senators may recall that we made a recommendation in our report on the White Paper. On page 59, paragraph 7 we said:

Your Committee recommends exemption from capital gains tax to the extent of the first \$75,000 of aggregate net lifetime gains derived from the sale or exchange by an individual or his spouse (or by a cor-

poration where such individual or spouse, because of statutory provisions, is obliged to operate through corporate ownership) of farms and orchards where the principal occupation of the transferor is farming.

We said you can make lifetime gains up to \$75,000 without attracting capital gains tax.

This is a different concept. Firstly, you do not want any limitation. You want the son to have an unqualified right, if he dies, to have the ownership of the farm turned back to the father.

However, that interjects other problems. The son may be married and have a family. If the son makes a will in which he disposes of the property in the interests of his family, we are wasting time here saying that we should give the son the right to turn the property back to the father without attracting capital gains tax.

The son is the only one who can say that.

**The Honourable Lazarus Phillips (Chief Counsel to the Committee):** Mr. Chairman, generally speaking, the committee took the position that small-type farming was entitled to special consideration.

I personally still hold that view. Those speaking on behalf of the Federation would make a much better case if they took the simple position, without confusing it with corporate structures as against individuals, that so long as a small farm operation—and the definition of a small farm operation would have to be made—were transferred within the family, no matter which blood member of the family, and the operation of the transferred unit was for farming purposes generally, there should be exemptions in respect of the application of the capital gains tax until its disposition outside the family or its transfer.

**The Chairman:** That would be a deferral.

**Hon. Mr. Phillips:** Yes. If I may be permitted to express an opinion other than being counsel—

**Senator Flynn:** How far would you go in relation to the family?

**Hon. Mr. Phillips:** I would go to direct blood descendants.

**Senator Flynn:** Or back?

**Hon. Mr. Phillips:** Yes, or even upstream as distinguished from downstream. I disagree with the simple statement that a small agricultural unit is a special unit related to the vital operation of our system. With respect to Senator Beaubien, I do not agree with his analogy of a small business in relation to a farm. There is a market for a commercial unit, even a small business unit, or the liquidation of an inventory which is liquid or accounts receivable. The circumstances are entirely different.

There is no market for a farm in Saskatchewan in a section of a drought area in terms of some years. I may be speaking out of my depth, because I have no status other than that of a lawyer.

I remind the committee that in our Senate report on the White Paper we accepted the principle that a distinction had to be drawn between persons engaged bona fide in farming and those engaged in commerce.



Regarding the simple principles of postponement, or, as our chairman said, deferral of capital gains, when there is a transfer of a small-type farm within a family, up or down—the reference was made to upstream as well as downstream—as long as it is so used, the capital gains tax should be deferred. That would strike a more responsive chord than the complicated submission we have had thus far.

**Senator Cook:** And it would cost very little in terms of tax.

**Hon. Mr. Phillips:** Yes, it would cost very little indeed.

**Senator Beaubien:** In the case of a small farm, a small operation, what kind of a capital gains tax would we have on an operation where there is no market?

**Hon. Mr. Phillips:** That is all the more reason for a deferral.

**Senator Beaubien:** But I do not think that is what the submission refers to.

**The Chairman:** Well, let us find out. Mr. Munro, you have heard the discussion. Is the presentation that you are making being made on behalf of what we call the small farmer, or is it for farmers generally; that if a farmer has a windfall and his property becomes valuable, he should be able to realize its creation into a real estate subdivision and make a profit, non-taxable as to capital gains?

**Mr. Kirk:** That is not our submission.

**The Chairman:** Tell us your viewpoint in relation to our discussion here of small farm businesses.

**Mr. Kirk:** In the first place, we are not distinguishing between small farms and large farms; that is the first point. However, the first paragraph of our brief notes that it would be useful to define a family farm corporation; this means that it essentially has to be family held and the profits have to be essentially from the farm operation.

I should emphasize, first of all, that we are not asking for exemption from taxes; we are asking for a deferral of taxes. I think that is quite important.

**Senator Cook:** For how long a period?

**The Chairman:** You mean until the farm ceases to be a farming operation?

**Mr. Kirk:** Yes, until it ceases to be a farming operation.

Except for that one point with respect to the son dying first, we are not asking for special recommendations for farmers on an incorporated basis. We just referred to this because we thought it would be in the thinking of you gentlemen and also in the thinking of the Government. We thought it would be in the picture that this option is in fact open; it is open now under the present law and it would be open under the new law to any corporation. What we are asking for is that, incorporated or not, a family farm not have realization for capital gains until it ceases to be a family farm and the assets are sold off. If it is sold for a subdivision, then capital gains are immediately realized under our recommendations. It is not a question of avoiding taxes or exemption from taxes; it is a question of not

realizing the capital gain on that land as long as it continues as an integral operating farming unit, because otherwise you would either have to sell off part of it in order to pay the capital gains tax or undertake a debt in order to pay the capital gains tax. That is our point.

**Senator Flynn:** How does the provision concerning principal residence affect farms? There is no provision specifically designed to cover farms. You would have to use the provision concerning the exemption for principal residence.

**Mr. Kirk:** We discuss this in some detail later on in the brief.

**The Chairman:** It is referred to on page 3 of the brief. You are thinking of the fact that the farmer can make an election under section 40(2)(c).

The small farmer would benefit by this election whereby he can deduct \$1,000 a year for each year that he has occupied the principal residence on the farm, can he not? If he spent a life time there he would be deducting quite a few \$1,000, would he not?

**Mr. Kirk:** Yes, indeed, and we value that provision a great deal.

**Senator Flynn:** Is the definition of principal residence applicable to the whole farm, or is it only applicable to the main residence and one acre around the main residence?

**The Chairman:** Yes.

**Senator Flynn:** They could not benefit, then, by this deduction of \$1,000 a year. If it is a farm, they could not deduct \$1,000 from the increased value of the land because it only applies to the one acre around the main residence.

**The Chairman:** Section 40(2)(c) states:

where the taxpayer is an individual, his gain for a taxation year from the disposition of land used in a farming business carried on by him that includes property that was at any time his principal residence is

(i) His gain for the year, otherwise determined, from the disposition of the portion of the land that does not include the property that was his principal residence, plus his gain for the year, if any, determined under paragraph (b) from the disposition of the property that was his principal residence, or

**Senator Flynn:** This means, then, that the provision respecting principal residence would be applicable to the whole farm.

**The Chairman:** That is right. Section 40(2)(c)(ii) states:

If the taxpayer so elects in prescribed manner in respect of the land, his gain for the year from the disposition of the land including the property that was his principal residence, determined without regard to paragraph (b) or subparagraph (i) of this paragraph, minus \$1,000 for each year for which the residence was his principal residence and during which he was resident in Canada;

**Senator Burchill:** Without defining a small farm, Mr. Munro, how many small farms would be incorporated? What size farm ordinarily would be incorporated?

**Mr. Munro:** That would be difficult to quantify, but I would suggest that there must be a sizeable business within the farm in order to go to the expense of incorporation and the ensuing expense year by year of maintaining books that meet the requirements of the laws of the land. I am not familiar with the provincial laws in other provinces, but certainly here in Ontario a farmer would have two sets of laws pursuant to which he would be required to submit his books, and these books have to be kept in a prescribed manner. It does become an expensive operation to incorporate, and it also adds another dimension to the farming operation, and that is the bookkeeping aspect. Generally speaking, farmers in this country—and this is a fact; it is not a criticism or an excuse or anything else—have had little training in bookkeeping, and if you are going to maintain an incorporated farm you have to keep proper books. This means that people either have to be employed to maintain those books or the farmer has to find that type of person within his own organization.

A small farm means different things to different people, but, relatively speaking, if it is a one-man operation or even a father and son operation, in some instances, they will not have the desire nor the amount of money available to go to the extra expense of incorporating. It is expensive to set up an incorporated farm.

**Senator Burchill:** So when we talk about small farms and incorporated farms we are talking about two different things?

**The Chairman:** Yes, and with all due respect to Mr. Munro, I think this presentation is intended to be weighted on the side of the individual and not on the side of the corporate farm.

**Mr. Munro:** That is right.

**The Chairman:** So we should look at it as the individual. Some of these benefits in the bill are benefits to the individual who is carrying on a farming operation.

**Mr. Munro:** The major portion of our concern lies with the individual. Incorporated farms in Canada are quite few in number and we suggest will remain that way for some considerable time to come.

**Senator Connolly:** Is the principal residence deduction available to the farmer who incorporates?

**Mr. Kirk:** No, and that is one of our complaints.

**Mr. Poissant:** In other words, they would like this word "individual" to read as well "a family farm corporation" and to extend the same rules applicable—

**Mr. Kirk:** To a defined family farm operation.

**Senator Connolly:** Have you suggested any particular section to be changed? You do not have a draft of the amendments you propose, do you?

**The Chairman:** No, Senator Connolly, although with the information we now have as a result of our study it would not be difficult to determine, firstly, where the changes should be made, and, secondly, settle the language of the changes.

The question is what we wish to do in that regard. I do not think we can answer "yes" or "no". Our review in relation to the treatment of farms is expressed in our report on the White Paper, and I do not suppose that that view has changed. What we have to assess is whether the treatment that is accorded in the bill is fair in the circumstances.

**Senator Cook:** I was going to come back to what we said in our report, Mr. Chairman.

Assuming that you could not get total blanket exemption, Mr. Munro, what do you think of the \$75,000 figure suggested by the Senate as a definition of a small farm which would be exempt? What figure do you suggest it should be? What do you think of \$75,000?

**Mr. Munro:** It sounds interesting. We really have not quantified this within our organization or discussed it at all. I do not think we went in this direction in our discussion.

**Senator Connolly:** I wonder where we got the \$75,000.

**The Chairman:** We had quite a lot of discussion here with some of the farming groups. There was some criticism because we limited the qualification to, as it were, the principal occupation of the transferor, his farming. We felt it had to be limited in that way.

**Hon. Mr. Phillips:** May I remind the members of the committee that we were bothered about how to define a small farming operation, so we came to the conclusion that we were better off by asking for an exemption of capital gains to the extent of the first \$75,000 of aggregate net lifetime gains. Obviously, lifetime gains are related to an individual rather than a corporation, which clearly is another matter. We just did not seize ourselves of the problem of corporate structures in relation to farming operations. We came to the conclusion that rather than struggle with the definition of a small farming operation as to acreage, yield, moneys received and that sort of thing on an annual basis, or over a five-year or ten-year basis, the simplest approach would be to recommend the exemption from capital gains of a lifetime amount realized by an individual farmer up to \$75,000. That is the history behind our recommendation, as I recollect it.

**Mr. Kirk:** I would observe that we realize you made that recommendation, and we appreciate it very much. We have to say frankly that this brief is drafted in the light of the tax bill; that is to say, we deliberately did not go back to square one; we attempted to make a recommendation that we thought was, as closely as we could make it, within the context of government thinking, on the grounds that you had made the recommendation, for example, and it was not accepted. We tried to make recommendations that we thought might meet with Mr. Benson's definition of "technical" in his offer for further representations; he said he would welcome further technical representations. These are not altogether technical, but we did try to be reasonable from the point of view of the practicabilities of government decision-making, rightly or wrongly.

**The Chairman:** It may be that what the Government is proposing in this bill is not too far away from what we



recommended. We recommended that there be an exemption for net lifetime gains derived from the sale or exchange of farming property of \$75,000. In the bill, the net lifetime gain is limited by the number of years the farmer has used the residence on the farm as his principal residence. If he was there for a lifetime, maybe 40 or 50 years, in all he has accumulated a net lifetime gain of 40 or 50 times \$1,000.

**Senator Flynn:** Plus the original value. Our \$75,000 included the original value and the value at the time of the deemed realization, or the realization.

**The Chairman:** The difference between the two would be the gain.

**Senator Flynn:** But there was an exemption up to \$75,000. To the \$1,000 a year you have to add the original value. If at the time of valuation day a farm was worth \$50,000, you can add \$1,000 a year at the time of the transfer.

**Senator Cook:** It would be worth over \$125,000 before liability.

**Senator Flynn:** I think the \$75,000 was the total value.

**The Chairman:** No, net aggregate capital gain.

**Senator Flynn:** Gain?

**The Chairman:** Yes.

**Senator Flynn:** That goes much further.

**The Chairman:** The deduction of the \$1,000 is \$1,000 a year from the gain.

**Senator Flynn:** When the property is transferred to the wife, at present there is no estate tax, but would there be a deemed realization when a transfer is made under the new tax bill? Will the estate of the deceased have to pay a capital gains tax on deemed realization when there is a transfer to the wife?

**Senator Connolly:** You mean on the death of the husband?

**Senator Flynn:** Yes.

**The Chairman:** There is nothing I see that takes away from the right of either spouse to make a gift without deemed realization to the other.

**Mr. Poissant:** These are roll-overs between spouses.

**Mr. Kirk:** There is no realization on the inheritance by a wife.

**Mr. Poissant:** That is right, to the wife from the husband, or vice versa.

**Senator Flynn:** There is no estate tax.

**Hon. Mr. Phillips:** No deemed realization.

**The Chairman:** There is no taxable gain.

**Mr. Poissant:** No deemed realization.

**Senator Flynn:** Between husband and wife?

**The Chairman:** No, not in this bill.

**Hon. Mr. Phillips:** Roll-overs.

**Senator Flynn:** It follows the same principle as the estate tax?

**Hon. Mr. Phillips:** Yes.

**The Chairman:** I was making the point that the provisions in the bill recognize a principle of deduction in relation to gain; they arrive at it in a different way on this \$1,000 a year of occupation of the residence as a principal residence. The net result does not produce as many dollars of exemption, because to produce \$75,000 the taxpayer would have to have his principal residence on the farm for 75 years. It does go some distance, and I take it that you are certainly not looking a gift-horse in the mouth and saying, "No, we don't want it."

**Mr. Kirk:** No. Perhaps I might review some of the problems. There are a few problems with that \$1,000. Would it be all right to just review those?

**The Chairman:** Yes, you go ahead.

**Mr. Kirk:** The first problem is that it does not apply to an incorporated farm. It should be pointed out that if the principal residence is in the incorporation, then the exemption for the residence, which everybody has, is not available to the farmer.

**The Chairman:** That every individual has.

**Mr. Kirk:** That every individual has. One would say that you should separate these in the incorporation, but in fact there are a good many provincial laws on land use that make it impossible to separate them in the incorporation, because they do not permit that. You have to keep that unit. They do this for purposes of land use planning. That is a definite disadvantage and it should be corrected, in our view.

The other point is that you get the \$1,000 only in the years when you are in principal residence on the farm. For example, a farmer may be in a rather remote position in, say, Saskatchewan. As you know, the small towns are declining there and many farmers find it highly advantageous to buy, often very cheaply, a house in town, because then they can educate their children adequately, and they do not have the same type of isolation. But if he does that, he loses immediately the \$1,000 a year. Or, if the son is working the farm and the father retires to the village, perhaps does some of the work but retains the ownership of the farm, then that \$1,000 a year is lost for those years. We do not think that that is reasonable, that he has to be actually on the farm in all cases in that way.

**Senator Flynn:** He would be able to claim exemption from it, too, if you were to correct the situation as suggested, because the residence that he has bought in town will benefit by the exemption.

**The Chairman:** Under the general law.

**Senator Flynn:** Yes.

**Mr. Kirk:** He could not claim both, of course.



**Senator Flynn:** Then he would have to have an option between the two, in a case like that.

**Mr. Kirk:** The option is there, in any case, but often these alternate houses in the town are not going to appreciate very much. This is a convenience. The town is not a major centre and it is not going to be a growing centre, in most of these cases.

**Senator Flynn:** Is the farm more likely to be growing in value, as an asset?

**Mr. Kirk:** In many cases, in the Prairie Provinces, yes, it would be much more likely, because what we are getting is a surplus of houses.

**Senator Flynn:** Even if it remains a farm?

**Mr. Kirk:** Yes, even if it remains a farm.

**The Chairman:** Yes, it must be a farm used in the farming business.

**Mr. Poissant:** Mr. Chairman, it would apply now, if the father were in the town and the son were occupying the farm residence. They could both have a principal residence, under the proposed scheme, because the father has a house and the son has a house.

**The Chairman:** They both have to be owners.

**Mr. Poissant:** Yes, but it could happen, if they are owners.

**Mr. Kirk:** The son would have to be an owner.

**Mr. Poissant:** Except in the corporation.

**Senator Flynn:** We are worried about the son acquiring a house and dying before the father.

**Senator Cook:** You are also saying it is sometimes not possible to split the house and the farm, because of the law? Do you not say that?

**Mr. Munro:** Yes. This is a definite problem.

**The Chairman:** The principal residence does not necessarily mean that one lives there every day in the year.

**Senator Flynn:** It is question of fact.

**The Chairman:** It must be your home base.

**Mr. Kirk:** Essentially, what we are saying is that the farm should have the \$1,000 a year exemption, or the option of principal residence. It is that simple. The residence requirement on the farm should not be so restricted.

**Mr. Poissant:** What you are asking here really is—and this prompted the question—that there be perpetual roll-overs, if a man can give the farm to his son, and his son to his son, and his son to his son, and there is never a capital gain in the case of the farmer. Furthermore, in the case of the corporation, where 80 per cent of the shares are held by the family and 80 per cent of the income is from farming, we would have to put additional restrictions to the effect that this family corporation should not have anything else—that is, because the shares could again be transferred ad infinitum, in your example here. If 20 per cent of the assets were something else, were shares in Bell Tele-

phone, they would qualify as part of the family farm corporation under this definition.

**Senator Flynn:** That is what they are asking. I think they want the definition of the farm to apply to a farm that is owned by a corporation. Then this would be an asset of the corporation.

**Mr. Poissant:** Then the exclusive assets should only be farming, and we should define further that not only 80 per cent of the shares are held by them—

**Senator Flynn:** All the shares would be exempt.

**The Chairman:** This is what they are asking, that a family corporation would be a corporation where 80 per cent of the shares were held by the family and where 80 per cent of the income came from a farming operation.

**Senator Flynn:** It would open the door to abuses.

**Mr. Poissant:** Yes, unless you define it further, that no other assets but farming land, farm houses and farming equipment are allowed. It would be very restricted.

**Senator Cook:** And employed in farming.

**Mr. Poissant:** Yes, employed in farming, and nothing else, no investments. Otherwise this would be a fair and proper channel to get all the capital gains through by this type of corporation. One can see the complication that could arise.

**The Chairman:** I think we have given this fairly complete consideration. Can we move on to other points that you have?

**Mr. Munro:** Yes. I would ask Mr. Kirk to pick up the basic herd concept and deal with that.

**Mr. Kirk:** Yes. I will read this, if I may, as it is a fairly complicated subject. It is on page 4, item 4, basic herd.

In connection with the provisions for termination of a basic herd system as regards increases in basic herds established by 1971, and establishment of basic herds by further farmers after 1971, we feel strongly a serious error of policy is being made here. That is to say, there will be no expansion of basic herds after 1971 establishment now, and the law says there will be no additions to basic herds. Any farmer can establish a basic herd as of January 1, 1971. Then that herd is valued and on disposition of the herd, according to certain rules, the value of the dispositions is compared to the original value, and capital gains is charged on the difference. Presently it is a unit system and it makes no difference what you sell it for, compared to what you bought it for. One cow is one cow and there is no capital gain. We are not quarrelling with that change. We are not quarrelling with the change to actual valuation of the animals sold from the basic herd and charging a capital gain on the appreciation in value. We accept that. What we are quarrelling with is the termination of the basic herd system, and its freezing. We say:

The basic issue is this: there is a real, valid need to have some system by which the farmer can treat this capital investment in livestock as a capital investment. Consider, for example, the problem of the farmer who wishes to take money out of capital to acquire a herd or a major addition to an existing herd. From his standpoint, he now has a

capital asset which cannot be depreciated. His cost of acquisition of the cattle is an expense to him, if he is on a cash basis of accounting, giving him a number of years of severe losses that will not be corrected by the five-year averaging provision. To go on an accrual basis with annual valuation of the herd is often impractical and undesirable. A much better answer is to establish a basic herd.

The same consideration in a less extreme way applies to farmers who wish to build up their herd year by year, reporting the cost of acquisition as income—as they do now—and enlarging their capital base of animals.

If this is not provided for, the farmer builds up a large sum which will be realized as income immediately on dispersal of the herd.

Farming requires increasing capital investment. It has been Canadian public policy for more than two decades to assist farmers in obtaining the capital requisite for a viable farming operation that alone can satisfy the twin objectives of a decent income for the farmer and reasonably-priced food for the consumer. One effect of the basic herd has been to create capital in livestock operations without the necessity of outside money investment: i.e. an ongoing farm business on basic herd is able to show a balance sheet that includes part of the livestock as a capital asset, rather than entirely in inventory. The effect is that the financial strength of the operation is automatically increased. To phase out the basic herd will have the mischievous side effect of weakening the capital structures of thousands of farming operations without producing a significant gain in tax revenues.

We recognize that with the introduction of a capital gains tax the unit system, whereby proceeds from reduction in basic herd are treated as non-taxable, has less validity. However, the recognition of the basic herd as capital has validity, and there is no reason why proceeds of dispersal should not be assessed by treating the gain on disposal over initial cost on valuation day value as a capital gain rather than as ordinary income, and tax levied accordingly on only half of such gain.

The failure to treat this unique capital asset of the farmer, i.e. animals, as a real form of capital, subject to the same rules on taxation of capital gains is, in our view, discriminatory.

There is a special point which should be dealt with in connection with valuation of basic herd on valuation day. This is not of widespread application, but it could be important to some people.

Much valuable breeding stock will be, on valuation day, in fact under test. This applies for example to young bulls whose semen is being used by insemination stations. The breeding results alone will prove the real value of that animal. There should be provision for later determination of valuation day value based on the results of testing out of animals which is in process on valuation day.

In short, on valuation day you do not know what the animals are worth, because the tests are not in.

**Senator Connolly:** Just on that point, without seeing the specific wording of the section, I should think that the value does not necessarily have to be determined on valua-

tion day. For a number of reasons it may have to be determined a long time after valuation day. For example, if I own a very valuable painting, I may not know precisely what its value is on valuation day, but, if I get in an expert to assess its value two months later, that is the value that will attach to the painting so far as valuation day is concerned. Would that not be true in connection with cattle?

**Mr. Kirk:** It might be dealt with by regulation, I suppose. On the other hand, if the department said that the value of a breeding animal is the average value as of that day and then it turns out that that is an exceptionally valuable animal, then they would say, no, that that is not it, it is the average value.

**Hon. Mr. Phillips:** Mr. Chairman, I think the point made with respect to a herd being a capital asset rather than being inventory is a pretty forceful argument. But the question of applying a special rule of determination of value other than valuation day opens up the door to the complete destruction of the whole concept of value and valuation date. Private investors might very well take the position that their inventory is securities. They might take the position that the value of the securities listed on the exchange may have a value greater than that of the "bid and ask" column, because certain discoveries, for example in the natural resources like mining and so on, have not yet been disclosed to the public by management.

In an effort to solve a minor problem which may have validity, you would destroy the whole concept of value on valuation day. I do not think there would be much chance either of that being accepted as a valid argument for all people, or that it would be accepted, even if valid. But with respect to the first point, if I may be permitted to make an observation, I think it has considerable validity.

**The Chairman:** Well, with respect to paintings, we know that it sometimes takes a considerable period of time before artists acquire such a standing that the value of their paintings goes up. Some entirely fortuitous event may bring about that rise in value. Therefore, the person who has a painting may object to valuation day as being the proper date for valuation because he does not know at that date the fortuitous circumstance which may alter the value of his painting, either by depreciating it or by increasing it. I do not know how you can shift from a date on which, whatever the conditions are, that is the value because that is the value in the marketplace at that date. If there are conditions that still have to be assessed which might affect the value, I do not know how you can give effect to those.

**Senator Connolly:** Mr. Chairman, with respect to the example of the security tradeable on the exchange, that security has a determinable value as of valuation day, but in the case of the painting, or in the case of the animal, although there is an intrinsic value on valuation day, that value may not be known. Perhaps the knowledge of what that value is on valuation day only comes to you later. In the case of the stock market you have something tangible. Is there not a difference there?

**Mr. Poissant:** I might say to Mr. Munro and Mr. Kirk, and, therefore, to their association or federation, that the Minister of National Revenue is now publishing approximately



15 pamphlets, one of which will be concerned with valuation day problems. Perhaps I could recommend to them that they should ask for this particular paragraph of their brief to be inserted in that pamphlet, dealing with this problem that the farmers would have, and then there could be a corresponding set of recommendations with respect to the valuation that could be taken into account in this very particular case. I am sure that, although the booklets are in the process of being printed, there would still be time for such an insertion to be made.

**Senator Connolly:** Mr. Chairman, perhaps through our staff we could ask the tax department to issue a ruling on this and we could cite what was given to us.

**The Chairman:** In other words, in the valuation of an article you would make a distinction between the article, the value of which is either black or white, and the article in this case, where there are factors preventing you from getting at the basic value until you know about the product or whatever the article might be. It still presents quite a problem.

**Senator Connolly:** The determining factors not turning up until later is really the problem. Perhaps if we write to the tax department and inform them of this situation they could put out a bulletin that would cover this one issue. That might clear up the problem.

**Mr. Kirk:** What we are really talking about here is not acquisitions of animals. We are talking about animals that have been bred by farmers, where the results of the farmers' efforts are simply not known. That is all we are talking about. We are not talking about speculative acquisitions.

**Senator Cook:** There is a paragraph on page 4 which I do not understand:

The same consideration in a less extreme way applies to farmers who wish to build up their herd year by year, reporting the cost of acquisition as income and enlarging their capital base of animals.

How do they report the cost of acquisition as income? They pay for it. What does that mean?

**Mr. Kirk:** We are saying that we wish they would be able to do so. But what you have to do now, and as we are recommending for the future, is, if you add an animal to your basic herd, you have to put into income the cost of that animal.

**Senator Cook:** You mean you pay for it yourself and you put it into your income?

**Mr. Kirk:** If you are on a cash basis of accounting, then the way it works, generally, is that your expenses are what you pay out and your income is what you take in. And in that process you might pay out the cost, in fact, of raising an animal which you did not sell.

**Senator Connolly:** Let us say, for example, that you paid \$100 for a calf—

**Mr. Kirk:** And if you kept that calf—

**Senator Cook:** Let us stick to the \$100 first. You mean that you report that \$100 as income?

**Mr. Kirk:** No.

**Senator Cook:** Well, this is what it says here.

**Mr. Kirk:** Well, if you had a capital gain as we are recommending, then when you total your year's operation on a cash basis—so much outgo and so much income—you would have a certain income. But if you wanted to take one of the animals you had in your herd and add that animal to your basic herd, then you would have to add the value of that animal to your income, because you would be transferring it to capital in that year. That is what a farmer with a basic herd does now.

**Senator Connolly:** He is allowed a deduction for capital investment.

**Mr. Kirk:** No, he has to put the value in as income if he puts the animal in as basic herd.

**The Chairman:** But then it is on a cash basis. In dollars or the equivalent of dollars, the inventory has a value, and that comes into his assessment of income at that value, but he has a deduction for his expenses on the other side.

**Senator Cook:** It does not change his expense picture; it only changes his income picture.

**The Chairman:** Are there any other questions on this business of basic herd? You say that this concept of a basic herd certainly existed in our income tax law for a number of years. Do you say that there are definite advantages to the farmer in that system and that the changes in the law as proposed do not compensate for that benefit?

**Mr. Kirk:** Well, I do not know about the compensation, but what we are saying is that the capability of building up a capital asset in livestock is eliminated. That means that if you build up a herd, the day you sell it, it comes into income in that year. It is much better to have brought it into income gradually over the years, and the basic herd makes it possible to do that as you build up your herd.

**Mr. Munro:** With this exception, Mr. Chairman. In order to establish a herd of an ongoing nature that is of any use to you, and you have \$10,000 to invest, then you must invest it in one year because you cannot set up a business on a very gradual basis under present systems today. Then you have a \$10,000 expenditure, whereas we could put the \$10,000 under the system we have as capital, and then in 15 years' time if the equity—only using figures—is then increased to \$15,000 in that herd, it also shows as income in that year. But under present conditions he would still have his original \$10,000 of capital being considered as \$10,000 of capital under the system which we had before.

**Senator Cook:** But we have that now, surely.

**Mr. Munro:** Yes, we have it now.

**Senator Cook:** And we have it in the bill. Will you not have it under the amendment? I mean if you take \$10,000 and you invest it in a herd, will you not still have it?

**Mr. Munro:** No, this is what we are complaining about. We cannot do that any more, and for five years we are going to have a very serious loss position which we cannot recoup under averaging.



**Senator Connolly:** You say it is to be phased out at December 31, 1971 under the bill?

**Mr. Munro:** People can have a basic herd if they are now in farming, but there will be no further additions to the basic herd permitted after January 1, and new farmers cannot establish a basic herd. Even though a young man may walk into the Farm Credit Corporation and borrow \$40,000 of which he puts \$10,000 into establishing a herd, immediately he has for those five years plus all his other starting expenses, a loss position which he can never recoup.

**Senator Connolly:** I suppose another way of putting it is this; from now on where a man is starting in farming and he establishes a herd, it is like setting up his inventory, and when he sells that inventory the proceeds go into his income for the year in which he sells it.

**The Chairman:** Well, the proceeds go into income and for his taxable income you deduct the other goods sold.

**Mr. Poissant:** Mr. Chairman, may I ask this question? When you say that there might be a loss in your example, Mr. Munro, to the farmer starting in operation, you say that loss would not be applicable in the future against farming income for the next five years?

**Mr. Munro:** Well, in starting a business I expect he is going to go through in the normal way a heavy loss period during which he would not be taxable and with depreciation on machinery and other assets there is some way in which he can depreciate, so that he can pick it up and choose, if necessary, the amount of depreciation he wants to take. But then if there is no depreciation schedule on the \$10,000 investment in cattle, and it shows completely as an expenditure, which over the five-year period could very well be the factor that would put him in a loss position—although he may gain two-thirds of the \$10,000 in the loss position—he is still going to lose in the averaging position a portion of that loss.

**Mr. Poissant:** Yes, but if at the end of the year having started with \$10,000 he were to take an inventory of his animals, like in any other trade, and that is only the difference between his beginning inventory and the closing inventory, it will be charged to his operation.

**Mr. Kirk:** We are talking about people on a cash basis of accounting and not on an accrual basis. On an accrual basis it would work differently, of course.

**Mr. Poissant:** That is, if the farmer should choose to remain on the cash basis.

**Mr. Kirk:** You see, they are leaving the option for the farmer to go on a cash basis in the law, but they are making it extraordinarily difficult to use it, by not having the basic herd provisions.

**Mr. Poissant:** You are quite right and under that condition he should go on an accrual basis for the first year until he has caught up the loss and then revert.

**Mr. Munro:** But I do not think that is possible. As I understand the law once you go on the accrual basis, that is it.

**The Chairman:** You have to get the permission of the minister. There is no return from accrual as of right. Maybe that is where you should put your finger on it. If, going on an accrual basis, farmers were to begin to carry on business on the January 1, 1972—if the right to do it on an accrual basis is the beneficial way of doing it, that is the way they should start out and perhaps the law should permit them to shift to a cash basis once they have established themselves.

**Senator Cook:** Consent should not be unreasonably withheld.

**Senator Connolly:** Is it suggested then that we should consider an amendment to the bill as introduced to bring about the right of the farmer to have this option?

**The Chairman:** This is what we are discussing. We are not to the stage where we are thinking in terms of what amendments should be made, if any. We are discussing a possible remedy to the position that this brief complains about. This is what we are asking Mr. Kirk and Mr. Munro. If a farmer started out on January 1, 1972 on an accrual basis, and then when it became beneficial for him to change over to a cash basis he would have the option of doing that, would that not deal with the complaint they are making? and I understood him to say "yes".

**Mr. Kirk:** I do not know. I do not see through the complexities of this clearly enough to give an answer.

**Senator Cook:** You are not the only one!

**Mr. Poissant:** Mr. Chairman, that was provided in the old section 85F and it has been carried forward under section 28(1) of the act whereby if you are on an accrual basis you can elect to change over to a cash basis later on. However, once you have elected, that is the end.

**Senator Connolly:** In other words, it is up to the Federation to alert the farmers to chose the accrual basis.

**Mr. Kirk:** There is an option right now whereby you can convert to a cash basis?

**Mr. Poissant:** You have always had that right, under section 85F.

**Mr. Kirk:** No, but to return to one.

**Mr. Poissant:** No, when you are on an accrual basis you can switch over to a cash basis.

**Mr. Kirk:** You cannot?

**Mr. Poissant:** You can under section 85F. I do not know whether it reads word for word, but I think you can also under section 28(1). I think it is the same thing. It says in section 28(1):

For the purpose of computing the income of a taxpayer for a taxation year from a farming business, the income from the business for that year may, if the taxpayer so elects, be computed in accordance with a method (hereinafter in this section referred to as the "cash" method) whereby the income therefrom for that year shall be deemed to be an amount equal to

(a) the aggregate of all amounts that . . .

and minus any deductions for the year permitted by paragraphs 20(1)(a) and (b).

That is the depreciation.

**Senator Cook:** Is your election lost once you have made it?

**Mr. Poissant:** Section 28(3) reads as follows:

Where a taxpayer has filed a return of income under this Part for a taxation year wherein his income for that year from a farming business has been computed in accordance with the method authorized by subsection (1), income from the business for a subsequent taxation year shall, subject to the other provisions of this Part, be computed in accordance with that method unless the taxpayer, with the concurrence of the Minister and upon such terms and conditions as are specified by the Minister, adopts some other method.

I am sorry. You can elect to be on a cash basis, and if you want to change from a cash basis to an accrual basis you can do so under section 28(3), but you can make only one change. I would like to correct myself. It does not appear that you can start on an accrual basis and go to a cash basis.

**Hon. Mr. Phillips:** Even then, you need the consent of the minister.

**The Chairman:** If Mr. Kirk and Mr. Munro are able to answer the question which I put to them regarding commencement on an accrual basis on January 1, 1972, and then switching to a cash basis, at their option, when it would become beneficial to them, if that deals with the problem, perhaps that is one of the areas of the problem to which we can look.

**Senator Cook:** They do not have to answer the question now. They can think it over and let us know. They are not bound by anything they would say now.

**The Chairman:** Yes. Is there anything else, Mr. Munro?

**Mr. Munro:** I do not think there is anything else under that section. Perhaps Mr. Kirk could give us a review of item 5, Straight Line Depreciation.

**Mr. Kirk:** As we mention on page 6 under item 5, Straight Line Depreciation, the option now open to farmers to depreciate assets on a straight line basis should be retained, and recovered depreciation be not included in income. This is the present situation.

We believe this is a very reasonable request. The fact is that in farming income is typically low in relation to investment, obsolescence is rapid, inflation of farmers costs continues year after year, and more expensive and sophisticated machinery, equipment and structures have to be constantly introduced into the business. Often of course there will be no recovery of depreciation, but where there is this should be allowed tax-free as a limited but much needed means of easing the problems of replacement and the necessity of incurring a steadily increasing debt load to keep technologically abreast of the business. We do not view this request as a concession, but as a sensible and realistic recognition and adaptation to the very real problems faced by farmers in their rapidly

changing, highly competitive, and inherently very risky business.

The summary of the 1971 tax reform legislation, issued by the Minister of Finance with the new bill states:

Straight-line depreciation will continue to be available for assets acquired before the new system starts. Depreciation will be calculated on the diminishing balance system for assets acquired after December 31, 1971. If the assets depreciated on a straight-line basis are subsequently sold for more than original cost or Valuation Day value, the difference will be a capital gain. As at present there is no recapture of straight-line depreciation.

In the event that the extension of the straight-line system with freedom from tax on recovered depreciation is not retained, we would like to be sure that the provisions of the bill do in fact meet the full intent of this paragraph. This is referring to the paragraph I have just quoted.

By this we mean that farmers must:

1. Be able to maintain a separate bookkeeping on assets acquired up to December 31, 1971, on the present straight-line basis, with assets subsequently purchased separately set up on a diminishing balance basis.

We were not totally clear whether this was a possibility.

2. That capital gains if any, be calculated on the difference between disposition price and original cost or valuation day value whichever is the higher.

There are occasional cases, they are not frequent, where a machine, perhaps because of inflation, is worth more at valuation day than the amount you originally paid for it. That is not a typical case.

We have had difficulty in satisfying ourselves that the bill fully provides for this, and would like it ensured that this is so if, we repeat, the Government does not meet our very sound and reasonable overall request.

**Senator Connolly:** This may become a subject matter for our consideration based on a comment in the department's bulletin. It is a question of interpretation.

**The Chairman:** I am not sure, Senator Connolly, in view of the fact that the minister has made a pretty positive statement that based on any assets you presently own and have owned before January 1, 1972, you continue on your straight-line depreciation. But on those subsequently acquired, you are on a diminishing balance basis, which is the usual basis for capital cost allowances now. I would doubt, in the face of that statement, whether you could expect any different regulation to evolve, unless there were pretty strong recommendations made.

**Mr. Kirk:** We are not questioning the intention of the minister. We could not find those assurances in the bill whereby these two systems could be set up.

**Mr. Poissant:** It is not in the bill because it is part of the regulations. That is why it is provided in section 20 which refers to the regulations being issued. That is where it should be. Let us hope it will be there.

**Mr. Kirk:** That deals with the legislative question, which we did not understand.



**Mr. Poissant:** It is not in the act as such.

**Senator Connolly:** Unless we see the regulations, we will not know either.

**The Chairman:** I am sure that when we have the representatives here from the Department of Finance we can specifically ask that question and we are entitled to an answer.

In the event it is indicated that it will be contained in the regulations, I suppose we should insist on an immediate answer for our consideration, suggesting that if we have to wait for the regulations maybe they will have to wait for the bill.

**Senator Cook:** Or they should indicate on what authority they say it will be contained in the regulations. Such a statement does not mean a thing without authority.

**The Chairman:** On previous occasions, for instance in connection with the estate tax bill, the departmental officers gave certain interpretations, which the minister undertook would be applied in the department. That is contained in our proceedings of that day.

In the event, for instance, that law courts in their decisions interpret something differently, the minister would be prepared to amend. I agree that there are limitations in enforcing any such undertaking, but I cannot conceive of a minister giving an undertaking and the Government not being prepared to honour it.

**Senator Cook:** I said that because I thought it would be departmental officials speaking.

**The Chairman:** The minister should appear with respect to some of these points.

**Mr. Kirk:** We are not particularly concerned with the technicalities; our main submission is to maintain the present straight-line system.

**The Chairman:** It gives you a little more annual write-off than the diminishing balance.

**Mr. Kirk:** That is correct.

**The Chairman:** After the first year.

**Mr. Kirk:** It is also a little help in the rather desperate problem of keeping up with capital investment requirements; we would have more tax-free recovery.

**The Chairman:** There is a big "if" underlying all this: The capital cost allowances do not mean anything unless there is income.

**Mr. Kirk:** That is correct.

**The Chairman:** Of course, if you go for a period of time without income you will cease to operate.

Are there any other points on this section, Mr. Kirk or Mr. Munro?

**Mr. Munro:** No; I think it has been covered from our point of view. I wonder if Mr. Kirk would take us to the next section, on page 8, under the heading "Partial Sale of Farm Land and Re-investment in Farm Business."

**Mr. Kirk:** Item 6: Another provision that should be made in the bill relates to sale of a part of a farmer's land. As we read the bill it would not be possible—unless under expropriation—for a farmer to sell land and re-invest the proceeds in the same or another farm without realization, and therefore taxation, of capital gains. There are many circumstances when a re-organization of the farm business requires disposal of land and purchase of either other land, or depreciable assets for the farm business. This is particularly important for a farmer who wishes to change to production of another agricultural product, such as a prairie wheat farmer who starts a hog operation. Public policy has in recent years emphasized the necessity of farmers adapting their production to market conditions. The capital gains tax provision now proposed would introduce unnecessary rigidity. There should be no realization of capital gains on such re-investment. This would be a real problem for many farmers, and we request it be taken into account. Not only this, but we would point out that for persons who do not need to invest their capital gains in their own enterprise, the annuity arrangements permit extensive averaging. That is the annuity arrangements in the new bill, which provide up to 15 years of averaging.

The farmer who wishes to re-invest in farming should have a corresponding option, as we have suggested.

There will be many cases where the farmer, on the other hand, will suffer capital losses on disposal of property. If he is faced at that time with new investment in the re-organization of his business, the backward averaging provision may be of little use to him, or unavailable. That is, he may have used them up. We would recommend in such cases that a forward averaging of the capital loss over five years be provided for.

**The Chairman:** Mr. Poissant, have you any comment with respect to this?

**Mr. Poissant:** Yes, I have two questions: First of all, you say that a capital loss should be spread over five years. Do you mean to say that it should be spread over any type of income, or only against capital gains in the next five years?

**Mr. Kirk:** We refer to farming income.

**Mr. Poissant:** Not only restricted to capital gain in the next five years?

**Mr. Kirk:** We say that if there is a capital loss presumably one-half of it, if it is in the capital accounting area, could be carried forward over five years, as farm income can be averaged back for five years. However, in the case of a capital loss, where a farmer is re-organizing his business, the availability of that five-year averaging provision may not be there. He may in fact have had very little income during the previous five years, or he may have exercised the averaging option for four or five of the previous five years. He would therefore be faced immediately with a loss, which he should be allowed to apply ahead.

**Mr. Poissant:** You say the loss should be applied against farming income over the next five years. The brief requests it be applied not only against capital gains, but also farm income.



**The Chairman:** If there is not sufficient gain, income cannot be encroached on for \$1,000 in any year.

**Mr. Poissant:** Yes, for ever. This is one of the problems that would be faced in drafting the legislation. I refer to the middle of page 8, where it is stated that this is particularly important for a farmer who wishes to change to production of another agricultural product, such as a prairie wheat farmer who starts a hog operation. There would be a difficulty in determining the demarcation line between strictly agricultural and other products. There could be companies or farmers engaged in other than agricultural production. How would the determination of agricultural products be made and any change within that group be allowed to roll over free, which is really what you are asking?

**Mr. Munro:** Yes.

**Mr. Poissant:** How should agricultural products be defined? I know of farms in Quebec, for instance, which are farms only in name and are really in the commercial business of raising chickens for barbecues. In your opinion, would that be a change in agricultural products?

**Mr. Kirk:** Yes; in our lexicon we consider farming chickens for barbecues as agricultural.

**Mr. Poissant:** Would other by-products remain in the group of agricultural products?

**Mr. Kirk:** We would not include TV dinners as agricultural products.

**Mr. Poissant:** Even if they were prepared by the farmer?

**Mr. Kirk:** Yes, they would not be included in the definition of agricultural products.

**Mr. Poissant:** That is my point, that there would have to be some definition.

**Mr. Kirk:** Yes, there would have to be a definition.

**The Chairman:** Are there any other points that you would like to raise, Mr. Munro or Mr. Kirk? We have already discussed the item on page 9 headed Principal Residence Under Incorporation. We come now to the heading Aggregation of Assets on Valuation.

**Mr. Kirk:** This is a fairly technical point. It is our understanding that the way the bill now reads, a taxpayer, in setting a valuation-day value on his assets, must adopt, for all his assets as a group, either original cost or valuation-day value, choosing whichever in the aggregate is the higher.

This is clearly not a satisfactory arrangement. The option should be open for each item of property taken individually. We understand too that this latter arrangement is the intent of the Government as a policy matter, and we urge that in amendments brought in the error be carefully corrected. This is an important matter. This matter has come up much more widely than in farm submissions.

**Mr. Poissant:** You are not referring to the article in the *Times and Post*?

**Mr. Kirk:** I was told by my advisers that it had come up.

**Senator Connolly:** An item-by-item valuation.

**Senator Haig:** The taxpayer does not set a valuation-day value. The valuation day is determined by the Government, and he values his assets on that base. He does not set the valuation day.

**The Chairman:** No, he does not.

**Senator Cook:** It says "A valuation-day value".

**The Chairman:** It states, "A taxpayer, in setting a valuation-day value on his assets." Are there any further points, Mr. Munro?

**Mr. Munro:** Not unless you have any further questions. Perhaps we can now turn to page 10, "Adding of Losses to Capital Cost".

**Mr. Kirk:** The hobby farmer provisions of the bill state that non-deductible losses may be added to adjusted capital cost up to the amount of taxes and interest on borrowings. Non-deductible losses more generally may be added to the capital cost.

**The Chairman:** The effect of that may be to have less exposure by the hobby farmer to capital gains.

**Mr. Kirk:** In business generally they may be added to capital cost. Farmers will often suffer losses which, while deductible, are not in fact deducted because of the way the averaging option works out or because he has suffered severe income difficulties over a period of years. Losses in any taxation year, up to the maximum of taxes and interest on borrowings, should properly be added to the capital cost if they could not otherwise be set against income by the taxpayer.

**The Chairman:** Do you have any comment to make on that, Mr. Poissant?

**Mr. Poissant:** Yes. In other words, you have the same treatment as is being offered to hobby farmers. In one year of the five-year carried forward loss, you either add the loss of the year to the cost base or you keep the loss and carry it forward against your other revenue, am I right?

**Mr. Kirk:** That is right. It could not be both.

**Mr. Munro:** We come now to item 10, Guidance to the Farmer.

**Mr. Kirk:** This says that we appreciate the assurance of the minister that he will do his best to explain as clearly as he can what this is all about. We offer our co-operation and would like to be consulted in the preparation of guidance to farmers.

**The Chairman:** I think, Mr. Kirk, you should request an opportunity for consultation. Item 11 is "Transitional Period of Grace".

**Mr. Kirk:** We were informed by our advisers that it is often very difficult to take full advantage of new laws right away, that the consequences and problems related thereto do not become evident and clear except over a period of time. We suggest that at least one year should be provided for the farmer to review his position, for which

period the position of the farmer would be pro forma frozen as at valuation day, for the purpose of making arrangements at any time during a further year's period, so that he does not get caught out on the sheer business of having to act quickly.

**The Chairman:** Any person to whom it applies is caught by it, if he does not alert himself fast enough.

**Senator Cook:** We all feel that it is too much too soon, not only for farmers but for everybody.

**The Chairman:** Yes. The period of grace should be added to whatever the time limits are, to equal a certain period of time within which you can assess your position under the new legislation.

**Senator Cook:** It should be added more gradually to fit into the system.

**The Chairman:** It is a terrific job. There are over 250 complicated sections. We know, from former witnesses, that it is not easy to obtain answers. It takes a lot of reading and study. We will have a good look at that, Mr. Kirk.

**Mr. Munro:** We now have a paragraph on pollution. Would you explain that, Mr. Kirk?

**Mr. Kirk:** We are saying to the minister that we hope he will give special attention to an adequate definition of pollution control equipment covering farm machinery and equipment. I am not familiar with the area of pollution control equipment for farmers.

**Mr. Munro:** This is a new ball game that we are in. We have a society that is becoming greatly concerned with various facets of the ecology, and farm pollution is one of them. Technology is concentrating on this matter. We do have smells, odours, and so on. New equipment is appearing consistently and is badly needed to minimize both air and water pollution. But this does not add anything to the income of farmers.

We are asking for some special provision here, that the advice of the Department of Agriculture is sought about equipment that should be eligible for tax exemption. We do not know the dimensions of this ourselves, but we can see it coming.

**The Chairman:** We are not in a position to define specifically what is pollution equipment, unless you are prepared to give us some help.

**Mr. Munro:** We are asking that the experts within the taxation department check this out very carefully. We ourselves have some trust in the Department of Agriculture, but we have observed in other jurisdictions where the Government divide themselves, and run in different directions for different reasons, they get out of communication with each other.

**Senator Cook:** In other words, you are suggesting that they define this pollution equipment, that perhaps we should have public hearings on it, that people should advance their views on whether such equipment should be so defined or otherwise?

**Mr. Munro:** That may be one answer. We do have some trust in those who are working in the field and helping us to develop this equipment, and we think they should have some say.

**The Chairman:** It is inconceivable that they would not be concerned.

**Mr. Munro:** Yes. I hope you are right.

**Mr. Kirk:** It is our hope that equipment or machinery will not simply be identified as pollution control machines. It will be a complex of technology that will result in pollution control, and what we are concerned about is that they do not so narrowly define what is a pollution control machine that many of the machines the farmer needs for pollution control are, in fact, outside the definition.

**The Chairman:** On page 12 of your presentation, Mr. Munro, you have a paragraph on depreciation. It has been indicated that capital costs allowances are going to be reviewed. What you are suggesting is a simple single rate to be applied to all depreciable farm assets, namely, 40 per cent on a diminishing balance basis, and 20 per cent on a straight line basis.

**Mr. Munro:** We feel that the rate of allowable depreciation is in need of review, Mr. Chairman. Let us take as an example, and only as an example, the fact that in my part of the country, southern Ontario, we are greatly concerned right now because we have inadequate corn-storage, and yet if we build a corn storage facility we have to depreciate it at the rate of 2½ per cent, which means it will take 40 years to write off, and before half that time has elapsed the piece of equipment will be obsolete, due to changing technology. It is the same with respect to so many things—feed lots and many other items of equipment and particularly with respect to buildings. The write-off period is hopelessly inadequate.

**The Chairman:** The minister has indicated that the capital cost allowances will be reviewed. I cannot conceive of them being reviewed in a vacuum.

**Senator Cook:** Unfortunately, Mr. Chairman, he also indicated that they are too generous.

**The Chairman:** Yes, I believe he did add that with respect to some instances.

**Mr. Munro:** In taking a feed lot floor, for example, the concrete could be laid twice before the original concrete is depreciated. It is inconceivable that we have to operate in this manner.

**The Chairman:** Well, we have noted that, Mr. Munro.

Now, you support the co-operatives in their position with respect to this bill. We have not heard from them yet, although they are coming in.

**Mr. Kirk:** Mr. Chairman, with respect to the co-operatives, first of all, I should explain that, as many of you probably understand, there is a very large overlapping of membership between the Canadian Federation of Agriculture and the Co-operative Union of Canada. We are supporting their representations. We are not here as expert witnesses on co-operative taxation; we leave that to them. We do,



however, support their representations. We are convinced from what they tell us that the provisions of the bill will, in fact, create extreme difficulties for co-operatives in their traditional and self-generating techniques of financing, for one thing. That is leaving aside the basic principles that the co-operatives do not believe they make profits in the first place. But even leaving aside that fundamental question the change from 3 per cent to 5 per cent as the minimum net cost base increases the taxes, of course, and the new procedures for the definition of employed capital are such that the basic techniques of getting capital from the membership and rotating it out again and getting it from the patrons primarily as a means of providing a business facility for themselves as patrons would have to be changed rather radically, and it would seriously disrupt the co-operative method of operation.

That is what we understand from them, but, as I say, we are not here as expert witnesses on the co-operatives. We have been leaving this job to the Co-operative Union and they are the people who can tell you about it.

**Senator Isnor:** How can you fully support their representations if you do not fully understand them?

**Mr. Kirk:** We fully support their recommendations because we have a large overlapping of membership, sir. It is just a division of labour that we have not ourselves made ourselves experts in this area. We did not prepare ourselves for such a presentation.

**The Chairman:** That closes your presentation, does it?

**Mr. Munro:** Yes, it does, sir, and we thank you for hearing us and we hope you will give due consideration to what we have put before you. I do not think our list is an extremely lengthy one, but we felt it was pertinent.

**The Chairman:** Well, you heard the course of the discussion. Thank you.

**The Chairman:** If the committee would remain for a short time, Mr. Poissant is going to take perhaps 15 or 20 minutes to explain the administrative changes. I believe it will be useful to a better understanding of the question.

**Senator Molson:** Mr. Chairman, before we switch, could I ask what the situation is with regard to the amendments? A motion was put forward.

**The Chairman:** Did I not mention that last day?

**Senator Molson:** You may have. I may have missed it.

**The Chairman:** There is no reason why the committee should not know. The resolution and the request contained therein went forward to the Minister of Finance. I was speaking to the Minister of Finance last Thursday and he agreed that the committee should have the amendments at as early a date as possible. He suggested that when the motion to go into Committee of the Whole takes place in the other place all the amendments which the Government is proposing to put forward will be tabled at that time and they will become available to us en masse right away.

**Senator Molson:** They have had second reading now, so presumably that motion, will come forward any minute.

**The Chairman:** Yes, that is right.

**Senator Molson:** Do you happen to know, Mr. Chairman, how many amendments have received favourable consideration?

**The Chairman:** No, I do not. I have heard a wide range starting at, perhaps, one hundred.

**Senator Molson:** Yes, with an upper limit of two hundred.

**The Chairman:** I do not know, but there will be some advantage in having them all at once.

Another thing we have to look at is the possibility that the review of this legislation in Committee of the Whole in the other place may proceed at a faster pace than we thought it would.

**Senator Walker:** The fact that they got through second reading is amazing. How could they possibly do that?

**Senator Flynn:** They had to go to Committee of the Whole.

**The Chairman:** In Committee of the Whole, where they are dealing with it section by section, there is bound to be much more debate and a great many more questions and explanations. It is pretty hard to indulge in general-debate, I would say, on a bill of this size and scope. It would be a difficult thing to do, and that may be the reason why they decided that it would be better to get the questions going in the Committee of the Whole. In any event, I am sorry I did not tell you this at the opening.

**Hon. Mr. Phillips:** If I may just say, Mr. Chairman, that has a direct bearing upon the representations we have just heard. Some of the recommendations submitted by the Canadian Federation of Agriculture may be reflected in some of the amendments.

There was an indication from the Government, to start with, that they proposed to bring in each amendment as they got to the section. This would have made it utterly impossible for this committee to function intelligently. At least we seem to have extracted the commitment that all of the amendments will be brought down at one time, and as soon as they are brought down we can relate the amendments to the representations as we hear them.

**Senator Connolly:** There may be further amendments made as a result of discussions in Committee of the Whole in the other place.

**The Chairman:** We cannot control that. I should add that your chairman and some of his experts have been thinking that at some stage we should be considering making certain interim recommendations to the Senate; in other words, we should not go through the whole hearing process before we start thinking about what, if anything, we put forward by way of suggested changes. Some of these subjects can stand by themselves, and when we get representations, as on international income, for instance, if we have any views that we think should be reflected in the legislation and are not, possibly our position is that we should feed that into the stream right away.

**Senator Walker:** That would be a good idea.



**The Chairman:** The way to do that, of course, would be to make an interim report to the Senate, because anything we are attempting to feed into the stream must go to the Senate; it is then available for distribution, it would go to the Government for their consideration, and might very well in those circumstances become the subject of debate in Committee of the Whole in the other place. We are alert to that situation, and we will try to do something about it pretty quickly.

**Senator Walker:** Otherwise it would be too late, if you left it to the end.

**The Chairman:** Yes, it may in one sense be too late. Remember, at some time or other we will see the actual bill, which after it has had third reading in the other place will come to us and to this committee. In that sense it would not be too late, but you will not be able to give it the same studied consideration as if you were feeding it in at this time. We will try to do it reasonably soon, and "reasonably soon", Mr. Poissant, I would say would be within a week or ten days.

**Mr. Poissant:** Yes.

**The Chairman:** At the latest.

**Senator Connolly:** For the first interim report?

**The Chairman:** That is right.

**Hon. Mr. Phillips:** Perhaps I might insert this. I do not know whether you were here at the time we were dealing with this point, Senator Walker. We are not now considering a money bill here, and we are therefore able to deal with the matter on a broader and more flexible basis by making suggestions.

**The Chairman:** We will move as fast as we can.

**Senator Carter:** Do I understand you to say that the regulations will be introduced?

**The Chairman:** No, the proposed amendments that the Government has indicated it will bring forward.

**Senator Carter:** The whole works, the regulations as well?

**The Chairman:** No, the regulations are a separate matter. I understood the minister to say that the regulations would be tabled as they became available. Some of them are being worked on now; it is a massive job.

**Hon. Mr. Phillips:** There is also the problem that you cannot have regulations unless they are related to a definitive section of the law.

**The Chairman:** But they can be put out in the form of draft regulations.

**Hon. Mr. Phillips:** It could be done that way.

**The Chairman:** I would now like to ask Mr. Poissant to make some comments.

**Mr. Poissant:** Mr. Chairman, honourable senators, I have prepared a few notes, which you now have in front of you. There are a few additional things I would like to say. The notes cover sections 150 to 180 of the bill. I have made

notes only on the changes made from the present system; anything that is unchanged is not reflected in these notes.

The first section in which there has been a change is section 152(4), which is the old section 46(4). The Minister of National Revenue has the right to open a file on assessment after four years if there was misrepresentation in the original assessment. He could do that only if there was a misrepresentation. If there was no misrepresentation he was bound by the four-year limit. Words have now been added to this misrepresentation provision:

—that is attributable to neglect, carelessness or wilful default.

All my remarks will show that the tax reform reflects the judgments given by various courts in tax cases, many of which have been incorporated into the reform.

**Hon. Mr. Phillips:** Would you advise some of us who are lawyers whether the situation has improved for dishonest taxpayers and resourceful lawyers? If it is mere neglect, unless it comes under the heading of "neglect, carelessness or wilful default", it can still be a serious misrepresentation, and hence the dishonest taxpayer's position is improved.

**Mr. Poissant:** That is quite right. This is really a legal point.

**Hon. Mr. Phillips:** This is indicative of fixing so-called loop-holes.

**Mr. Poissant:** In the case of *Taylor* the judge decided that any misrepresentation includes innocent misrepresentation, even though the act only referred to misrepresentation. Maybe this is one reason why the old section 46(4) has been amended.

In respect of section 152(5) I say that adjustments on re-assessment after four years are restricted to those items in respect of which there has been misrepresentation or fraud. This is very interesting, because hitherto the department opening a file where there was misrepresentation could check every item in that year, and not only confine the study or examination to matters of misrepresentation. Now the file can be opened after four years, but the examination must be restricted to points in the taxation year subject to misrepresentation or fraud.

I make the additional comment that in the case of *Taylor* it was held that the burden of proof lies on the minister in the case of misrepresentation or fraud, whereas throughout the general act the onus of proof is usually on the taxpayer. In *Taylor* the judge decided that in the case of misrepresentation the onus of proof was on the minister.

Again, if the taxpayer waives a notice of the four-year limit he cannot restrict his four-year limitation to one aspect of his dispute with the minister. Once the waiver is signed, he has signed for everything in the four years and the four years are open for all items.

Under sections 161(1) and (2) I refer to the rate of interest. That is new. It will be defined in regulations from then on.

Section 163(1) says:

—attempts to evade payment of tax payable—

I have underlined the following:

—by failing to file a return of income.

It is a little dangerous to have an attempt to evade tax by failing to file a tax return. They say this is really when the tax was evaded, and the return was not filed; but it could be meant to mean that the failure to file this by itself is an evasion of tax.

**The Chairman:** That contradicts a lot of legal decisions.

**Mr. Poissant:** Yes.

**The Chairman:** Section 132 at present says there must be *mens rea* or a deliberate attempt at dishonesty, to evade tax.

**Mr. Poissant:** Yes, to evade tax.

**Senator Cook:** That should be cleaned up, because obviously it is not what is intended.

**The Chairman:** I take it, Mr. Poissant, you have made notes where we have said that something must be done.

**Mr. Poissant:** Yes. I think this was already raised in the House of Commons. There is a case on this, which is cited. It is *Legare Foundry*, 64 D.T.C. 696, where Mr. Legare was successful in saying that he had not tried to evade tax. This is why this section, I understand, was changed. He says you do not evade tax unless you are assessed to pay tax and he said he had not been assessed and therefore he had not been evading. Therefore, it is based now on the filing of the return and not on the assessment, when the bill goes through.

In regard to section 163(2), omissions in returns, this is still the same as section 56(2) of the old act. Here, I would like to make a reference that previously there was a section, 56(3), that says that if you are fined under section 56(1) you cannot be fined again under 56(2). But this saving provision now is being removed. I read the *Panko* case, 71 D.T.C. 5255, Supreme Court. Under this July, 1971 decision of the Supreme Court, they could apply together, and if you have not got the saving provision you could be penalized on the first one, penalized on the second one, although admittedly the Finance Department and the minister may say this is not the purpose of the intent of the law.

I have raised some points. Omissions in the return could be just in a letter to the department. If you made an error in a letter to the department, in sending additional information, this could be fined under section 56(2). Because you omitted to send your statement in the first one you could be penalized under 163(1) and if you have not got this other provision I think there could be a danger that you could be penalized under both sections.

Now, section 163(3) is a new one. It says that in respect of penalties, the onus of proof rests with the minister for this section only. This section would contradict current jurisprudence. In the case of *Pashovitz*, 61 D.T.C. 1167, it was held that "the onus falls on a taxpayer appealing an assessment of a penalty under section 56(1)".

I said before that the onus of proof is always on the taxpayer, and so was the penalty under the tax, the onus of proof; and the judge agreed to that, but this they have changed, by this section 163(3), to say that the onus of the

proof in the case of any fine or penalty will be on the minister, to prove that the fine is properly charged.

**The Chairman:** That is a significant change.

**Mr. Poissant:** Yes.

**The Chairman:** It is beneficial, too.

**Mr. Poissant:** It would be, yes.

**The Chairman:** Let us not do anything about that.

**Mr. Poissant:** This is to the taxpayer's benefit.

**The Chairman:** To the taxpayer's benefit, yes.

**Mr. Poissant:** In regard to section 164(6), I would like to warn honourable senators there about this. I do not know why this section was stuck in there, but I have to go through with it. If you were to read the section in rough language, it comes to this. Where the estate of a deceased taxpayer has suffered capital losses and/or terminal losses in respect of depreciable property, the estate will be deemed to have paid on account of tax payable for its first taxation year an amount equal to the excess of the tax actually payable by the deceased for the taxation year in which he died over the amount that would have been payable were the capital and/or terminal losses deducted from his income.

In other words, they say that if you, by any chance, have a capital loss in the first year after anyone died, you could elect to consider that capital loss to be the capital loss of the deceased, and you recalculate the tax that he would have saved by having himself the capital loss and any additional tax he paid because of that would be deemed to be a part payment of, the estate payment, against the income tax payable by the estate on account of the revenue.

**Senator Molson:** A capital gain?

**Mr. Poissant:** Not only capital gains.

**Senator Molson:** Against income.

**Mr. Poissant:** If the estate has to pay tax of \$50,000—you have to make calculation as to which is the greater benefit. If the benefit is greater to the deceased, you apply that tax against your own tax payable. I do not know why this is there. I should remind you that this section is Returns, Payments and Assessments. That is probably why that section is in there.

On section 165(3), the taxpayer may indicate on his notice of objection that he wishes to appeal directly to the Tax Review Board of the Federal Court. This is rather an important and very good change, I would think. If the taxpayer is sure that on his notice of objection his arguments are put forward, that he has a good valid case, instead of going through the procedure of having the minister to revise the case and confirm the assessment, he may, on his notice of objection, say he wants to appeal directly to the court, that he does not want to go through the proceedings again because it is too long a process, that he wants to clear the matter immediately. If he does this, he must, of course, waive his right of reconsideration. The minister must consent. I do not know what would happen



if the minister refused, because it is permitted under the act. It says that he must consent. Also, the minister is deemed to have confirmed the assessment. In other words, he is deemed automatically to consent, to confirm what assessment he has issued originally.

**Hon. Mr. Phillips:** In connection with subsection (3), I would say that the taxpayer who is so advised by a lawyer is badly advised. I have noticed through the years that one will sometimes file a notice of objection which has no particular merit and it is accepted by the minister. I have found there were notorious notices of objection which have been disallowed, and sometimes by the law of error you can get a minister to confirm a bad appeal.

**Mr. Poissant:** That is a very good point. In this way, if there were another decision or another settlement that you knew of, you could say that in a previous case it had been agreed, in a similar case.

**Hon. Mr. Phillips:** You have the right to go to the tax court, anyhow. Why not gamble on the law of error?

**The Chairman:** We are not making a recommendation.

**Hon. Mr. Phillips:** No, it is a personal observation.

**Mr. Poissant:** I think there was a question of time involved, too. In regard to section 165(7), the taxpayer need not file a notice of objection in respect of a re-assessment or an additional assessment when he has objected to the original assessment. As honourable senators know, you may be assessed in one year; the assessor may have found out that in three or four months he has overlooked some items and may re-assess by an additional assessment for the very same year. In the case of *Abrahams*, 66 D.T.C. 5451, it was decided that once you re-assess for the same year the first assessment is dropped. It is the second one that counts. In the case of *Abrahams*, he had appealed on the first assessment and he finally discovered that when he was re-assessed, all of the proceedings he had to go through in the first appeal were no longer legally in existence, and he had lost his right of appeal because the time had elapsed, the ninety days and the 180 days. Therefore, now, when you are being re-assessed, all you do is, send a letter back to the court, at whatever stage you are, and you say you are adding your complaint or your arguments to whatever reference was made on the first appeal.

Now I come to section 172 and section 180, and these are both the same. In the past the minister could refuse the registration of the pension plan and he could refuse the certificate for a charitable organization and there was no appeal. You could not challenge his decision. That was the end of it. Now, if he refuses the certificate for the charitable organization or refuses to register the pension plan you have ten days within which to appeal to the Federal Court of Appeal.

Incidentally, I find ten days a rather short period in which to appeal. If you are a charitable organization you may happen to be away when the minister sends the notice, and if you only have ten days you may lose your right of appeal. Although the time can be extended by permission of the Court, I think ten days is too short a period.

**The Chairman:** Maybe it should be 30 days.

**Mr. Poissant:** At least.

**Senator Connolly:** Can you tell us whether it is intended to continue the approvals that have already been given to registered pension plans and to recognized charitable organizations? Or does every registered pension plan have to reapply?

**Mr. Poissant:** That is a question of administrative procedure. Once you are registered, unless your registration is revoked, you are a bonafide organization.

**Senator Connolly:** Is that provided for in the transitional sections?

**Mr. Poissant:** That is a good question. I have not seen it but I imagine it is in the regulations.

**Hon. Mr. Phillips:** I should have thought it would be in the transitional part. Perhaps we could suspend the answer to that question until we have checked into it further.

**Senator Connolly:** I notice that in certain sections here you refer to the Appeal Division of the Federal Court and in other sections to the Trial Division of the Federal Court. I take it that in every case where there is recourse to the Federal Court it is specified in the act whether it should go to the Appeal Division or to the Trial Division.

**Mr. Poissant:** Yes.

**Senator Connolly:** Perhaps you could clarify one point for me, Mr. Poissant. In section 165(3), you refer to the Tax Review Board of the Federal Court. I do not remember the Court having such a division or unit.

**Mr. Poissant:** You are quite right. There is a typing error there. Perhaps we should make the correction to section 165(3) right now. It should read, "to the Tax Review Board or the Federal Court".

Now, dealing with section 173(1) and section 173(2), if there is a question of law and both parties agree that it should be settled by the Court, if both parties agree in writing they can then go to the Court and get a settlement of that point.

**Senator Flynn:** They prepare a joint memorandum, do they?

**Mr. Poissant:** Yes, and submit it to the Federal Court Trial Division. It is decided there instead of having to go through the old procedures.

**Senator Flynn:** They have that in the Quebec Civil Code now. You can obtain a judgment on a question of law on a joint statement of the facts.

**Senator Connolly:** Mr. Chairman, is that the equivalent of a stated case?

**Senator Flynn:** Probably.

**The Chairman:** Yes.

**Mr. Poissant:** Under section 173(2), with respect to the time taken for determination, the suspension of time would hold for items under dispute as well as for the question of fact being determined, but the time taken would not count for the purposes of the four-year period,



the time for filing a notice of objection or the time for instituting an appeal. In other words, the suspension of time applies not only to the item under dispute but applies to everything else as well.

Section 174(1) reads as follows:

Minister *alone* may apply to the Tax Review Board or the Federal Court—Trial Division for determination of a question of law, fact or mixed law and fact common to two or more taxpayers.

As an example of that, you would have the situation of the buyer and seller of depreciable and non-depreciable assets, where the buyer would say, "my value is this", and the vendor would say, "my value is that". In such a case the minister may apply to the Tax Review Board or to the Federal Court, Trial Division, and have a value fixed by either the Board or the Court. That value is going to be fixed for both parties now, whereas previously it was necessary to go to court for the one and to go to court for the other, if he was in disagreement in both cases.

Now, in this case what the applicant must do in his application is to set forth the question to be determined, the names of the taxpayers to be bound by the determination and the facts and reasons for the determination. He then must send a copy of that to the taxpayers concerned and to other persons likely to be affected.

**Senator Flynn:** It is the same as in section 173(1), except that in this case he does it alone.

**Mr. Poissant:** Yes, once it comes to his attention that the vendor has sold an item which is subject to depreciation and other items which are not subject to depreciation. Now, we see this most often in the case of alimony payments, where the person making the payments claims that they are payments and are, therefore, deductible from the income, whereas the person receiving the payments takes the position that they are not payments but are a capital sum and are, therefore, not subject to be taxed. So now the minister faced with this kind of conflict has the right to submit the case to the Court or to the Board for a determination.

**Senator Flynn:** Mr. Poissant, you said that a copy must be sent to the taxpayers concerned and other persons likely to be affected. I suppose that if someone thinks he is affected he can intervene, even if he does not receive a copy of the notice. In other words, anybody who has an interest in a case may intervene.

**The Chairman:** Section 174(3)(b) says that the Tax Review Board or the Federal Court may:

(b) if one or more of the taxpayers so named has or have appealed, make such order joining a party or parties to that or those appeals as it considers appropriate.

**Senator Flynn:** If someone is not advised and not named in the proceedings, he can probably still intervene if he has an interest.

**Mr. Poissant:** It does not say that. Do you think, Mr. Chairman, that he would have a right to do so?

**The Chairman:** I doubt it.

**Senator Flynn:** It is a question of law and the minister is seeking an opinion from the Court. Anybody who may be affected eventually by this decision should be able to intervene.

**The Chairman:** The question of law is on a set of facts that have arisen in connection with the situation for two or more taxpayers. Those particular taxpayers have to be named.

**Senator Flynn:** But they say that copies must be sent to the taxpayers concerned and other persons likely to be affected. So I suggest to you that you may miss some of those "likely to be affected" and they should be able to intervene.

**Senator Lang:** The taxpayers might be corporations and the shareholders might be the ones who are affected.

**Senator Walker:** It would only be in stated cases.

**Mr. Poissant:** Let us say there is someone who could be indirectly affected by the decision, and he is not aware of it. But that would not change anything because he is not directly bound by the decision. He could be indirectly affected, but a decision is a decision.

**Senator Flynn:** I do not know if the court could reverse its stand.

**The Chairman:** Well, that is a practical matter.

There is something here, Mr. Poissant—at the stage at which the minister applies for the opinion of the court, he has not made an assessment, but yet when you come to section 174(3)(a), it says:

if none of the taxpayers so named has appealed from such an assessment, . . .

But at stage these do not contemplate an assessment.

**Mr. Poissant:** If he has appealed, then it is too late.

**The Chairman:** But how could he appeal it? The assessment has not been made.

**Mr. Poissant:** But a man could have appealed. Let us take the case of an alimony payment, for instance. A taxpayer files a return and he considers that as a deductible alimony payment, and the tax department at the local level refuses to accept it, and he goes through the procedures of appealing it. In the meantime his divorced wife in another remote place did not file a return because she presumed it was not income, and then it was discovered that it was income. Then, I would say under those conditions the appeal has been filed in a proper way and the minister does not have the right to set aside the appeal procedures and say that he is going to appeal directly to the court.

**The Chairman:** No, that is not the point I am making. The point I am making is that in 174(2) it says at (c):

(c) the facts and reasons on which the Minister relies and on which he based or intends to base assessments of tax payable . . .

**Senator Carter:** But there is no assessment existing at that time.

**The Chairman:** There may not be any assessment at that time, because the order he wants from the court is an order determining a question of law so that he can make the assessment.

**Mr. Poissant:** That is right. I also question the phrase "intended assessment". What is that?

**The Chairman:** I do not know. Is it something you carry around in your head? Do you write a letter of intent?

**Mr. Poissant:** That is the first time I have ever seen that in the act.

**Senator Connolly:** But in that case would not the department make the assessment?

**The Chairman:** But it does not contemplate that. Look at the material that the minister sends to the court. These are the facts and the reasons on which the minister relies and on which he bases or intends to base assessments and he names the persons. So at that stage there has not been an assessment.

**Senator Connolly:** The only point I want to make is that he might avoid that by making an assessment in a way that is favourable to the department.

**The Chairman:** I think the language is not good and it is not clear and we should note it.

**Mr. Poissant:** I remember when I first saw that in the big book I wondered what was an intention to make an assessment.

Now 178(2) is something new in the act in that if the minister appeals a decision of the Tax Review Board—and by the way this seems to be important because this is the only section where there is a reference to the Tax Review Board—even though you were to appeal to the Federal Court Trial Division directly, it would seem it would not be applied in this case because the reference is only to the Tax Review Board. Now do they want to force every taxpayer to go to the Tax Review Board first and then to the Trial Division and then to the Appeal Court and then to the Supreme Court? Anyway, if there is an appeal from that Board the taxpayer will be refunded his reasonable costs—and I do not know what "reasonable costs" means—as long as the tax involved is \$2,500 or less.

**Senator Flynn:** Well, we discussed that, Mr. Chairman, and the idea appears to be that when the minister appeals and the amount is not higher than \$2,500, it is not fair to force the taxpayer to follow before the Tax Review Board or the Federal Court, and I suggest that we should take a note that it should apply in both cases.

**Mr. Poissant:** Do you agree with that, Mr. Chairman?

**The Chairman:** Yes.

**Mr. Poissant:** That an appeal to the Federal Court Trial Division should also be permitted.

**The Chairman:** That is right.

**Senator Connolly:** I could not hear what Mr. Poissant said.

**Mr. Poissant:** Senator Flynn suggested, Senator Connolly, that section 178(2) should also refer to an appeal from the Federal Court Trial Division.

**Senator Flynn:** "To."

**Mr. Poissant:** "From." You can appeal to the Review Board or you can appeal to the Trial Division directly, and if the minister appeals from that one, you get your refund. If he appeals from the Trial Division, the taxpayer would not get it. So you are in agreement that in both cases it should apply?

**Senator Flynn:** I was wondering whether there was an appeal to the Federal Court of Appeal in the case where there was only \$2,500 involved.

**The Chairman:** Wherever the minister's action takes the taxpayer in that bracket.

**Senator Flynn:** In any case there should not be an appeal to the Supreme Court.

**The Chairman:** That is right. But they could obtain leave, and I think it should cover the whole process.

**The Chairman:** I agree that it should cover the whole process.

**Senator Flynn:** Even if they go to the Supreme Court.

**Mr. Poissant:** Why not?

**Senator Connolly:** Because it may be related to a question of law not necessarily related to the amount involved in the appeal.

**Senator Flynn:** And not necessarily related only to the individual involved in the particular case.

**Senator Walker:** But what if the taxpayer wanted to appeal?

**Senator Flynn:** Well, that would be at his own risk. The principle is that if he appeals in a case like that, it is because he considers there is a principle involved and an important precedent may be created, and therefore the taxpayer should not be penalized because this appeal is in the public interest. But on the other hand, as far as the taxpayer is concerned, he has only \$2,500 at stake, so if he takes the risk of going up, then he must assume the cost.

**Senator Connolly:** There is always the possibility that if he gets to the Supreme Court of Canada, the court might decide that it was a case where the taxpayer should not have to pay the cost.

**The Chairman:** Senator Connolly, you mean appeal *in forma pauperis*? That should be quite a hint to the tax collector, if a person is appealing and he says he has no money to pay his costs, that perhaps they had better make a deal with him.

**Mr. Poissant:** I have another note here that additional assessments, as stated in the present act, have not been defined as yet, although there are many references as to what constitutes additional assessments. Now, under Administration and Enforcement there are only a few comments which most of you are already aware, but I



would like to say that some provisions of the present Income Tax Act are not being reported in the new Income Tax Act, but they are being found in the Federal Court Act and the Tax Review Board where you will find most of the procedures for appeal. Some of them were previously found in the Income Tax Act, and they are not being carried forward. They are to be found in their respective acts.

**Senator Connolly:** Do you suggest that this is a good change, to shorten the Income Tax Act and to lengthen the acts respecting the Federal Court?

**The Chairman:** No, my own feeling on the matter would be that the taxing statute is a very important statute and it affects everybody, but there should be one place where you can go and look up what your rights and remedies are. Some people do not consult lawyers. They consult tax experts who are not lawyers and who are not chartered accountants and who are not familiar with the taxation system. They would not know enough to look at the Federal Court Act.

**Senator Connolly:** Did Mr. Poissant say whether it would appreciably increase the number of sections if it were carried in the Income Tax Act?

**Mr. Poissant:** I would say so. However, I am not a lawyer. I would like to give the Chairman my views on the matter. I am of the opinion that it should not be in the Income Tax Act. The Chairman has suggested that some taxpayers are not soliciting legal advice. I feel that they should. They are trying to interpret this section and they are taking the wrong interpretation. It does not represent their rights because they have not looked at it properly. I think this is a legal matter. The Federal Court Act is a very lengthy document.

**The Chairman:** The thought I had in mind was that you should be able to find in the Income Tax Act a reference to the sections that are carried into the Federal Court Act, so you are alerted.

**Senator Connolly:** It could be done by reference to the incorporating sections.

**The Chairman:** That is right. But you do not have to incorporate each section. There should be a reference, however. That occurs in a lot of the legislation that comes before us now.

**Mr. Poissant:** Under the old system there were many pages, and I would say that the Exchequer Court took about five or six pages, and the Tax Appeal Board took five or six pages. But of what interest is it to know that the chairman of the Tax Appeal Board is appointed for ten years and he has to be a lawyer? That was in the Income Tax Act. Perhaps it should be a reference.

**The Chairman:** A reference to the section, yes.

**Mr. Poissant:** This will just take a few more seconds. It says that the taxpayer may appeal—I think that the wording there is pretty clear. I would like to refer to section 231(2), and this is new to the act:

Minister must return documents seized within 120 days unless otherwise authorized by the courts.

This is as a result of court decisions where the taxpayer has his documents seized as in the case of Lafleur and he went to the Supreme Court and was turned down. The Supreme Court decided that he was not entitled to the document because of an inquiry.

Section 231, subsections (2), (6) and (15) are corrective measures which I think are good and proper.

Section 238(2) is rather new, it extends the penalty to a non-resident who has failed to file a prescribed form on disposition of taxable Canadian property. In other words, he will now be fined just as any other Canadian would be. I admit, of course, that there will be a question regarding collection.

**The Chairman:** Yes.

**Mr. Poissant:** But that is their problem. Then, at the end of page 5 under Tax Evasion, Tax Avoidance Dividend Stripping and Associated Corporations, they have not been changed. Mr. Scace referred to that the other day regarding tax evasion, tax avoidance dividend stripping and associated corporations. They are the same.

I would like to make one further comment regarding a comment Mr. Scace made the other day that there is no deemed gift under the present tax reform. I feel that this is an enormous error. There is deemed disposition, but there is no deemed gift. I understand they will have to amend the act to that effect. Under section 4 of the Income Tax Act it described a gift and what was deemed to be a gift. But they removed all of section 4 dealing with gifts because there was no longer a gift tax. If there is no gift tax there should at least be a deemed gift tax. I understand that this is going to be inserted in the amendments. Gentlemen, this is all I have to say.

**The Chairman:** Thank you, Mr. Poissant.

The committee will adjourn until 2.15 p.m., when we will hear the Canadian Construction Association.

The committee adjourned until 2.15 p.m.

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Upon resuming at 2.15 p.m.

**The Chairman:** Honourable senators, we have a quorum. We have one brief to consider this afternoon, that of the Canadian Construction Association. Mr. Robert C. T. Stewart, President of the Association and of Cameron Contracting Limited, is present. Mr. Stewart, do you intend to make an opening presentation?

**Mr. R. C. T. Stewart, President, Canadian Construction Association:** Yes, Mr. Chairman.

**The Chairman:** With Mr. Stewart are Mr. Chutter, of Ottawa, General Manager of the Canadian Construction Association, and Mr. Sandford, their Taxation Officer.

**Mr. Stewart:** Mr. Chairman, honourable senators, we appreciate very much having this opportunity of coming before you, because we appreciate the valuable work that has come from your committee in the past in relation to income tax reform.



To go back in time, since the immediate post-war period the Canadian Construction Association has made numerous submissions to the Government on the need for special recognition in tax law of the construction industry due to the nature of its operations.

Two of the items which have been of particular concern to us have related to the recognition of the problems involved in the assessment of income in construction operations. We have recommended repeatedly that the completed contract method be officially recognized as a fair and equitable means of reporting income. A special brief on this subject was submitted by the Canadian Construction Association in 1949. This was further confirmed in a brief to the Royal Commission on Taxation. It is worth noting that the late Mr. Carter concluded that the estimate of income on construction work in progress was one of the toughest problems he had ever encountered in his professional career. This subject was raised in our brief on the recent White Paper and has been incorporated in our annual briefs to the federal Government.

It might be noted that in the United States this practice has been widely recognized and there American contractors report their income on the completed contract basis for all contracts of over one year's duration. This is more than the Canadian Construction Association is advocating. We suggest that the completed contract method apply to all contracts of two years or less duration.

It is interesting to note, I might say, that when some American companies have come to Canada they have been horrified to discover that here we are required to report income on a more regular basis. Several major contracts with American principals have got themselves into hot water when they have overlooked the fact that on a two- or three-year contract income must be reported annually as the work progresses.

There is one other item of concern to us. We appreciate the provisions that have been made for small business incentive—

**Hon. Mr. Phillips:** Before you come to that, do you not in practice receive by way of departmental indulgence at this stage the complete contract approach?

**Mr. Stewart:** I understand that the department does make some allowances when a contract originally contemplated to be completed within two years is slightly delayed due to unusual circumstances. There are special exemptions, provisions or indulgences granted, but it is one of these things that is tolerated in the administration without firm provision for it in law. With the growing complexity of contracts, a two-year contract is not now regarded as a long contract. Some extend for three and four years.

I made reference to the provisions which have been set up for the Small Business Incentive. However, it should be noted that this is perhaps less attractive to the construction industry than to other small businesses within the country. I can only say from my own personal experience that the retention of hold-backs over extended periods of time entails a very substantial tie-up of working capital. Whereas the presently proposed \$400,000 of taxable earnings eligible for the reduced rate of taxation is a definite assistance to the smaller companies, the net retained earnings of some \$300,000 represented by this does not go very

far when major equipment holdings, common in many types of construction, are taken into consideration. There is also the fact that cash flows in construction are frequently extended because of the protracted hold-backs which are often introduced. I know of many contracts that call for a year's maintenance guarantee which, in effect, retains a sizable portion of the hold-back for a period of 12 months after all contract work is essentially completed. So we are concerned about this.

If it is not feasible to change this figure—and it must be acknowledged that some figure has to be chosen as an arbitrary cut-off point—another suggestion might be to provide for accelerated write-offs in other categories of equipment common to the construction industry.

There presently exists one category basically related to earth-moving and concreting equipment which is eligible for accelerated write-off. We have suggested that perhaps greater consideration could be given to other categories of equipment where depreciation, obsolescence, and a straight-forward matter of wearing out during the life of the job, makes it not too realistic to capitalize their initial cost.

The present cut-off point, I might say, is \$100 for small tools. With the increasing cost of such tools, this is not as appropriate now as it might have been when it was first introduced.

**Senator Connolly:** Can you mention the other types of equipment that you have in mind?

**Mr. Stewart:** I am thinking about specialized equipment, such as flexible tracked vehicles used in some of the northern territories. Pile-driving equipment is another type; also certain types of heavy equipment which represent a major capital cost and which either have a limited life or are required for one specific project.

**Senator Connolly:** Those are the types of equipment that are now excluded from the regulations?

**Mr. Stewart:** Yes, from class 22.

**Senator Connolly:** If you wished to have an enlargement of the class, you would have to be more precise about the categories.

**Mr. Stewart:** This could be developed. We have had discussions within the association on the particular types that might be more appropriate. I can give the committee more specific cases, namely: "flexible tracked vehicles, four-wheel drive pick-up and service vehicles, floats and float tractors for construction equipment, trucks, et cetera, used in quarries or pits, pile-driving equipment, cranes, aggregate placing equipment, portable asphalt mixing plants and cement mixers".

Those are categories that presently are excluded from class 22. Yet it is equipment that is used in conjunction with heavy equipment that currently has a fast write-off.

Equipment, used in the placing of concrete is eligible for the accelerated, or 50 per cent, write-off. Aggregate placing equipment, which could be an identical or similar unit, is not eligible.

You run into problems in the interpretation and administration of this class which provides that to qualify,

the equipment must be designed exclusively for the designated operations.

**Senator Burchill:** Is not the equipment in that list eligible at the present time?

**Mr. Stewart:** Not in the accelerated depreciation.

**Senator Burchill:** What depreciation do they carry?

**Mr. Stewart:** At the present time 30 per cent. The accelerated rate is 50 per cent. That is in class 22.

**The Chairman:** What about the wear-out on items that carry the 30 per cent depreciation?

**Mr. Stewart:** In the first two categories, our feeling is that generally speaking they have a high rate of depreciation because of the nature of the work they are engaged in. Regarding four-wheel drive pick-ups, for instance, we are not suggesting that the ordinary half-ton truck, used on a construction job, should be eligible. However, when you get into a four-wheel drive operation, working perhaps on a pipe line or a major construction site where four-wheel drive is required, the situation is different.

**The Chairman:** On that basis, since these items would have a more general application or use, it is the particular application or use that gives you the quick wearing out, is that not right?

**Mr. Stewart:** I do not think that anyone, in practice, would buy a four-wheel drive vehicle unless the conditions under which he proposed to use it were such that he required four-wheel traction. It relates specifically to construction.

I would be the first to admit that there might be an exception. I think it is generally agreed that there is always an exception, where someone might buy a four-wheel drive vehicle to plough snow or do something else, but in the construction industry the bulk of these vehicles are designed for use on a construction site. The floats and float tractors—these are the low-beds that are used to move the loaders and shovels are presently not eligible for the accelerated depreciation.

**The Chairman:** Would that be the kind of qualification we might put on these items, namely, when used in certain types of operation?

**Mr. Stewart:** The difficulty there is, how would you relate its use? It might be used 500 times in a year. On 450 occasions it might be used in the moving of class 22, accelerated depreciation, equipment, and the other 50 times it might be used for hauling lumber incidental to its main use.

**The Chairman:** I am trying to get at a proper classification of these items, when used in the construction industry, that should carry a higher accelerated rate, to say, 50 per cent instead of 30 per cent.

**Senator Connolly:** Can you police it if you use the words "when used and to the extent used in a particular type of operation"?

**Mr. Stewart:** Perhaps Mr. Sandford, our taxation officer, can reply to that. He has some past experience of class 22 in discussions with the department. He might be able to

offer something regarding the problems involved in defining these categories more specifically.

**The Chairman:** If you are claiming special treatment—and certainly an accelerated rate of 50 per cent would be special treatment—then you have to identify it with the object that it is related to, and in connection with which you have this quicker wear-out.

**Mr. K. V. Sandford, Taxation Officer, Canadian Construction Association:** The Committee might perhaps interject the word "primarily or mainly". There is a problem now with class 22, in the words "designed for". A gravel truck might be allowed if it is moving pulpwood, lumber or cordwood, whereas another truck, which perhaps is not designed for this purpose but has been adapted by the construction company, is disallowed. It might be appropriate to take out the words "designed for" and replace them with the words "used primarily for". You would have to add the words "not only moving and placing earth, rock and material, but moving the equipment that does that".

**The Chairman:** You could drive some rather big trucks through the words "designed for".

**Mr. Sandford:** There was one road contractor who had an asphalt tank truck. He was moving the liquid asphalt and he was allowed class 22. He expanded his operation to have tank trucks and trailers and had special tractors to move those trailers. The department allowed the trailers, but not the tractors. Their contention was that the tractor was not designed for the purpose of moving asphalt, so they disallowed the tractor portion. This is the type of problem you run into with these words and I think a use criterion would be more to the point.

**The Chairman:** Use items have been criticized in many respects. I know they have tried increasingly to get away from it in the tariff classifications.

**Mr. Sandford:** That is right, but the tariff is a one-shot thing as you come across the border, whereas the depreciation class goes on for years, and if it was up to the taxpayer to prove use and primary use by number of hours—50 per cent of the hours, or whatever—then it could conceivably be that one man would have to sell it to someone else who would not qualify. You would have to go back to a different rate, whereas the tariff item applies once and for all.

**The Chairman:** That is right. It seems to me you would have to work out language that would not be so dependent on the certification of use by the particular person, and it also might relate to the type of equipment used in the construction industry.

**Mr. Sandford:** Yes, you could relate it to the industry. That would make a good deal of sense.

**The Chairman:** If you relate it to the industry, if it is a type of equipment used in the construction industry, then, that is the qualification. Is that too broad?

**Mr. Sandford:** I think that would certainly be an aid to the contractors.



**Mr. S. D. C. Chutter, General Manager, Canadian Construction Association:** Mr. Chairman, by way of a reference for the committee, in our brief to your committee in April, 1970, Appendix C did develop this whole subject to a fair extent, and some of the items in there might stand as they are. For example, pile-driving equipment is, so far as I am aware, exclusively a construction item. Trucks and other equipment used in quarries and pits, I suppose, have an end use ascribed to them already. Most of these, I think, would have a construction connotation almost exclusively, and I think the appendix went into some detail to point out that with regard to these flexible tracked vehicles and four-wheel drive pickup trucks, a two-year life was about the extent that you could expect this equipment to last in construction. This relates to its actual longevity.

**Hon. Mr. Phillips:** Mr. Chairman, you are dealing with relief with respect to small businesses here and you have two approaches, as I understand it. The first approach is the low rate of taxation applicable to the first \$50,000 of profit, and the other approach is from the point of view of accelerated depreciation for special categories. Have you considered the latter suggestion dealing with accelerated depreciation? It really comes under the body of the statute proper. Have you considered the justification for the first suggestion; that is, that the first \$50,000 be subject to the low rate of taxation and that it should apply to that type of small company where it is established that its fixed assets in ratio to its total assets are in excess of 50 per cent, or in excess of a certain percentage, where you have a situation that distinguishes you from the small retail storekeeper moving inventory in and out, and this type of thing, to which I think you refer in your brief. And your justification for special relief is based upon the fact that you have a high fixed asset position in relationship to your total assets position. Would that not be a better way of approaching it rather than attempting, through this committee, to deal with relief by regulation?

**Mr. Stewart:** I believe the feeling was that there is the high fixed asset situation which exists in many companies, but there is also the matter of the need for working capital which is applicable over an extended period in many cases. It is somewhat different from that encountered by other small businesses. You made reference to a retail operation. Possibly \$300,000—I do not know the earnings after taxes of a retail operation—might represent quite a sizeable organization, whereas in the construction industry you might not have an unusually high fixed asset situation but the lack of liquidity due to extended hold-backs could create the same bind as far as the smaller operations are concerned, or it might tend to limit the effectiveness of the operation. This is why we accepted the small business incentive provided for with this \$400,000 total taxable earnings and then said that the Government should also recognize the particular situation that results in other cases in our industry.

**The Chairman:** Mr. Stewart, I do not think that the small business concept in this bill is of any particular help to the construction industry because the construction industry would have to do much of the financing out of its operations, and there is a limit on the accumulative earnings in this bill, C-259, of \$400,000. You can only keep that ceiling of \$400,000 from being punctured by periodically paying

out dividends to keep reducing it. If you start paying out dividends you are paying out the cash you want to use in your business operations.

**Mr. Stewart:** The point is that with this proposal contained in our brief, the suggestion is that through the provision of accelerated write-off—

**The Chairman:** Well, I am just addressing myself to the small business concept. Accelerated write-off would give you cash without affecting your accumulation of earnings.

**Mr. Stewart:** You still have to earn the cash initially to make your investment.

**The Chairman:** Yes.

**Mr. Stewart:** Once you get started on this path it facilitates the healthy growth of the business.

**The Chairman:** So it would appear that for your industry the proper concept would be one that dealt with your situation and the peculiarities of your situation by adequate write-offs.

Have you any comment on that, Mr. Poissant?

**Mr. Poissant:** This was one of the comments, Mr. Chairman, which I was going to make.

**Hon. Mr. Phillips:** Mr. Chairman, if I may, this committee, in dealing with the White Paper on Taxation, took the position that in so far as small businesses were concerned accelerated depreciation was not the road to provide the relief. That is at page 82 of our Appendix.

**The Chairman:** That is for small businesses.

**Hon. Mr. Phillips:** Yes, for small businesses.

**The Chairman:** We said the reason for it was they did not have a great quantity of fixed assets to depreciate.

**Hon. Mr. Phillips:** That is why I am drawing attention to that. You make the statement which is confirmed by our report.

**The Chairman:** Yes.

**Senator Connolly:** Is it correct to say, then, Mr. Chairman, that what the witnesses are talking about not only relates to small construction businesses, but that they are also interested in faster write-offs for a company in the construction industry?

**The Chairman:** Yes.

**Senator Connolly:** So that the small business is only a certain segment of their interest.

**The Chairman:** That is right. That is correct, is it not, Mr. Stewart?

**Mr. Stewart:** That is right. This would apply across the board, but it would have, we feel, particular significance for the smaller developing companies where the development of working capital is slow at the best of times, and any incentive that can be provided here will lead to development of what we consider would be stronger and more effective construction companies.



**Senator Connolly:** Mr. Chairman, once that \$400,000 level is punctured, then you are in that other category.

**The Chairman:** Yes, in the small business area this would not help very much because once you get up to the \$400,000 level the lower corporate rate is gone and you have to pay out dividends to reduce that \$400,000 in order to recover that position again.

**Senator Connolly:** And impair your cash position.

**The Chairman:** That is correct. Then what they have to do is to turn around and loan the money, take the money out in dividends, pay taxes, and then loan it to the business. The general theory, when we were dealing with small businesses before, was that they were in the peculiar position where they had to generate their own finances. This would appear to be a broad application to the whole construction industry because they do not have the same market availability to finance construction operations. Therefore they have to generate their own finances in whatever ways they are able. Higher write-offs, if you could justify them, would help their situation. I am sorry for taking over, Mr. Stewart.

**Mr. Poissant:** Mr. Stewart, this additional or accelerated depreciation that you are talking about will still not be sufficient, in my mind, to make up for the reduced \$400,000, because that would only be the tax on the additional depreciation which you would be entitled to, or which you would have the benefit of. That is really a very small item in the construction industry. Let us take for granted that this is an acceptable recommendation. In my mind it is not enough to suffice for the need which you have. My question is, what would you suggest to improve this \$400,000 limit in your case?

**Mr. Stewart:** I feel that the immediate answer would be to increase the level to \$500,000 or \$600,000, something of this nature.

**Mr. Poissant:** That is, across the board?

**Mr. Stewart:** Yes. Perhaps, we are being a little naive in our approach, but the Canadian Construction Association has always tried to take the attitude that we should not be unreasonable or unrealistic. Unfortunately, taxes are with us and someone has to pay them to provide revenue. This is the level that has been deemed appropriate, and it is being suggested as an arbitrary figure of \$400,000. We have not presumed that we are in a position to say that it should be increased 20 per cent or 50 per cent; but if this applies across the board, the accelerated write-offs on certain categories of equipment would tend to offset some of the disadvantages under which the construction industry is working. It is a case of trying to improve or offset the particular disadvantages relating to the construction industry because of the heavy investment in fixed assets and the difficulties that are experienced in raising working capital. As the chairman has indicated, because of the high risk nature of the industry there are not too many public companies, or very many bonds floated or common stocks issued.

**The Chairman:** Mr. Stewart, the accelerated write-off would enable the smaller construction company to stay at

the lower corporate rate for a longer period by keeping it under the \$400,000 of accumulated earnings.

**Mr. Stewart:** Yes it would; and the accelerated depreciation is also an incentive to all companies, both large and small, to maintain more current equipment. You have probably observed as well as I have the number of new machines that you see in the earth-moving industry, large hydraulic shovels, back-hoes, elevating scrapers, heavy dozers equipped with rippers—all of these are made possible because of the accelerated depreciation provided under class 22. There is greater incentive to turn in obsolete pieces of equipment and get newer ones to produce more effectively. This is one of the things that has enabled this section of the construction industry to maintain its position much more competitively than—

**The Chairman:** You are not arguing against yourself by saying that class 22 and the 30 per cent write-off has improved the situation in the industry already?

**Mr. Stewart:** It has improved the situation considerably, I would say. It has improved the effectiveness; and this is reflected in the fact that the industry has been able to hold its costs in the face of rising labour costs. What we are suggesting is an extension of this idea to other categories of equipment which are susceptible to actual accelerated depreciation which should also be recognized.

**Mr. Poissant:** And you do not lose the benefit that you already have from the small business deduction which you would lose in the future.

**Senator Molson:** Do not most of the smaller construction firms rent the bulk of their machinery on which they might expect a decided benefit from the accelerated depreciation?

**Mr. Stewart:** Senator, they are in a mixed position. Yes, there are companies that will be renting. My own company is by no means large and we are in a mixed position. We did purchase a sizable quantity of equipment under the accelerated rate. We have purchased new units this year, and we are also renting equipment this year in this category.

**Senator Connolly:** And the rent you just charge up as an expense?

**Mr. Stewart:** Yes, this is a business expense.

**Senator Cook:** But you pay for the depreciation through your rent; your rent is set?

**Mr. Stewart:** Yes, it is a fixed monthly rental, and that is a total cost.

**Senator Cook:** The owner sets the rent, bearing in mind he is going to write off the equipment.

**Mr. Stewart:** Yes, that is right. There is a balance. It is a matter of foreseeing how much use can be made of a piece of equipment.

**Senator Molson:** This would be the same situation with most companies. They would be in a mixed position, with partly owned, and partly rented equipment.

**Mr. Stewart:** Yes, we are in that position right now. We have had a particular piece of machinery on rental for four months, and we have it on a basis where we can make application of certain rentals towards the purchase. But we have to ask ourselves: Is there going to be enough work, and can we gamble on this? But this is a problem that anyone in business faces, balancing the capital investment versus the rental operation.

**The Chairman:** In summarizing, an accelerated rate on the type of equipment that you have been talking about in the construction industry could possibly help in two ways. It could help those who are small business operators by keeping them under the \$400,000 ceiling for a longer period, or for an indefinite period, and they would get the benefit of the lower rate; and generally, for the industry, it would increase their cash flow.

**Mr. Stewart:** And provide incentive to maintain a more efficient operation.

**Senator Cook:** You could have a piece of equipment that still has life left in it but, because it is obsolete, you could discard it and get new equipment.

**Mr. Stewart:** Yes. This has been done in the past where, before the accelerated write-offs under class 22 came into effect, it was shown that the contractors were spending a very sizable amount of money on equipment repairs as opposed to equipment replacement; and with the advent of the accelerated depreciation it became more attractive to buy equipment and take the higher depreciation allowed.

**Senator Cook:** Plus the fact that you would be using up-to-date equipment instead of obsolete equipment.

**Mr. Stewart:** Yes.

**Senator Isnor:** Dealing with Senator Molson's question about the rental of machinery, up to the present time you have been arguing this point with regard to the larger companies, have you not?

**Mr. Stewart:** I think this applies to all companies, Senator Isnor. The smaller companies rent equipment as well as the larger ones. Perhaps with the lack of working capital some of the smaller companies may be compelled to rent because they cannot afford to buy, not having the cash to purchase fixed assets.

**Senator Isnor:** But the bigger companies, for which your argument is largely presented, do have the cash available.

**Mr. Stewart:** I think you will find that this applies right across the board. The benefits will increase, certainly, for the larger companies merely because of the volume of purchases. The larger companies may obtain more dollars out of an expansion of the accelerated write-off position, but this is of less significance to them than it is for a small man attempting to finance his first purchase of a piece of equipment.

**The Chairman:** Do not forget, Senator Isnor, that the smaller companies which would fit into the small business category, by accelerated depreciation may be able to stay longer under the limitation on accumulated earnings and enjoy the 25 per cent rate of tax, whereas the bigger company would be paying 51 per cent.

**Senator Isnor:** That does not enter into this question of rental very much.

**The Chairman:** I am not speaking of rental, which is another aspect entirely. Equipment is rented because it cannot be purchased.

**Hon. Mr. Phillips:** Mr. Chairman, I would like to press my point. If we were to ask for relief for the construction industry at large, there might be the situation of a construction company having a small portion of its assets in fixed assets, and we would still be asking for an accelerated depreciation simply because it happens to be in the construction business. I believe that would be a good way to have our recommendation refused. If the request for accelerated depreciation were made for the construction industry, not on a functional basis, that is to say not for every company engaged in the construction business but, rather, for companies engaged in the construction business whose capital assets in relationship to their total assets equal or exceed a percentage, there would be a much stronger case.

There could be an extraordinary situation of a construction company functionally that has \$100,000-worth of assets, \$10,000 in fixed assets and still asks for accelerated depreciation simply because it is in the construction business. If the request were made having regard to the ratio of fixed to total assets, I personally believe there would be a case.

**Mr. Sandford:** Certain sectors of the construction industry are more capital-intensive than others. The roadbuilding and heavy construction side of it would benefit more from that proposal, whereas a business in the nature of general contracting, not so capital-intensive, would have the same problems with regard to cash flow.

I think your suggestion is that we should produce an alternative that would help all our companies. However, we cannot think of any other than, as Mr. Stewart said, raising the level. However, to tie it to those specifically that have a fixed asset at a certain level might jeopardize some of the other members of our industry who are not in this position.

**Hon. Mr. Phillips:** You might jeopardize them to the extent that you are not rendering a service to them as members, but you are improving your base.

**The Chairman:** The accelerated depreciation under discussion is in relation to the equipment and fixed assets of bricks and mortar. Really where they are seeking relief and assistance seems to be in the equipment area.

**Hon. Mr. Phillips:** I was thinking of fixed assets in relation to the categories we are discussing.

**Mr. Poissant:** Mr. Phillips is saying that the same companies are now not buying equipment, but just renting. They would have no relief, and they say this only partly solves the problem of the construction industry, if some have no equipment whatsoever. A ratio of heavy equipment to total assets would perhaps be a criterion for a solution.

**Senator Molson:** I do not often question Mr. Phillips' opinion on matters. However, I have to question him on this because I wonder if stressing the percentage of assets



and fixed assets and equipment would tend to increase unemployment. It seems to me that the construction industry needs relief with regard to some of the settlements that have been made, more than it does in the equipment field. The settlement with the crane operators recently was perhaps a source of some concern to them. However, if we say they must have a high proportion in fixed assets, then presumably this will result in greater mechanization, which will reduce the labour content and therefore increase unemployment.

**The Chairman:** It might increase the labour content which is required to produce that equipment.

**Senator Molson:** The heavy equipment, by and large, I think I might say, is mostly not produced in Canada. I am afraid that that is very largely imported. Am I not correct, Mr. Stewart?

**Mr. Stewart:** There is a high import rate, but there is an increasing percentage produced in Canada.

**Senator Molson:** It is still very small, is it not?

**Mr. Sandford:** Perhaps other incentives to the producers would help here, because certainly the labour problems increase the need for mechanization.

**The Chairman:** Mr. Stewart, would you care to put in summary form what it is that the construction industry is requesting in this area of acceleration and what you hope to achieve?

**Mr. Stewart:** It is basically set forth in page 5 of our brief. That contains the categories we are discussing and our feeling that the extension of accelerated depreciation to these categories of equipment would be of benefit to the construction industry. It would give a particular advantage to small businesses in construction operations, where the requirements for capital investment and working capital are more pressing than in other phases of business.

I will just mention another item in the current legislation that is of some concern to us. It relates to Joint Ventures; reference is made to it in the brief. Under the new legislation, joint ventures are considered as partnerships, and there are new approaches for the taxing of partnerships.

It presents problems which have not existed in the past, where two or more construction companies may see fit to join forces to undertake a particular project, where financial problems or undue risk associated with the project might be too great for one company.

It has worked effectively. It has been a rather loose and flexible arrangement. From readings that we get on the new legislation, it will tend to restrict, hamper and place additional costs on anyone contemplating future joint venture operations.

**Senator Cook:** Would the witness mind telling us if the great benefit to the construction industry will also benefit Canada? We are going to do something that will benefit the construction industry. What is in it for us?

**Mr. Stewart:** I almost wish the honourable senator had given me this question deliberately, because I could launch into a speech on this subject.

In all seriousness, the construction industry is the largest single industry in Canada. It accounts for 18 per cent of our Gross National Product. Everything that the construction industry does affects other Canadians—the local school rate resulting from the cost of building a school, all the utilities, services, hydro electric plants, natural gas pipelines, and so on. Anything that the construction industry can do more effectively, or more efficiently, benefits the whole country. This is the situation in a nutshell.

**Senator Lang:** How many employees are there in the construction industry?

**Mr. Stewart:** It has been estimated that there are 568,000 on site and over 600,000 in off-site supporting industries such as manufacturing, design, transportation of constructing, materials, and so forth.

**The Chairman:** That is an important segment.

**Mr. Stewart:** If the construction industry is not healthy and not working effectively, the whole country suffers.

**The Chairman:** Mr. Stewart, would you now care to move on to your next point? Have you finished with joint ventures?

**Mr. Stewart:** We would like to see something that would exclude short-term joint ventures that are undertaken solely for the execution of a single project, as is common in the construction industry.

**Senator Connolly:** To be excluded from the partnership rules?

**Mr. Stewart:** Yes. As we see it, the partnership rules were designed basically to cover groups of professionals, possibly in the legal or accounting fields, in architectural operations, or something of this nature, and not to cover the joint effort of two or more construction companies to undertake a specific project which cannot be practically undertaken by any one of them.

**The Chairman:** In the course of our study of this bill we had the assistance of a gentleman who had made a considerable study of it. He expressed the opinion that a joint venture was not defined in the bill and that it was not a partnership.

**Mr. Stewart:** May I say, as a poor contractor, that I would not for a moment question the rulings or interpretations you have received. I only hope they are right.

This is a case which emphasises a remark that I was going to make, namely that there are many items in the bill that are not clear to many people—people who are far better trained in the subject than I am.

I know that the concern which has been expressed throughout the country has been repeated within our industry. There are all kinds of problems. I do not think the department itself really knows what is involved. They may know what they intend. In view of the amendments that are currently being considered, or are being introduced, and the various problems that are bound to arise in the interpretation and implementation of the legislation, we in the industry have grave doubts as to whether it is practical to consider its implementation on January 1, 1972.



There is a high percentage of small companies in the construction industry. I have attended a couple of tax seminars by so-called experts on the implications of the new legislation. I think that I have, perhaps, an average appreciation of economics, finance, and what-have-you; but I am hopelessly lost, and I know there are a lot of contractors who are no better than I am.

**The Chairman:** Do not say "hopelessly lost," Mr. Stewart. We may find some way out of the morass, or whatever you want to call it.

**Mr. Stewart:** The ideas are good, but there are so many complications that will have to be interpreted by the department and explained to all the firms of auditors and corporate accountants.

In the case of major companies this may not be too bad, because they have specialists who are quite competent in this field. However, we have a tremendous number of small companies associated with the construction industry in this country, who have an accountant, so-called, who is not a chartered accountant. He has had no taxation training. To attempt to introduce a new system of bookkeeping, a cost accounting system, and one thing and another, to meet the requirements of the new legislation, appears to us to present all kinds of practical problems.

**The Chairman:** Mr. Stewart, I should tell you that some of us have come to the conclusion that although there is a good deal of complexity in Bill C-259, there are many things which appear, after repeated readings, to be very beneficial.

**Mr. Stewart:** I do not think I would argue that point. You say "repeated readings". That is an operation that we are going through now, as I see it.

**The Chairman:** That is right.

**Mr. Stewart:** The chairman of our taxation committee could not be here today because his company is currently involved in the re-assessment of its position in view of the implications of the bill, in trying to meet the situation, to cope with it, to fit their operations into it, and everything else.

These are all practical problems. Let us multiply them by the number of companies that are affected. I cite construction because that is the field which we represent. You are all familiar with the number of small operators, from the two- or three-man operation to the 10-, 20- or 50-man operation. How can you expect people of this type to conform to the new legislation practically and effectively? With all due respect, the firm meaning and interpretation of the bill has still to be settled.

**The Chairman:** Apropos that point, in a publication put out by the Clarkson, Gordon Company entitled *Tomorrow's Taxes*, there is a chapter on partnerships, and a general summary of it, which conforms with your own thinking.

Paragraph I.5 states:

The proposed legislation does not introduce a definition of a partnership. With the introduction of new rules that are considerably more comprehensive and complex than before, it will become even more impor-

tant to determine whether a partnership does, in fact exist. This issue will become critical, for example, in determining whether a particular joint endeavour or joint venture constitutes a partnership and as a consequence whether property transferred to or from such a venture will be subject to the new rule that treats such a transfer of property as a sale at fair market value, resulting perhaps in taxable capital cost allowances. In such circumstances it will be highly desirable that competent legal advice be obtained to determine the status of the undertaking, preferably in advance of completing contemplated transactions.

**Mr. Stewart:** It does present one more possible complication, and the suggestion that competent legal counsel be consulted on the matter is good advice, but if everyone else in the country is trying to obtain the same competent legal counsel for advice on the implications of the tax changes between now and the end of December, there is going to be a bottleneck.

**Senator Cook:** The problem is further complicated by the fact that the learned counsel will have no jurisprudence to go by. They are starting a new act now.

**The Chairman:** Well, of course, you would have a starting point on partnerships, I would expect, in the provincial Partnerships Act.

**Senator Cook:** I hope so.

**Senator Connolly:** What you say, then, is that for all practical purposes it is going to be virtually impossible to get the new system running by January 1st. Have you any suggestions to offer the committee as to detail assuming that the new system is to be brought into effect at that time?

**Mr. Stewart:** When the legislation is passed we would like to see some period—I do not know what the magic number is; three months, four months, six months—

**The Chairman:** Or a year.

**Mr. Stewart:** Some period of time during which there could be adequate publication of the legislation, the development of any regulations that might relate to it, the explanation of any areas that are not clear, and a general educational period whereby businesses could find out what they are supposed to do and how they are supposed to operate. The sudden introduction of new legislation when the people are not prepared for it—and perhaps they should be prepared for it—and when they are not aware of how they are to conduct their affairs to comply with the new legislation, seems to me to be an invitation to chaos.

**The Chairman:** Mr. Stewart, are there not some aspects of a joint venture that might distinguish that type of operation from a partnership? You have a joint venture when two construction firms undertake a project which they might feel was too big for either one of them to undertake alone. Now, what are the aspects of that in connection with how they would go about laying down their rules of operation? Neither one loses its separate entity. Is that right?

**Mr. Stewart:** They both retain their separate entities. They simply agree to work together during the course of a

particular project and there is some agreement as to the assumption of responsibilities and, presumably, shares in the profit or loss.

**The Chairman:** You can see a real difference between that and a legal partnership or an accounting partnership.

**Mr. Stewart:** It is our feeling that they represent quite different fields of operation, and this is why the suggestion has been made that there should be a definition. You could probably arrive at words that would cover the situation, but it is basically for a short term specific project as opposed to a continuing operation designed to cover the affairs of the business.

**Senator Haig:** Mr. Chairman, is it not sometimes called a consortium?

**Mr. Stewart:** It could be, yes.

**Senator Haig:** A group of companies get together to handle a specific project and they enter into an agreement as to the work to be done and the sharing of the profits or losses.

**Mr. Stewart:** It usually applies to, or is particularly appropriate to major engineering projects where the physical size of the work is beyond the capacity of any one company, or where the degree of risk is such that even if one company did have the physical capacity to undertake the work it would necessitate putting all of its capacity on this one job. Under those circumstances you would have two, three, four, or even five companies pooling their resources. This has happened on some of the major dam projects in British Columbia where the scope of the work was beyond the capacity of any one company.

**The Chairman:** Mr. Stewart, just pursuing that for a moment. In an ordinary business partnership individuals get together and they decide to carry on a business on a continuing basis, and so they form a partnership. But with a joint venture, two or more companies get together and pool their capacities on a specific project. It is not a continuing arrangement; it has a termination date. It seems to me that there are essential differences and they should be able to work out some definition. I agree that it is hopeless to leave this bill without a definition of partnership because the incidence of liability is great.

**Senator Lang:** In a joint venture, Mr. Chairman, the two contractors at the same time each enter into a contract with the contractee, do they not, whereas in a partnership the persons joined together do not enter into separate agreements with a third party?

**The Chairman:** Yes, that is right.

**Senator Beaubien:** Could we arrive at a definition that would suit the situation, then?

**The Chairman:** It is practicable to work out a definition, but, equally, it is absolutely necessary that there should be one.

**Senator Beaubien:** What was done, Mr. Stewart, on the Seaway? A number of companies got together—Iroquois Constructors, and so forth. Did they form separate companies, or—

**Mr. Stewart:** There were a number of separate contracts and also a number of joint ventures.

**Senator Beaubien:** Did they form partnerships?

**Mr. Stewart:** It was usually a joint venture, to the best of my knowledge.

You can have the procedure of creating a separate company for a specific project, but there are disadvantages to this in so far as liability for other people is concerned who may have business with that body. With a joint venture the two or more partners in the joint venture have a continuing liability and responsibility, and this is considered to be in the public interest.

**Senator Burchill:** Mr. Stewart, has the minister been made aware of the points you are raising before us this afternoon?

**Mr. Stewart:** Through discussions and representations to Mr. Mahoney, his parliamentary secretary.

**The Chairman:** Are there any other questions?

**Mr. Poissant:** Mr. Chairman, I am just wondering that once a partnership is defined in the Income Tax Act, would it be agreeable if a joint venture were regarded as a partnership? Or, in the alternative, there could be an election under the Income Tax Act whereby they could elect to be considered to be not subject to the partnership rule and, therefore, be taxed on their share of income of the joint venture. Would that be a satisfactory solution? The partnership rule remains, but if they wished to embark on a partnership arrangement for a specific project where it might be beneficial to them to do so, they could, with the permission of the minister, be taxed on the share of the income from the joint venture and not as a partnership.

**Mr. Sandford:** I feel that it would be reasonable, as long as it is clear and understood that they have to make an election. Otherwise, they will get caught.

**Mr. Poissant:** Yes, we do not have to change a rule, and we do not have to define whether it is a joint venture, or if it is a partnership or not. It is merely a case of two people wanting to explore together such new resources, whether it be for this purpose or for that, and we are asking permission to consider this, not as being a partnership for tax purposes, but as our sole business.

**Mr. Sandford:** If that were a right rather than a benefit decreed by the minister, I think it would be good; and you might have some definition then as to who could make such an election.

**Mr. Poissant:** In a joint venture, as the Chairman was saying before, in a continuous partnership there is no such provision, but in a joint venture it is one single transaction.

**The Chairman:** It is a right of election.

**Mr. Sandford:** Yes, a right of election.

**The Chairman:** A right of election to take yourself out of whatever may be the benefits in the partnership relationship.



**Mr. Cook:** You might run into the situation where one would make an election and the other would elect something different.

**The Chairman:** I do not think they would enter into a joint venture then.

**Mr. Sandford:** There are problems such as this. If they should happen to get into a partnership, they have to make certain elections in regards to capital cost allowances. One may have a nice profit or a loss that he is carrying forward, and the other may not.

**Senator Cook:** That could cause a conflict.

**Senator Isnor:** Mr. Chairman, before we leave this, would you consider the term "equipment", a fixed asset or another term for income tax purposes?

**Mr. Stewart:** On page 5 of the brief, we identify certain types of equipment which we feel might well be added to the present list of equipment in class 22. These are fixed assets.

**The Chairman:** You mean they are fixed, of the freehold?

**Mr. Stewart:** No, they are not fixed, of the freehold. They are moveable, but they are classified for accounting purposes as fixed assets.

**The Chairman:** Are there any other questions? Have you anything further you want to add?

**Mr. Chutter:** Mr. Chairman, there was one point with regard to Hon. Mr. Phillips' initial question relating to reporting on the income tax form. He asked whether the Department of National Revenue did not offer certain indulgences in the reporting of income on a completed contract basis; and I think this is one of the main points the Association would like to stress.

So far as I can remember, throughout the whole postwar period, the Department of National Revenue has allowed the contractor, as an administrative practice, to report on the completed contract method for lump sum contracts up to two years' duration. This has worked well, and is used by approximately half of our members. It has worked well so far as we know for the department. It has been an administrative practice now for 20 years or more. The only problem from our standpoint is that it has no legal status, and in the event of a dispute over assessments, there is no right of appeal because there is no legal basis for this administrative practice. What our interested members would dearly like to see, I feel, in the interest of equity and regularity, is to have this administrative procedure, which has been in existence for a couple of decades or more, and is in the United States law, confirmed by being given legal status in our own Income Tax Act, and extended to stipulated unit price contracts. Right now it is restricted, in practice, to lump sum contracts.

**The Chairman:** You have attached an appendix to your brief.

**Mr. Stewart:** Yes, sir.

**The Chairman:** And this is your concept of the language that you would like to have changed from administrative practice to gain statutory support.

**Mr. Chutter:** Yes, this was prepared last year before the bill to amend the Income Tax Act came out. Basically, this would be the proposal from the Association as to the possible wording.

**The Chairman:** The Department of Finance would also be in possession of this wording?

**Mr. Chutter:** Yes, this was filed not only with your committee, but with the Department of Finance, the Department of National Revenue, the Department of Justice and anybody else who might be interested.

**Mr. Poissant:** Mr. Chairman, on this very point, the department recognizes the common practice on the completed contract method but yet in your recommendations, Appendix G—and I agree with you by the way, you are asking for the holdback as well, am I correct? You are asking for the complete contract, and are you not asking in 3(a) on page 2 of this appendix that the holdback be given as well?

**Mr. Sandford:** The reason that is in there is because we are anticipating what action the Government might take on this bill, and what we are trying to do is legalize the *Colford* decision if they should come along with some amendment.

**Mr. Poissant:** I agree with you entirely. I had a case like this in the department. But your brief does not stress that. It merely says the Government recognizes this method of administrative practice. Yet I think, legally speaking, you are entitled to the holdback at the end of any year.

**Mr. Sandford:** As we understood it, the Bill did not upset this decision. That is the professional advice we obtained.

**Mr. Poissant:** Is there a recent judgment on that?

**Mr. Sandford:** The *Colford* decision has not been upset, so that means we still have it to rely upon.

**Mr. Poissant:** I know. That should be stressed in your brief that you should be entitled to the holdback, because that is what you are asking in your appendix.

**The Chairman:** Would you please write us a note specifically dealing with that, since the issue has been raised?

**Mr. Sandford:** Yes, our whole appendix presupposes this situation. We do not ask for what is in the United States law on completed contracts on jobs of two years' duration, but that the final determination on tax be left until the job is completed and all the results are in.

**The Chairman:** You want this on a completed lump sum basis, and also on a complete unit price. Anything else?

**Mr. Sandford:** Mr. Chairman, I think that is all.

**The Chairman:** We have enjoyed your appearance and your representations here today, and for the manner in which you answered the questions.

**Mr. Stewart:** That is very kind of you, sir. On behalf of the Association, I can only say we have appreciated the opportunity of presenting our case and trying to explain why we are concerned about the bill's implications to construction in Canada.



**The Chairman:** Thank you very much.

Now gentlemen, before we adjourn, I should tell you what we have for tomorrow. Tomorrow we will meet in Room 356-S at 9.30 a.m. We have three different groups—the National Association of Canadian Credit Unions, the Co-operative Union of Canada, and the Allstate Insurance Company of Canada. And I should point out to you, in case you are making plans for a week ahead, the following week on Wednesday and Thursday, the 20th and the 21st, we have the Canadian Jewish Congress, and Massey-Ferguson Limited. Massey-Ferguson, I take it, will involve international revenues.

**Senator Beaubien:** And this will be in the afternoon?

**The Chairman:** No. I am attempting to fit in Alcan Finances also next Wednesday.

**Senator Beaubien:** They are down for the 27th.

**The Chairman:** I know, but it would be convenient if we could hear them when we are discussing a similar question, relating to international income, with Massey-Ferguson.

In that case we may enlarge to three hearings on Wednesday, October 20.

On Thursday, October 21 we have a very important group, the Canadian Bar Association. Their hearing has been scheduled to start at 9.30 a.m. Later in the day we will hear the Independent Petroleum Association.

We are endeavouring to hear some of the important aspects which we discussed when we were "going to school" to learn about the bill.

**Senator Beaubien:** I will not be here during the morning of the 20th. If Alcan could be set down for the afternoon it would suit me better.

**The Chairman:** Depending on how long the Canadian Jewish Congress takes—I know the points involved—we might hear both the Congress and Massey-Ferguson on Wednesday morning and schedule Alcan firmly for the afternoon. I think we can safely say Alcan will appear next Wednesday afternoon.

We will adjourn until tomorrow morning at 9.30.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

## Banking, Trade and Commerce

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 41

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THURSDAY, OCTOBER 14, 1971

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Fifth Proceedings on:

“Summary of 1971 Tax Legislation”

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin  
(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Thursday, October 14, 1971.  
(49)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further examine:

“Summary of 1971 Tax Reform Legislation”.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Gelinass, Isnor, Lang, Macnaughton, Molson, Smith and Walker—(16).

*Present, but not of the Committee:* The Honourable Senator Bourget—(1).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant.

## WITNESSES:

### *National Association of Canadian Credit Unions:*

Mr. George May, Chairman, Tax Committee and General Manager of the B.C. Central Credit Union, Vancouver;

Mr. Kenneth Weatherley, President of the Ontario Credit Union League and Executive member of NACCU, Ottawa;

Mr. Frederick Graham, Chartered Accountant, Campbell, Sharp, Nash & Field, Vancouver;

Mr. Joseph J. Dierker, Legal Counsel, Francis, Gauley, Dierker & Dahlem, Saskatoon;

Mr. Andre Morin, Director, Research Department, La Federation des Caisses Populaires Desjardins, Levis, Que.;

Mr. Raymond Blais, Director, Technical Services, La Federation des Caisses Populaires Desjardins, Levis, Que.;

Mr. Robert J. Ingram, General Manager, National Association of Canadian Credit Unions, Toronto.

### *Co-Operative Union of Canada:*

Mr. Breen Melvin, President;

Mr. Joe Dierker, Solicitor;

Mr. Martin Legere, President, Le Conseil Canadien de la Cooperation;

Mr. Richard Newberry, Controller, Co-op Federee de Quebec;

Mr. R. H. D. Phillips, Research Director, Saskatchewan Wheat Pool;

Mr. Ed. Chorney, Treasurer, United Co-operatives of Ontario;

Mr. John R. Moore, Treasurer, Maritime Co-operative Services;

Mr. T. Pat Bell, Treasurer, Federated Co-operatives Ltd.;

Mr. G. L. Harrold, President, Alberta Wheat Pool;  
Mr. J. A. Dionne, President, Federation des Magasins Co-op.

### *Allstate Insurance Company of Canada:*

Mr. John Atkinson, President & Managing Director;

Mr. Donald J. McRae, Financial Controller;

Mr. Michael G. Welch, Tax Supervisor.

At 12:25 the Committee adjourned to the call of the Chairman.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, October 14, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Hon. Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, this morning we have three groups making submissions: the National Association of Canadian Credit Unions, the Co-operative Union of Canada, and Allstate Insurance Company of Canada.

We have moved to this committee room this morning because some of those making submissions may wish to make them in French. We have the simultaneous translation system working, so that will facilitate the hearing.

The first group is the National Association of Canadian Credit Unions. I have been furnished with a list of the members attending; and they are: Mr. George May, Chairman of the Tax Committee and General Manager of the B.C. Central Credit Union, Vancouver, B.C.; Mr. Kenneth Weatherley, President of the Ontario Credit Union League, and Executive Member of NACCU, Ottawa; Mr. Frederick Graham, a Chartered Accountant with Campbell, Sharp, Nash & Field, of Vancouver; Mr. Joseph J. Dierker, Legal Counsel of Messrs. Francis, Gauley, Dierker & Dahlem, Saskatoon; Mr. Andre Morin, Director, Research Department, La Fédération des Caisses Populaires Desjardins, Levis, Quebec; Mr. Raymond Blais, Director, Technical Services, La Fédération des Caisses Populaires Desjardins, Levis, Quebec; Mr. Raymond Blais, Director, Technical Services, La Fédération des Caisses Populaires Desjardins, Levis, Quebec; and Mr. Robert J. Ingram, General Manager of the National Association of Canadian Credit Unions, Toronto.

I take it those are the appearances. Who is going to make the first presentation?

**Mr. George May, Chairman of the Tax Committee, National Association of Canadian Credit Unions:** Mr. Chairman, I shall. Perhaps Mr. Dierker might join me. He is our legal counsel. In addition, from time to time, I would like to call on our technical advisers.

**The Chairman:** Yes, we do not have room for all of them up here, but they will be available. Do you wish to make an opening statement?

**Mr. May:** Yes, if I may. I would like to put on record two additional members of our delegation who are important to our submission and will probably make a contribution during our hearing today. Mr. Paul E. Charron, General Manager of La Fédération des Caisses Populaires Desjardins is with us; along with Mr. Ives Lamothe, Technical Services, La Fédération des Caisses Populaires Desjardins.

Mr. Chairman, in introducing our submission to the Senate, may we first express our appreciation for the previous report of the committee regarding our earlier appearance before you. We appreciated your comments to the Government on our position.

We should also at the outset like to take cognizance of the amendments produced in the House of Commons yesterday respecting the tax bill, and particularly our position in relation thereto. As you might expect, we have not had much opportunity to analyze these amendments and their effect on the position of the credit unions.

**The Chairman:** We are in the same position; we have not had an opportunity to view the amendments, and they will not be available until approximately 10.30 this morning. Therefore we are dependent on the newspaper report, and you will have to tell us whether that agrees with your understanding of the effect of the amendments.

**Mr. May:** We will endeavour to do that. There are some areas which were not included in the amendments, which we interpret from the newspaper report, mainly, and our attendance in the house to hear some parts of the actual presentation. We would like to comment specifically on these, as they will now constitute the key issues with relation to the position of the credit unions and the tax bill.

There are two basic issues in this area. I would like to comment on the amendments and these two basic issues which were not dealt with specifically in the amendments introduced yesterday and call on our legal counsel, Mr. Joseph Dierker.

**Mr. Joseph J. Dierker, Legal Counsel, National Association of Canadian Credit Unions:** Mr. Chairman, we have had the opportunity of reviewing briefly the actual wording of the amendments, in addition to seeing the newspaper report. We will do so, as they have been presented in the House of Commons.

A review of the amendments which have now been proposed by the Government reveals two areas of concern to credit unions and caisses populaires. First is the area of permitted business activity of credit unions and



caisses populaires. The initial draft of clause 137 contained a very serious restriction as to the investments a credit union might make. It was allowed basically loans to members or investments in prime government bonds in the sense of Government of Canada and governments of provinces. This has been modified to permit investment in municipal and secondary government bonds. Credit unions and caisses populaires are, however, concerned about the nature of that definition.

Clause 189, in effect, provides for a penalty tax for monies invested in ineligible investments.

Clause 125 provides for a low rate of tax, basically 25 per cent. This, with some modifications, should be available to credit unions. The Government indicates that they will be introducing some proposals to make this more applicable to credit unions. In that regard we do not have the amendments.

However, we are concerned with respect to the definition of the investments that a credit union can make. If a credit union makes investments other than those specifically defined in that section, a reviewing officer acting for the Department of National Revenue could well construe it as being an ineligible investment under clause 189, in respect of which the credit union would have to pay tax.

We find it a little peculiar that credit unions and caisses populaires should be subject to tax, as other financial corporations, but that there should be a specific provision written into the section defining the investments they can make.

Basically we would like to see provision in the act for a credit union or caisse populaire to carry on a full financial business and exercise the investment powers given under its act of incorporation.

**Senator Connolly:** Are you referring to clause 189(4)(b)?

**Mr. Dierker:** I do not have the act in front of me.

**The Chairman:** Clause 189(4)(b) deals with ineligible investments. Is that the clause?

**Mr. Dierker:** Yes, clause 189(4)(b) refers to property that was not acquired for the purpose of gaining or producing income from an active business. I am concerned that when this is related to the provision in clause 137 which indicates where a credit union may invest its money which, as I say, is now defined to be government bonds and secondary government bonds, it will be interpreted as being the business activity of a credit union and caisse populaire.

**The Chairman:** Clause 137 also runs into a number of subclauses; to which are you addressing yourself?

**Mr. Dierker:** Clause 137(6)(b). You will note that in the initial draft of Bill C-259 basically the investments could be only in bonds guaranteed either by the Government of Canada or of a province. This has been modified in the amendments brought down yesterday to include municipal bonds and public bonds.

**Senator Connolly:** Is that amendment made to clause 137(6)(b)(i)(A)?

**The Chairman:** We have not yet seen the amendments.

**Mr. Dierker:** The proposed amendment is to clause 137(6)(b)(B).

**Senator Connolly:** (i)(B)?

**Mr. Dierker:** That is correct.

**Senator Connolly:** Which now reads:

bonds of, or guaranteed by, the Government of Canada or of a province.

And to that has been added municipal and secondary bonds?

**Mr. Dierker:** That is right.

**Senator Connolly:** At both levels?

**Mr. Dierker:** The wording is this:

or a Canadian municipality or bonds of a municipal or public body performing a function of Government in Canada.

It specifically excludes bonds of corporations, of course, by that definition.

**Senator Gelin:** Does that include the bonds regarding hospitals subsidized by the Province of Quebec?

**Mr. Dierker:** I would say yes, if they are guaranteed by the Province of Quebec.

**Senator Gelin:** It is a guarantee through subsidies: they are not fully guaranteed, as in the case of Hydro Quebec.

**Senator Beaubien:** The interest is guaranteed.

**Mr. Dierker:** Perhaps Mr. Morin could answer that.

**Mr. Andre Morin, Research Department, La Federation des Caisses Populaires Desjardins:** I would think so, Senator. This would be granted, but the problem, at the present time, is that the definition of a caisse populaire is being broadened and it is permitted to have more obligation in its definition, but not to the point where one knows what financial activities it could conduct. In our opinion, the main problem is that we have provincial legislation which is already there to restrict the activities of the caisses populaires, the credit unions. And it seems to us that all the financial activities that are permitted under provincial legislation should also be permitted by legislation as a normal activity because, otherwise, all that is going to happen, we are going to start having a lot of red tape concerning a few investments that can be made. I can give you an example: if credit unions exist in a general finance company, it is a corporation and we are...

**Senator Beaubien:** That is a very good thing.

**Mr. Morin:** I agree. If credit unions could support the Société générale de financement, they should pay a tax,

an additional tax by buying shares in the S.G.F. because that would be regarded as an investment which is not permissible to credit unions. Provincial legislation provides for it, and at that moment we fall into an administrative trap which must, of necessity, be recognized and there is provincial legislation which already provides for the activity which the caisses populaires, the credit unions, can conduct. Federal legislation which overlaps all that should recognize that, credit unions should be recognized as full-fledged financial institutions. It is not because they are private corporations belonging to a large number of individuals that they should be met with tricky legislation and red tape.

**Senator Bourget:** Well, what you are asking for is that the conflict which might exist between federal and provincial legislation be eliminated?

**Mr. Morin:** That is right. Such as section 189 as it now stands, and section 137. We already see a source of conflict there, and it should be specified immediately in 137 that a credit union is a full-fledged financial institution and that the investments, the financial activity permitted under the legislation which governs it is a normal activity.

**Senator Connolly:** Could I ask this question in English, because I am a little more familiar with it? You speak primarily of a conflict between the law of Quebec respecting investments of co-operatives and the proposed federal act. What is the situation with respect to the other provinces? Is there conflict also?

**Mr. Dierker:** The answer to that question is "yes."

**Senator Connolly:** Do you have some concrete proposed amendment which would perhaps reconcile the conflict between the laws of all the provinces and the proposed amendments to the federal tax act?

**Mr. Dierker:** The suggestion that we are making is that credit unions and caisses populaires be permitted to invest their funds in investments permitted under their provincial acts. That covers the matter province by province. There is also a federal act dealing with some of the centrals.

**Senator Connolly:** What about subsequent amendments to provincial acts? Would you say that for the time being they should be qualified to make amendments to provincial acts? Is that your idea? It could be that provincial legislatures could amend their legislation from time to time and the federal legislation would not be changed.

**Mr. Dierker:** With regard to credit unions and caisses populaires making an investment, as from time to time provided under their act of incorporation, as long as the federal act provided that it was an eligible asset within the meaning of section 189, there would be no problem.

**The Chairman:** The effect would be that the provincial legislature would be writing the ticket, and that would be paramount in the selection of investments.

**Mr. Dierker:** They presently are, in the sense that provincial governments are the incorporating bodies of credit unions, except for the centrals which operate under the Cooperative Credit Associations Act, which is a federal act.

**The Chairman:** If amendments come in from time to time, how could you expect a provision now that would say that whatever those amendments might be in the future by the provincial authority, you should have the approval of the federal authority to make those investments? Do you not think that they should have some right of supervision?

**Senator Beaubien:** Supposing a province said that a credit union could buy junior mining stock?

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** I think you are asking for something less than you already have in the act. Under section 137(6)(b) you are not restricted to the type of investments covering and including the amendment, because your income need only be derived primarily from and not exclusively from.

**Mr. Dierker:** I recognize that.

**Hon. Mr. Phillips:** The word "primarily" could mean, in law, 51 per cent, and you could get the 49 per cent from other sources.

The penalty section, under section 189(4)(b), says:

"Ineligible investment" of any particular corporation means a property that was not acquired for the purpose of gaining or producing income from an active business of the particular corporation.

Surely, the active business of a credit union or caisse populaire is an active business allowed by law. Therefore you do not fall into the danger of ineligible investments. I would say you would have all the protection you need under sections 137(6)(c), and 189(4)(b). My impression is that if we attempted to give you relief we might end up by narrowing your broad rights.

**Mr. Dierker:** If only I could be sure that would be the interpretation given by the Department of National Revenue to the matter of active business.

**Hon. Mr. Phillips:** Perhaps you should see that I am appointed counsel to the Department of National Revenue!

**Hon. Mr. Beaubien:** At the usual fee, \$1 a year?

**Mr. Dierker:** I take it that we have your assurance that that would be your opinion?

**Hon. Mr. Phillips:** That would be my opinion, if you had me appointed.

**Mr. C. Albert Poissant, the Committee's Adviser on Taxation:** I think that the credit unions, where section 894B is concerned, are perhaps interested in knowing that a company which makes a deposit in a credit union—that should not be classified as an investment which is ineligible but one that is eligible. That is the differentiation; not where you are concerned but where all the



other companies are concerned. Is that the interpretation that you want to give it, sir?

**Mr. Morin:** About section 189, there are two points, two requests that we had made. An initial request was that a credit union be recognized as a financial institution and that any private corporation which temporarily invested funds in a credit union would see its funds invested in a credit union as an eligible investment. You are quite right, this is perhaps the first thing that struck us, that we had to ask for. We confess that when we first presented the matter to the Finance Department, they were somewhat annoyed saying: we are sorry, we forgot. And that amendment has apparently been made, according to the information we have.

The other amendment would be one simply so as not to have any pitfalls concerning the interpretation of section 189 versus 137.

I quite like the interpretation that Mr. Phillips gave: I am not a lawyer, but that pleased me like that. But it seems that one should always be wary of lawyers as a whole.

**Mr. Poissant:** Unless, as Mr. Phillips suggested a while ago, you have him as a legal adviser in the Revenue Department.

**Hon. Mr. Phillips:** That would eliminate the whole difficulty.

**The Chairman:** Would you please carry on, Mr. Dierker?

**Mr. Dierker:** We are concerned about what we think is a conflict between sections 137 and 189, and I would recommend this matter to the committee for its consideration.

A matter that concerns us greatly is the application of a small business limit to credit unions and caisses populaires. The information presented in the house yesterday was that an amendment was being considered in respect of this, and this part was reported in the newspaper this morning. However, the amendment is not yet available.

**The Chairman:** What limit are you referring to, the \$400,000?

**Mr. Dierker:** There are two limits. The first is the \$50,000 annual limit, and the second is the maximum of \$400,000.

**The Chairman:** Are you addressing yourself to both of those?

**Mr. Dierker:** It is a combination.

**The Chairman:** What do you say the \$50,000 and the \$400,000 should become?

**Mr. Dierker:** We are suggesting there should be provision written into either section 137, dealing with credit unions, or section 125, which permits a form of deduction for credit unions and caisses populaires which is not presently provided for in corporations.

**Senator Beaubien:** Deduction of what?

**Mr. Dierker:** Deduction of income before calculation of the figures. You will appreciate that under provincial legislation and regulations pertaining to credit unions and caisses populaires, money must be placed in reserve by these organizations to provide for their individual solvency.

They are all separate incorporations and are not tied in with the Bank of Canada or anything of that nature.

Once the funds are put in, these reserves become non-divisible and, as such, the credit unions and caisses populaires cannot pass these out.

There is therefore no way that credit unions and caisses populaires can take advantage of the benefit written into section 125 which permits a corporation to continue to have a low rate of tax if it pays dividends, because there is no way it can legally pay dividends from moneys put into reserves.

I suggest that cognizance be taken of this peculiarity and that provision be made to cover it.

**The Chairman:** In other words, that the \$400,000 accumulated earnings would not include reserves?

**Senator Beaubien:** The reserves would not be considered as earnings?

**Mr. Dierker:** The reserves would not include the amounts of money that are put into the non-divisible reserve account.

**The Chairman:** You mean money put in there out of earnings?

**Mr. Dierker:** That is right. As you appreciate, to a greater extent these moneys are put in out of earnings under compulsory provincial legislation to provide for the solvency of these organizations.

**Senator Connolly:** Would you tell us something of the history and how these moneys are used? Are they in that reserve account, as you call it, permanently?

**Mr. Dierker:** Yes. They are put into the organization and they remain in the credit union as long as the credit union exists. If the credit union ceases to exist they will go to some form of charity, generally speaking.

**Senator Beaubien:** So they really never become earnings?

**Mr. Dierker:** They are initially earnings of the credit union but they are not capable of allocation.

**The Chairman:** What use may be made of the reserve account?

**Mr. Dierker:** These funds can be invested by the credit union and are invested by the credit union in bonds.

**Senator Connolly:** Allowable securities?

**Mr. Dierker:** Yes, allowable securities.

**The Chairman:** But what is the purpose of the reserve?



**Mr. Dierker:** The purpose of the reserve is to ensure the financial stability of the credit union. These reserves are basically 20 per cent of the income of the credit union per year, on an average.

**The Chairman:** Yes.

**Mr. Dierker:** This is speaking in generalities.

**Senator Beaubien:** You put aside these reserve funds and you invest them. Now, is the revenue earned from those investments considered as income?

**Mr. Dierker:** Yes, the revenue is income.

**Senator Beaubien:** It is considered income. There is no problem there.

**Senator Molson:** Mr. Chairman, what governs the size of these reserves?

**Mr. Dierker:** In many provinces it is governed by provincial legislation.

**Senator Molson:** What is it based on?

**Mr. Dierker:** Generally speaking, it is based on a percentage of the earnings of the credit union. Up to about 20 per cent of your earnings must be put into a reserve fund.

**Senator Burchill:** Each year?

**Mr. Dierker:** Each year, yes.

**Mr. Frederick Graham, Member, Tax Committee, National Association of Canadian Credit Unions:** I believe the limitation, Senator Molson, is carried on by legislation until the amount of the reserve reaches 10 or 5 per cent of the loans outstanding for the shares, as the case might be. In the federal act the amount is 20 per cent of earnings each year until such time as the reserve is equal to 10 per cent of the paid-up capital and deposits, or, in effect, the loans of the organization.

**Senator Connolly:** What happens after that? Is that amount required to be put in annually?

**Mr. Graham:** It stops; it does not carry on.

**Senator Connolly:** Well, I think you had the same idea, Mr. Chairman; that is, if this fund continued to build up at the rate of 20 per cent forever it would amount to an enormous figure.

**Senator Beaubien:** Mr. Chairman, once the limit as set down by federal law has been reached, is there any problem then?

**Mr. Dierker:** Once the limit has been reached there is no further allocation to this reserve.

**The Chairman:** Which limit, the federal limit or the provincial limit?

**Mr. Dierker:** Whichever limit is applicable.

**Senator Beaubien:** Do you take your choice?

**Mr. Graham:** It depends on whether you are registered under the federal act or under the provincial act. The only organizations under the federal act are the central organizations. There are only four or five provincial centrals which are registered under the federal act. Under the federal act you must go up to 10 per cent. Generally speaking, the provincial limit is something less. In other words, a local credit union would reach its plateau, presumably, at an earlier stage than a central organization under the federal act.

**Mr. Morin:** May I comment on that? I would simply like the Senator to realize that it is quite rare for the Caisses Populaires to reach the famous limit on reserves, and I can tell you that if one looks at the province of Quebec, we are obliged by law to place 10 per cent of our annual operating surplus, or of our annual profits, if you prefer, in the reserves. In practice, for the past 20 years we have been carrying an average of 50 per cent of our operating surplus in the reserves; nevertheless during that time, taking one year with another, our reserves have represented about 4.5 to 4.6 per cent of our assets. This is a percentage of the operating surplus, and when it is low, even a high percentage will not necessarily offset the increase in assets; once again, even if we place much more in these reserves than we are bound to by law, we still have reserves equal to about 4.5 to 4.6 per cent of our assets, and if you compare that with other financial institutions you will all realize as I do that these reserves are not out of line, far from it; the other financial institutions all have slightly higher reserves than we do.

Now if we look at section 125, this provides an incentive to force this private corporation to specify the individual owners of its surplus, and that,—the reasoning behind that as we understand it is to enable us, first of all, to have the business income taxed at the individual rate, and then to avoid the problem of "dividend stripping", which occurs later when funds begin to accumulate in these enterprises and the time comes when the shareholder stops investing in the business, when he needs his money, and he has a problem because of his tax. If you take this type of reasoning and try to apply it to the Caisses Populaires, it does not work, because our Act states that this reserve fund is indivisible, no one is about to pocket it and be faced with a problem of "dividend stripping"; it is a joint fund belonging to the entire group of members, for use in providing the small businesses in their own area with financial stability. Bear in mind, as Mr. Viateur said earlier, that the Caisses Populaires are all responsible for ensuring their own stability since they are completely autonomous, and when I tell you that they hold 4.6 per cent of their assets in reserve, and that the other financial institutions throughout the country have more than that, I mean to say that this 4.6 per cent is not exorbitant; there is no problem of "dividend stripping"; the institution belongs to the community which will keep its money there to make its enterprise more stable. There is nothing which would militate in favour of a provision requiring large amounts in it; on the other hand, however, it ensures the stability of quite an important sector of financial activity in Canada.

**The Chairman:** Mr. Morin, we have been talking so far about what I will call the statutory reserve required by provincial and federal authorities representing a percentage of the earnings of the year which must be put into that reserve and which has very tight restrictions on the use that might be made of that reserve. Now, what you wanted was to have the amount of those reserves not entered into the calculation of the \$400,000 limit for small businesses.

**Senator Connolly:** Or the low rate of taxation for the first \$50,000 of profit.

**The Chairman:** I thought I understood you to say that some of the credit unions put into their reserve funds something in excess of the statutory amount. Now, are you asking that whatever amount they put into the reserve fund should be deducted in arriving at the accumulation of earnings to represent the \$400,000 a year?

**Mr. Morin:** Yes.

**The Chairman:** You realize you have no limitation and you could build up a substantial operation and accumulate substantial reserves only part of which would be subject to the provincial and federal dictates as to what use you might make of such reserves.

**Mr. Morin:** That does happen, but you will realize that credit unions have never been limited as to the amount they can put in the reserve. Our reserves are made gradually, at the same rate as assets; believe me, we do not need an incentive.

We already have the weight of democracy behind us; our members—what they put in the reserves of the group cannot be distributed among themselves, and certainly we have a weight behind us where people say, “give us patronage dividends rather than putting the money in reserves.”

**The Chairman:** Are you saying that whatever amount you put into the reserve in excess of the statutory requirement, provincial and federal, once it gets into the reserve it cannot be distributed other than in the same way that the provincial and federal statutes would permit you to make use of the reserves? Is that what you are saying?

**Mr. Morin:** I think so, yes.

**Mr. Dierker:** That is correct.

**Mr. Morin:** We are speaking of just a calculation of the amount entering into the total business limit concept. We are not speaking of the rate of taxation on this amount. We are speaking of the five per cent on the amount we are placing in our reserves.

**Senator Connolly:** Perhaps I might act as a devil's advocate here for amoment. If what the witness says were realized, it seems to me that the credit union in question could defeat the purpose of the provisions of the small business limit. In other words, they could put in almost any amount they desired to keep it below the \$50,000 annual limit and the \$400,000 overall limit. They

would seem to be in a position that other taxpayers who might be in the same type of category might not be able to achieve.

**Senator Beaubien:** They would have an advantage.

**Senator Connolly:** I think so. I would ask them to deal with that. I am not using a club but I simply say this is the way it looks to me.

**The Chairman:** Mr. Morin has said that he is not a lawyer and that he is always very careful when talking to lawyers, so maybe we should talk to their lawyer, Mr. Dierker, and see what he has to say.

**Senator Cook:** Could I ask a question on this point? Is it correct that when you allocate some money to reserve and it has gone once and for all, the members can never get that money? Is that correct?

**Mr. Dierker:** Yes, that is correct.

**Senator Cook:** In other words, you have the choice of paying tax on some and retaining some, or paying no tax and allocating it all to reserve?

**Mr. Dierker:** No, senator, that choice does not exist for credit unions in Canada.

**Senator Cook:** Not under your proposed amendment?

**Mr. Dierker:** No. Under the proposed amendment Mr. Morin was speaking about we are bringing to the attention of this committee that a credit union or *caisse populaire* does not have the ability to reduce this \$50,000 and the \$400,000 limit in the way a corporation can, because a corporation can by paying dividends get a \$4 credit for every \$3 of dividends paid out. In the case of a *caisse populaire* or a credit union, the moneys put into these reserves cannot be distributed. What we are saying is that these reserves are required, that under many provincial legislations there is no choice. Secondly, even if it is not required by provincial legislation, as in the case of Quebec, where reserves in excess of the provincial requirements are put into reserves, this is done under the existing bylaw provisions of the credit union, and to maintain the stability of the *caisse populaire*. Once these funds are put in there they can no longer be distributed.

**Hon. Mr. Phillips:** The expression used is “democratic pressure”, I think Mr. Morin said.

**Senator Carier:** If these reserves are not divisible and cannot be distributed, what advantage is there in building up the reserves beyond what is necessary, beyond what the province requires?

**Mr. Graham:** That, of course, is the practical answer to what Mr. Morin was saying. Why would the members allow the thing to be built up to such a point to defeat income taxes, when in effect they are losing the right to the moneys themselves? There is no purpose in it, in trying to keep excessive reserves over what can be given back to members.

**Senator Carier:** Let me put it the other way. Would there not be a disadvantage in building up your re-



serves beyond what is necessary if they cannot be distributed?

**Mr. Dierker:** The credit union or caisse populaire will continue to have to be a viable financial institution in the community, and to maintain that position it will have to be competitive with other financial institutions. Accordingly, it will have to pay a return to its members on deposits competitive with other returns, which will automatically commercially limit the amount of money that could be put into these reserves.

**The Chairman:** That may be so, but as I understood the request that was being made you wanted the right to deduct reserves in any calculation of the \$400,000 limitation, no matter how or in what manner, whether by compulsion or voluntary act of the credit union, those moneys went into the reserves. In other words, you want an amendment so that the only limitation as to what would go in excess of the statutory reserves would be what the company decided it wanted to put in there. Now, that is pretty unlimited. Maybe you would have to work out better language to justify that position.

**Mr. Morin:** This will depend on the Minister of Finance, Senator Hayden, and it is to ask that the first \$50,000 of taxable income of a credit union not be considered in the calculation of the total business limit. This is for the first \$50,000, but everything over \$50,000—at that moment, we come back to the same order, we come under the same standards as private corporations. Everything over \$50,000 would be included in the calculation of the total business limit, so that our unions will very quickly come under the 50 per cent rate and our central credit unions, perhaps in the first or second year at the latest will enter into the overall calculation of business. But we want to point out to you that the credit unions—that 93 per cent of the credit unions in Quebec have put less than \$25,000 in their reserves in 1969. And those are the small credit unions that we are trying to protect; we are trying to protect them so that they can put sums in their reserves without incurring a high rate of taxation in the more or less short term.

The other question, Senator. We have made a comparison with private enterprise and if you would like to see a few figures, we can hand them out to you. The objective is to make everyone realize, with a very concrete example, that the credit union, in practice, is going to pay a little more tax than a private corporation, and is going to be left with less working capital, and especially, is going to be brought more rapidly up to the high rate of 50 per cent.

My second point: we accept them, those are part of the rules of the game in view of our structure.

But the third point, what is being said is that at that point this runs counter to our legal characteristics.

**Senator Bourget:** What is the amount of the reserve at this time, in dollars?

**Mr. Morin:** 105 million, Senator, for Quebec, only, for our Federation.

24264—2½

**Mr. Paul E. Charron, General Manager, La Federation des Caisses Populaires Desjardins:** It should not be forgotten that the legal reserves are obligatory under provincial legislation, this is a minimum. In actual fact, in our by-laws, it is only ten per cent; 30 per cent is what is being asked for. It should not be forgotten that the reserves which are fixed by provincial legislation are minimums. Actually, the credit unions, through mere caution which experience has confirmed, by virtue of by-laws, have to put 30 per cent, by virtue of the by-laws, because the legal requirement is a minimum, and with inflation, when you take into account depreciations in bonds and immovables. But when we realize that if we examine the figures closely, we have not put too much, nor should it be forgotten, with the taxation that is upcoming, that will not be a further incentive, it will be a lesser incentive. And that is why there should perhaps be a certain compensation by organizing a certain deduction on the 400,000 and by exempting the first 50,000 because there is a relationship between the two; otherwise, at the present time, temporarily, if you leave the legislation as it is, well, the government is going to receive a little more, but I think that by making the change, the credit union will be permitted to fortify itself more quickly and the tax base in "x" years will be greater, and then, the credit union's position will have been strengthened, and the position of the federal government's revenue will have been strengthened. It is a question of administrative prudence, if you like, and that is why we are asking for a deduction and without taking into account that our shares do not increase in value and they are redeemable on request, and our reserves cannot be divided. Therefore, when that is compared to other corporations, a correction must be made; if not, we are in a situation, let us say, I cannot say the word, restricted, which is going to affect, more or less, at least 90 per cent of our credit unions.

**The Chairman:** What we are trying to do is to understand clearly what it is that you are asking for. Is this it, that the statutory reserves, federal and provincial, be deductible before you arrive at the \$400,000 limitation which would qualify for small business; and plus any voluntary reserves that are created by the credit unions; and the amount of those will be a determination by the individual company; and once it goes into that reserve you want it to be deductible, too, before you arrive at the \$400,000. Is that right?

**Mr. Morin:** Our request is to say that the first taxable \$50,000, for a credit union, should not be included in the calculation of the total business limit. The problem could be solved in another way which would be acceptable to us also, and that would be to stipulate that all the sums put in the reserves are taxed at 25 per cent, and that would be another advantage, but we will tell you about that right away, we would gain the second time.

**The Chairman:** Are you saying that the \$400,000 limitation is too small? Not if you can make these deductions, but if you cannot, you say it is too small?



**Mr. Morin:** No, what we are saying is that this section 125 was written with a private corporation in mind and that operates very well with a private corporation in mind. But, take an association like ours into the picture, that is no good, and we have legal characteristics, once again, and we are not talking to you about the social role of credit unions, we are talking about legal characteristics.

**The Chairman:** You are making one assumption there. You say that for private corporations the \$400,000 works beautifully.

**Mr. Morin:** Yes.

**The Chairman:** We have had expressions from private corporations where they think it should be \$500,000, \$600,000, \$700,000. So it is easy to speak for the other fellow.

**Senator Connolly:** Let us say that a credit union has \$20,000 that it is required by law to pay into the reserve, and it wants to pay in \$30,000. Suppose that extra \$10,000 were available to go to the reserve, or to go elsewhere. Where is "elsewhere"? Would it be distributed amongst the members?

First of all, I assume it would be taxed at the rate applicable to credit unions.

**Mr. Dierker:** First of all, there would be the 25 per cent tax on...

**Senator Connolly:** On the \$10,000?

**Mr. Dierker:** On the \$30,000.

**Senator Connolly:** All right. Suppose the \$10,000 did not go into reserve, how, normally, would you use it? It is taxable.

**Mr. Dierker:** It would go out to the members of the credit union as interest on deposits.

**Senator Connolly:** And it would be income in their hands and therefore it would be taxable?

**Mr. Morin:** Yes, you are right.

**Senator Connolly:** That is the same position.

**The Chairman:** Mr. Poissant would like to ask a question.

**Mr. Poissant:** Mr. Morin, you said a while ago that 93 per cent of the credit unions have paid less than \$25,000 into their reserves in 1969. Can you tell us what was the profit, or the net income of those credit unions for 1969, first of all, before their reserve, and secondly, after their reserve?

**Mr. Morin:** The overall profits of the credit unions were 20 million in 1969.

**Mr. Poissant:** In short, that is where my question is directed. Is the \$50,000 reserve which you are asking for a credit union individually too much in my opinion? For the large credit unions as a whole, in Montreal or

Quebec, that is alright. Perhaps \$50,000 is appropriate, but I think that for the credit unions as a whole, including the 93 per cent you are speaking about, it is perhaps too much and what happens, when you compare a small enterprise, the credit union, would for all practical purposes be exempted for practically its lifetime. Note that under the new taxation legislation, you will be permitted to now deduct reserves to arrive at your taxable income. Then, the \$50,000, you will be legally entitled to deduct the reserves from your accounts, the reserves on your investments, other type of reserves, on notes, which means that the income of credit unions fiscally speaking, is going to decrease now—and are you now speaking, in addition to that reserve which will now be permitted by law, of an additional \$50,000 deduction per credit union?

**Mr. Morin:** No. The first question is 93 per cent of the number of credit unions, and the simple answer is to tell you that it is 75 per cent of the income of the credit unions. Does that answer your question?

Your second question, there is a misunderstanding in this room and that misunderstanding should be rectified. We are not asking that the first 50,000 dollars put into the reserves not be taxable in the hands of the credit union; we agree that credit unions pay their share of the government's expenditures and that they be taxed in the same amount as a private corporation, at the rate of 25 per cent. But what we are saying is that section 125 is constructed for a private corporation and if a private corporation individualizes, for example, with the capital stock method which is offered to it, it can then remain at the low 25 per cent rate almost indefinitely. And there is no mechanism permitting a credit union to remain at that low rate, that is the problem. Note one thing, when we speak of private corporations and when we speak of legal characteristics, that is what it is, and when you have a private corporation, if you force, if you suggest to a private corporation through tax incentives like that, to take its surplus earnings and put them into capital stock, you are taking the surplus funds which are divided among the members, and you are putting them into capital stock which is frozen for the company, which is golden working capital. When you ask credit unions to operate in the same way, you are asking them to take money which is in reserve funds that cannot be distributed; therefore, it is our reserve fund that is frozen, and you put it into capital stock which is redeemable on request. It is a move in the wrong direction. Instead of freezing funds and leaving us more working capital, you freeze it. That is why we told you that the mechanism you have provided for a private corporation cannot function for a credit union and for a private corporation. Once again you are going to allow the private corporation to remain several years at the low 25 per cent rate if it individualizes. The purpose of individualizing profits is to prevent the problem of dividend stripping. We do not have it; there is no reason why you wanted to try to force us to go public; on the contrary, the reasons are there to ask the credit unions to build up reserves so that it will be a stable financial institution in the Canadian economy.

**Senator Cook:** Mr. Chairman, if the amendment proposed by the witness were accepted, would it be limited to the caisses populaires or would it have a wider application? Would it have implications for all taxpayers?

**Mr. Dierker:** Do you mean would it apply to credit unions as well as to caisses populaires?

**Senator Cook:** Would the principle involved extend to other forms of co-operative movements?

**Mr. Dierker:** For the purposes of this discussion let us define co-operative movements as being credit unions and caisses populaires. The principle of non-divisibility of these reserves applies to both caisses populaires and credit unions and only to these institutions. That is the extent of my knowledge, at any rate.

**The Chairman:** So the amendment would be by way of exception to deal with these two particular types of institutions.

**Mr. Dierker:** I think the amendment would probably have to be in section 137 where it deals with caisses populaires and credit unions.

**Mr. Poissant:** If I may ask the witnesses, if the statutory reserve as permitted under provincial law were acceptable as capital for the caisses populaires or the credit unions, and any excess would follow the normal pattern as being part of the \$400,000, would that be acceptable? If the answer is no, do I presume that their statutory reserves are not high enough, which then becomes a provincial problem and not an income tax problem?

**The Chairman:** Mr. Morin, any argument that you make is to support a higher amount in reserve than the statutory reserves, and you say that it is needed.

**Mr. Morin:** The reserve is needed, yes.

**The Chairman:** You say you need a higher amount than the statutory provisions would provide, so why should the statutory provisions not be increased?

**Mr. Morin:** It is a question of the financial stability of the enterprise.

**The Chairman:** What I am getting at is that you say there are two sources for building up reserves: the statutory requirements, provincial and federal, and also the voluntary contributions which you make out of earnings. You say that that is necessary and is needed to maintain the stability.

**Mr. Morin:** Yes.

**The Chairman:** All right, then, why does the provincial authority not recognize that a larger amount of contribution is needed and provide for a larger amount to be contributed to reserves?

**Mr. Morin:** You would like to see all the provincial legislatures taking the decisions for you.

**The Chairman:** No. That may be a smart answer, Mr. Morin, but it does not deal with the question at all. If

your argument to me was that the statutory plus the voluntary was needed in order to give stability to the credit unions and to the caisses populaires, that would be one thing. Suppose I accepted that, there is still a very obvious answer: if it is needed, apparently the provincial authority does not realize that it is needed because the provincial authority has not increased the statutory amount. So why not have them increase the statutory amount and then we would have no argument here.

**Mr. Morin:** The other thing I wish to tell you—the reasoning behind it is good—is that there could be provincial legislation which would be the same throughout the ten provinces, which would stipulate that 50 per cent of excess funds be held in reserve. However, when you consider the law governing “Credit Unions” where excess funds are larger, there could be problems for social reasons from one province to another. Now, just considering Quebec province only, the credit unions generally hold more than 50 percent of excess funds in reserve. However, we have to realize that there are already some credit unions that have large reserves and that could justifiably hold only ten percent of their excess funds in reserve, which is sufficient for credit unions that have already built large reserves, while it isn’t sufficient for others. Each has to be treated on its own merit. This minimum of ten percent required by law is a healthy thing, and every credit union should adhere to it. However, practical experience has shown once again that for the majority of credit unions in general, more than that is necessary, even though that law is enough for the larger unions that have sufficient reserves.

**The Chairman:** But, Mr. Morin, you are asking us to agree to and support an amendment where part of the contribution to the reserve out of earnings would be determined by the individual caisses populaires and credit unions themselves. What we are saying is that you could put it on a stronger basis, if the statutory requirements were increased, or that it may well be that the sum total of the reserves, both voluntary and statutory, should bear a fixed ratio to the deposits—because I understand the reserves are intended to give a certain assurance or stability to the depositors; isn’t that right?

**Mr. Morin:** Yes.

**The Chairman:** So there could exist a percentage relationship; that is, the sum total of the reserves, voluntary or otherwise, could bear a relationship not in excess of a certain percentage to the deposits. You tell us what the percentage should be.

**Senator Cook:** Without a percentage rate, the witness is asking us to accept the judgment of each individual caisse populaire as against the judgment of the provincial legislatures.

**The Chairman:** That is right.

**Senator Lang:** It seems to me that the caisses populaires or credit unions may very well, as a matter of policy,



be public rather than private corporations, because they are deposit-taking institutions. Really in one sense I think that this discussion may be academic, because the minister under section 89(1)(g) may very well decide that any particular *caisse populaire* is a public corporation and, as a consequence, is not entitled to the low rate of tax on the \$400,000.

**Mr. Morin:** Except that you have to take into account section 125 and Part V.

**Mr. Dierker:** Section 137(7) says that:

(7) Notwithstanding any other provision of this Act, a credit union that would, but for this section, be a private corporation shall be deemed not to be a private corporation except for the purposes of section 125 and Part V.

**The Chairman:** That is the way they make the small business provisions available.

**Mr. Dierker:** That is correct. That is where it comes from.

**Senator Connolly:** Mr. Chairman, it seems to me that individual credit unions have an opportunity to keep themselves as small business corporations in two ways rather than in one way. In the case of the ordinary incorporated company, the company can keep itself in the small business area by paying dividends sufficient to bring it within the \$400,000 ceiling. Now, the credit union is saying that it had that right, of course, by paying out its dividends, but it is also saying that the amount paid into—no?

**Mr. Graham:** No, the dividends are deductible before the computation of income.

**The Chairman:** Just a minute, now. What I think Senator Connolly is getting at is this. If a private or public corporation which is entitled to the benefit of small business finds it is pushing against its ceiling of \$400,000, it can pay out dividends to reduce that amount, but the person who receives the dividends finds that it is income in his hands. Now they reduce the \$400,000, but the receiver of the dividend is going to pay income tax on what he receives. Now if a credit union wants voluntarily to contribute, in excess of statutory amounts required for reserves, additional amounts will go into reserves without being subject to any tax.

**Senator Connolly:** No, it will pay the 25 per cent.

**Mr. Graham:** It will pay more than 25 per cent.

**The Chairman:** Do we have to back up and start all over? I thought it was said clearly that what you are asking for is that the statutory reserves plus the additional voluntarily contributions to reserves are to be deducted from the sum total of \$400,000 in arriving at the ceiling under which you may operate. Now, did you mean that or not?

**Mr. Morin:** Oui.

**The Chairman:** All right, so you meant it. And that means that you are asking that the reserves voluntary and statutory be not considered to be earnings.

**Mr. Graham:** You still have 25 per cent tax plus. It is a tax-paid transfer, senators, and it will amount to 33 per cent tax regardless.

**The Chairman:** Well, we have a difference in viewpoint there.

**Mr. Graham:** Even though it is not part of the \$400,000, section 125 only rebates half of the tax.

**The Chairman:** Are you saying that the statutory reserves that are built up will carry no tax?

**Mr. Graham:** It will pay a 33 per cent tax. The transfer into the statutory reserves is a tax-paid amount going in so that this has the effect of the credit union paying in respect of that amount 33 per cent tax.

**Senator Connolly:** I think, Mr. Chairman, that the understanding you had originally was the same as the one I had, but perhaps it was developed later. I heard some one say that it was subject to a tax before it went into the reserve. Then, having put it into the reserve, what you ask now is that it should not accumulate to the point where it is going to puncture this \$400,000 ceiling.

**Senator Cook:** Everybody agrees with that, but the only discussion is how much of this reserve should be considered.

**Senator Connolly:** All right; both the compulsory contribution and the voluntary contribution should be in this category; it should be exempt. Now suppose for the sake of argument that in the provincial legislature the compulsory amount is increased and increased and increased—this may be an exaggerated example, but I am thinking of the situation of the draftsmen of the federal legislation who have to consider getting, I suppose, the same amount of tax from all taxpayers and the provincial government could reduce the amount of tax that could be collected by the federal authorities by increasing the compulsory reserves. The provincial legislature therefore would be in effect defeating the purpose of the federal act, would it not?

**Mr. Graham:** The people who are going to operate against that, of course, are going to be the members themselves. Once you transfer it to reserves, you put it beyond the reach of these people forever.

**Senator Connolly:** So it is not available as dividends.

**Mr. Graham:** It creates its own defence against that. I mean people would be up in arms if the provincial government said you had to put 60 per cent or whatever amount you like.

**Senator Connolly:** That is a *reductio ab absurdum* on my part. But let us take your other arm. You can stop the small co-op from hitting its head against a \$400,000 ceiling by distributing dividends to the members, can you not?



**Mr. Graham:** No.

**Senator Connolly:** Why not?

**Mr. Graham:** There was one amendment proposed yesterday to the effect that the dividends paid on shares shall be considered as an interest payment and deductible in arriving at the amount of taxable income. So once that goes through, when we are speaking of the income of a caisse populaire or a credit union, the only income left is going to be the amount which is not distributed which is the amount that goes into reserve. There is no other income. There is no tax creditable on distribution because it cannot be distributed. It accumulates and we cannot distribute it so there is no defence against the \$400,000 ceiling.

**Mr. Dierker:** The real answer on the payment of dividends, senator, is that you are prohibited from distributing the money put into reserves.

**Senator Connolly:** I can understand that, but I was not talking about those moneys; I was talking about the distributed money.

**Mr. Graham:** But the only income once the dividends are deducted are the reserves. So you are now left with the income of the credit union. Remember it is all taxable in the individual's hands, but the corporate position is that the only thing left will be the undistributed amount representing the reserves.

**Mr. Dierker:** I think, senator, we can back up one step on this. The money that the credit union pays as interest on deposits is a business expense.

**Senator Connolly:** Would you say that again, please?

**Mr. Dierker:** The money that a credit union or any other financial institution, including a bank, pays on money on deposit is a business expense. So that at the end of the year after adding together your income and expenses, so far as the credit union is concerned all that will be left will be the moneys undistributed, the moneys to be allocated for your reserves. The point we are making is that these are the moneys that will go into reserves.

**The Chairman:** Well, Mr. Dierker, Mr. Morin and I have a difference in view. Are you saying that when income earnings are allocated to reserves in the year (and that would be the net amount of income left after all deductible expenses have been taken away) that notwithstanding the fact it goes into statutory reserve it is income subject to tax?

**Mr. Dierker:** Yes, it will pay a 25 per cent levy.

**Senator Beaubien:** But you pay a tax before that money is put into reserve? Isn't the only thing you are afraid of that that money will build up and get you out of the class of the \$400,000?

**The Chairman:** I understand what they are saying.

**Senator Beaubien:** I know you do, sir, but I was trying to get it clear for myself.

**The Chairman:** I do not follow it all as a matter of interpretation. Now we are not going to argue out the legal interpretations; Mr. Morin does not want to argue with a lawyer. So, as I say, we are not going to argue it out.

We understand your position and the arguments you have given in support of it, and we can verify whether that agrees with what we think is the interpretation in the act and therefore we can deal with your request on that basis. We have said many things here and we have really threshed out the point very completely. I do not think there is any value in saying anything more.

**Senator Desruisseaux:** Mr. Morin, what is the present increase in the percentage of the reserves over, let's say, the last two years?

**Mr. Morin:** Our rate of growth is about 12 percent a year.

**Senator Desruisseaux:** How much?

**Mr. Morin:** 12 percent.

**Senator Desruisseaux:** Deposits?

**Mr. Morin:** Assets also.

**Senator Desruisseaux:** I am not talking about assets, I'm talking about deposits.

**Mr. Morin:** Deposits—it varies on the average—about 12 percent. Deposits represent on the average 85 percent of our assets.

**Senator Desruisseaux:** Could you expound on that briefly?

**Mr. Morin:** Yes, going back over the last 20 years, the amounts held in reserves simply maintain these reserves and they are approximately equal to 4.5, 4.6 percent of the assets existing at the year end.

**Senator Desruisseaux:** Thank you.

**Senator Burchill:** May I ask a question, Mr. Chairman?

**The Chairman:** Yes, certainly.

**Senator Burchill:** This reserve which is indivisible, are there any conditions or circumstances whatever in which it could be divided?

**Mr. Dierker:** Yes, on the liquidation of the Credit Union; and generally then it goes to a charity function.

**The Chairman:** It is there is a reserve in relation to deposits.

**Senator Burchill:** Yes, but it cannot be touched.

**Mr. Dierker:** By the members? That is correct, not unless it is wound up. It never returns to the members.

**The Chairman:** No, but it may go to the depositors.

**Mr. Dierker:** This is true.

**Senator Connolly:** In the event of a bankruptcy, for example.

**The Chairman:** Yes.

**Senator Connolly:** What happens in the event of a failure of one...

**Senator Beaubien:** You can deduct the amount of the failure.

**The Chairman:** Certainly. Quite obviously, the reserve is to protect the depositors, that is assuming the depositors need protection, and the reserves must be available.

**Senator Carter:** May I ask a question, Mr. Chairman? Is depositors' insurance available through Caisses Populaires?

**Mr. Dierker:** Just to members of Caisses Populaires, not to members of the Credit Unions.

**The Chairman:** Not to the Credit Union members.

**Senator Carter:** I think the answer is "yes"?

**The Chairman:** In part.

**Mr. Dierker:** It is available to members of Caisses Populaires but not to the Credit Union members.

**Mr. Morin:** Saving accounts only in the credit unions of Quebec.

**Senator Carter:** That is additional protection for the depositors. Would that not be better, rather than building up the voluntary contributions? Would that not be better?

**Mr. Morin:** We have not asked for deposit insurance. It protects us presently, and the policy of the credit unions is to try to cover themselves, in conjunction with all credit unions, and we hope we'll never have need of this deposit insurance.

**Mr. Poissant:** Mr. Morin, to sum up, your request comes down to this: on the first \$50,000, the credit union pays 25 percent. For the remainder, once \$400,000 has been paid in and accumulated, the normal amount of tax will be paid. Your request makes sense to me, because if we consider the workings of the treasury as a whole, in effect the treasury is going to receive 25 per cent immediately, and looking at the average tax of shareholders of a normal company who receive bonus dividends, I think the average tax would be seen to be less than 25 percent, or nearly 25 percent.

**Mr. Morin:** The average tax of citizens in Quebec is 15 percent.

**Mr. Poissant:** At such a time, the Federal Treasury would immediately gain on the first \$50,000, 25 percent, and not being subject to dividends, this tax could not be recovered, while the little company that has profits of \$50,000 and that pays out dividends of \$50,000 to its shareholders, has paid, for argument's sake, \$25,000 in tax; it isn't too rational an example, but for the sake

of simplification, let's say the shareholders recover this \$25,000 of tax, while the first \$25,000 in this case paid by the credit union will, for all practical purposes, be lost in the hands of the members. Therefore, the government could receive its tax almost immediately, if I understand it. Is that what you meant?

**Mr. Morin:** The example is excellent. The credit unions, as things stand at the moment, are to pay from 3 to 5 million dollars in tax, uniquely for credit unions of Quebec. The change produced by the article under discussion does not change the tax payable by the credit unions. What we are questioning is that we are already going to pay a slightly higher tax than the average tax paid by a private corporation, due to the fact that there is no recovery of the tax payable by the enterprise. But, what we are asking for, is to avoid being pushed up in a short period to a ceiling of 50 percent. And while there are means in existence, moreover, to keep private corporations on the low 25 percent rate, there is nothing of this nature for the credit unions. That is what we are asking for.

**The Chairman:** Mr. Morin, is it not your case when you transfer earnings into a reserve, you say that they lose the character of earnings because you cannot deal with them in the way in which you would ordinarily deal with earnings. And since the accumulation of the \$400,000 is supposed to be an accumulation of earnings, then the moment that you put these earnings in a reserve they have lost the character of earnings.

**Mr. Morin:** I would agree with this.

**Mr. Dierker:** Precisely.

**The Chairman:** Now I understand your point.

**Hon. Mr. Phillips:** May I touch on a point by way of compromise, being a man of peace? I felt that there is a great deal of merit in the point that the distribution to the members comes to the members by way of interest and not by way of dividend in the normal way, even though it is deductible against the credit unions or caisses populaires. I personally feel that there is a great deal of merit to the point that the statutory reserve plus the voluntary reserve be dealt with in the manner in which you have indicated.

However, I think the Chairman has raised this point: Do you not feel that the combination of both should be related to the deposits or to the total assets, that is, constituting some curve on the freeze? That would appear to make sense. If a recommendation were to come from those of us on the committee who are in favour of this, I think that they would feel more comfortable if they had a little guidance on that point in terms of what the ratio should be to deposits in its totality, or in relationship to total assets.

**Senator Connolly:** Would Mr. Phillips spell that out more clearly with an example?

**Hon. Mr. Phillips:** Suppose at the end of 1971 you had \$1 million on deposit and your statutory reserves plus



the voluntary reserves were \$200,000—that is 20 per cent for the protection of \$1 million on deposit. Now my question is: Is that too high or too low, if you had \$2 million of overall assets and you had \$200,000 of statutory plus voluntary reserves? Is the \$200,000 in relation to the \$2 million of assets too high or too low?

**The Chairman:** Perhaps this is a question that you would like to think about for a while.

**Hon. Mr. Phillips:** And give us some guidance on.

**Senator Lang:** Mr. Chairman, the highest figure for trust companies is 20 times.

**The Chairman:** We would like to hear your views, as quickly as possible, on Mr. Phillip's proposal, by way of summary.

**Senator Beaubien:** You are asking for a ceiling?

**The Chairman:** Yes. We would like to hear from you rather quickly because we are going to be giving consideration to this matter.

**Mr. Morin:** Excuse me, Senator Phillips, but we are to pay immediately, even if we are given the exemption of \$400,000 that we are asking for. We are going to pay our part of the national expenses. And concerning that point, we are convinced that we are not dodging taxation in any way and that the credit unions are to pay a little more than the private corporation in that sense; you should not be too preoccupied with the possibility of a credit union having large reserves; here again, because of the weight of democracy, it is very, very unlikely. In the past when we had no tax to pay on amounts held in reserve, we did not build exceptionally large or exaggerated reserves. I do not see why when subjected to taxes, we should change our policy. The danger is rather that our credit unions may try to avoid holding money in their reserves so as not to pay tax, and that is our own business, but in an inverse sense; there is no danger of building exaggerated reserves.

**Senator Beaubien:** Mr. Morin, there is no danger of you building exaggerated reserves. There is no use in objecting to a ceiling because that is what you want, you want to have a ceiling.

**The Chairman:** I did not realize that it would take so many words to say "yes" or "no".

**Senator Beaubien:** We are not lawyers.

**The Chairman:** We put a question to you, to which you replied in your own good time. Having regard to our demand for some expedition, the answer we would like is "yes" or "no". If you say "no", we would like to know why you say "no", if that is not asking too much.

**Mr. Morin:** Yes, Senator, it's acceptable, but it doesn't appear necessary to us.

**The Chairman:** The brief filed on behalf of the caisses populaires and credit unions contains a statement that the restriction in section 137(6)(b)(I) with reference to

carrying on business in one province should be deleted. Could we have, shortly, an answer?

**Mr. Dierker:** Mr. Chairman, shortly, the appropriate amendment has been proposed.

**The Chairman:** I really want to know why?

**Mr. Dierker:** Why the credit unions and caisses populaires feel this way?

**The Chairman:** No; why should there be a restriction?

**Mr. Dierker:** I do not know why there should be; there was one in Bill C-259 and we requested its deletion. The amendments which have now been filed satisfy that request.

**The Chairman:** Then there is the obvious answer, and it is a short one.

Are there any other points in your brief which you wish to discuss at this time?

**Mr. May:** Mr. Chairman, given the amendments which were introduced yesterday, we have touched on the two very complex areas which remain of much concern to us. I think we really have presented the issues which remain outstanding.

Your suggestion that we should make a further submission in writing to the committee with respect to these two outstanding areas in an endeavour to clarify by example and supplementary wording will be followed through immediately.

**The Chairman:** Does this conclude your presentation? You have expressed the view that we should pay full attention to the amendments which were tabled yesterday. We have not seen them yet, but we will later today and will certainly look at them with every consideration.

**Mr. May:** Very good. We appreciate the opportunity to appear and your consideration.

**The Chairman:** Thank you very much.

**The Chairman:** We now have the Co-operative Union of Canada. Mr. Melvin, sitting on my immediate right, is the President. Mr. Legere is the President of Le Conseil Canadien de la Cooperation. Mr. Dierker will also take part in the discussion.

Others present from the Co-operative Union are: Mr. Richard Newberry, Controller, Co-op Federee de Quebec; Mr. R. H. D. Phillips, Research Director, Saskatchewan Wheat Pool; Mr. Ed. Chorney, Treasurer, United Co-operatives of Ontario; Mr. John R. Moore, Treasurer, Maritime Co-operative Services; Mr. T. Pat Bell, Treasurer, Federated Co-operatives Ltd.; Mr. G. L. Harrold, President, Alberta Wheat Pool; and Mr. J. A. Dionne, President, Federation des Magasins Co-op.

Mr. Melvin, will you make your opening statement please?



**Mr. Breen Melvin, President, Co-operative Union of Canada:** Thank you very much, Mr. Chairman and honourable members of the committee. We appreciate very much the opportunity to appear before you this morning. I would like to make two or three brief comments, and then, if I may, sir, ask Mr. Legere if he would care to say a word or two. I should point out that it may not be entirely clear to you that this is a joint presentation of the Co-operative Union of Canada and Le Conseil canadien de la Coopération; and Mr. Legere would like to speak on behalf of his organization.

May I say first of all that the co-operative movement, as represented by those appearing before you and the organizations which they represent, is very greatly concerned at the impact of the provisions concerning co-operatives in Bill C-259 on their successful operation. We are troubled considerably because some provisions appear to require that co-operatives should forsake their particular nature and become oriented toward the return of earnings on investment, rather than the return of savings to members.

Co-operatives have always been user-member organizations and the patronage-dividend method has been employed to return earnings to them. It appears that the proposed amendments would change this emphasis and require that these returns be made on the basis of investment interest.

Secondly, we are quite concerned that the amendments seem to veer away from what we have understood to be the traditional position of Canadian society and of the Government of Canada. That position is that there are three forms of economic enterprise in our society: The public sector; the private sector; and there is the co-operative sector, which is much smaller than the others.

This has been stated on occasion by people in very responsible positions in Government. We have been happy to hear that and have accepted that it was the case. It would appear that the co-operative sector may suffer very greatly. The suggestion might even be taken from the amendments that it has not an important role and really there are only two sectors in the economy as far as business is concerned.

**Senator Connolly:** What are those two?

**Mr. Melvin:** The public sector and the private sector.

**Senator Connolly:** Where would you fit in?

**Mr. Melvin:** If the amendments are carried forward and become law, it would appear that we would be over into the private sector of the economy without any recognition of the peculiar features of a co-operative business enterprise.

The third point that I should like to make is that upon inquiry from the International Co-operative Alliance, which is the world federation of co-operatives, and is well posted on the activities of co-operatives, we have been advised that although the taxation position of co-operatives in different countries varies somewhat, even considerably, in no other country is a minimum tax base or minimum earnings imputed to co-operatives by law.

This seems to us to be a peculiar and certainly a very different situation. This is one that does not take into consideration the nature of the kind of enterprise in which we are engaged.

Those are the three comments that I wished to make by way of introduction.

**The Chairman:** Do you say that there is no element of earnings in the operation of a co-operative?

**Mr. Melvin:** No. I would not go that far.

**The Chairman:** What happens to the earnings, if there are some?

**Mr. Melvin:** I would suggest that in the case of a co-operative, the decision of the members of the co-operative, which is made voluntarily, is that earnings would be distributed among them—and they are also the owners—rather than on the basis of investment they have made by way of capital investment or purchase of shares; that it should be distributed to them on the basis of the business they do with the co-operative. In other words, use the patronage dividend device to make this distribution.

**The Chairman:** Would you not agree that if you are distributing earnings, the person who receives them should be subject to tax?

**Mr. Melvin:** This applies to the great majority of members of co-operatives, particularly farm marketing or fishery co-operatives. They take these earnings into consideration when determining their own income tax position each year.

**The Chairman:** Do they take them into consideration at less than the full amount of the earnings that are paid out?

**Mr. Melvin:** No. The patronage dividend which they receive reduces the cost of their operation and so becomes a part of the calculation of their income for the year.

**The Chairman:** When you say “part of the calculation”, what do you mean?

**Mr. Melvin:** It becomes involved in the procedure, in the calculation of their income.

**The Chairman:** Can you give us an illustration?

**Mr. Melvin:** Perhaps I should ask Mr. Dierker to deal with this matter in more technical terms.

**The Chairman:** Mr. Dierker, let us take an example. Supposing a co-operative has earnings of, say, \$100,000. Would you please follow that through and tell us what happens to it?

**Mr. Dierker:** If the co-operatives propose that they be able to distribute this as patronage refunds to their members, and if they are so distributed, the \$100,000 will be taken into individual income.

**The Chairman:** Will be taken into individual income?

**Mr. Dierker:** Yes.

**Senator Beaubien:** Is there any tax paid on it first?

**Mr. Dierker:** You mean under the proposal or under this example? If you have \$100,000 of earnings at today's date, a co-operative is permitted to pay this out as a patronage refund, subject to the limitation that they cannot pay patronage refunds so as to reduce their income below a figure equal to 3 per cent of capital employed.

**Senator Burchill:** On what basis is the patronage dividend based? How is it calculated?

**Mr. Dierker:** The patronage dividend is calculated on the business done by the member with the co-operative.

**The Chairman:** And he pays tax on his marginal rate.

**Senator Burchill:** I get a patronage dividend, and I also have to pay taxes. I wondered what the patronage dividend was based on. I could never figure it out.

**Mr. Dierker:** The patronage dividend is a deduction to the co-operative as an expense, and it will be taken into your personal income.

**Senator Beaubien:** Supposing I buy a bulldozer at a cost of \$60,000. At the end of the year the co-operative makes some money and I get something back. Do I show that as a reduction in the cost of the bulldozer, or do I show it as coming in as income?

**Mr. Dierker:** You will show it as coming in as taxable income.

**The Chairman:** Let us take the example of \$100,000 of earnings. There is a limitation on the amount of that you can pay out in patronage dividends.

**Mr. Dierker:** That is correct.

**The Chairman:** Is or is not the rest of it, in the hands of the co-operative, subject to tax?

**Mr. Dierker:** If it is kept in the hands of the co-operatives, it is subject to tax at the standard corporate rate. However, a co-operative can distribute this as a patronage refund after it sets aside the minimum capital employed.

**The Chairman:** What is the character of the patronage refund in the hands of the co-operative and in the hands of the recipient?

**Mr. Dierker:** In the hands of the co-operative, it is an expense. In the hands of the recipient, it is income.

**The Chairman:** The whole of the \$100,000 would not be subject to any tax in the hands of the co-operative?

**Mr. Dierker:** Except for the capital employed feature, yes.

**The Chairman:** With respect to the capital employed feature, the limitation governs the amount that is paid out in patronage dividends?

**Mr. Dierker:** That is correct.

**The Chairman:** But to the co-operative, what is its character in the hands of the co-operative the instant before they pay it out? Is it taxable to the co-operative?

**Mr. Dierker:** Yes, it is. There are no deductions.

**Senator Connolly:** Taxable at the corporate rate?

**Mr. Dierker:** Yes.

**Senator Connolly:** If it is not a small business company. If it does not comply, it pays the 51 per cent or 52 per cent, or whatever it is?

**Mr. Dierker:** That is correct. As a point of clarification, the presentation being made here today, once we get into it properly, is not on the basis that a co-operative should not pay tax. We are not quarreling about the payment of tax on moneys kept in the hands of the co-operative; nor are we quarreling about the payment of tax on business done with non-members.

The point we are quarreling about is that there should be a capital employed concept put in between a co-operative and the members, limiting the return that can be paid to members.

Basically, what we are saying is that a co-operative is a form of partnership, a large corporate partnership, and that the earnings be in the hands of the members.

**The Chairman:** Why limit the amount that is being paid by a co-operative to a member if the whole amount in the hands of the member is subject to his marginal rate of income tax, without any credits?

**Mr. Dierker:** You mean why is this done?

**The Chairman:** Yes. Put it this way: Why should it be done?

**Mr. Dierker:** We do not think it should be done. Our position is that it should not be done. Perhaps, Mr. Chairman, I could explain the features of Bill C-259 with respect to capital employed?

**The Chairman:** Yes.

**Mr. Dierker:** Under the present proposal a co-operative is restricted in the amount of patronage refund that it can pay to its members on the business done with the members, so that it cannot reduce the income below a figure equalling 5 per cent of capital employed.

To the best of my knowledge, this is the only place where in taxation law we have a tax imposed directly on capital where capital is deemed to produce some money. If you take a corporation as an example, honourable senators, there is no requirement on a corporation to produce some money on its capital; it can distribute it. There is, however, a limit imposed on a co-operative.

A co-operative can do away with this 5 per cent limit if it pays out this 5 per cent by way of interest on shares or on member equity, so called. It is important to realize that this payment must be by way of interest. If the co-operative pays a return to its members on capital by way of dividends it cannot reduce this 5 per cent. If it pays interest, however, on its share capital it can in fact reduce its income down to zero.



It is a most peculiar feature because what the tax provision says is that co-operatives may zero out their taxable income if they do two things: firstly, pay interest on member equity equal to 5 per cent; and, secondly, they can then pay the balance out as patronage refunds.

**Senator Connolly:** Would you give us an example of that?

**Mr. Dierker:** Let us take \$100,000 . . .

**Senator Connolly:** Please identify the \$100,000. This is earnings of the co-operative for the year?

**Mr. Dierker:** At the end of the year.

**Senator Connolly:** All right.

**Mr. Dierker:** Let us take the figure of \$100,000 before any distribution. Now, supposing, for the purposes of this example, that the 5 per cent of capital employed amounted to \$20,000; at a 50 per cent rate of taxation your tax would amount to \$10,000. That would leave you \$80,000 that you could pay out as patronage refund resulting in an expense to the co-operative and income to the members. You can pay tax on this \$20,000 that you have as your capital employed feature, and at the rate of 50 per cent that will be \$10,000, or if we pay \$20,000 out in interest we can simply reduce that down to zero, provided we paid the interest to the members.

**Senator Walker:** You are going a little fast. Just go back over that again, please.

**Mr. Dierker:** You can do two things with the \$20,000. You can pay tax on it . . .

**Senator Connolly:** And then is the balance available for distribution?

**Mr. Dierker:** Well, we will not talk about distribution right now.

You can pay tax on the \$20,000 or it can go into a tax-paying reserve, or you can get rid of it by paying interest on your member equity; not by paying dividends, but by paying interest on member equity.

**The Chairman:** It will then become a deductible expense.

**Mr. Dierker:** Yes, it will become an expense for the co-operative and income to the member. Now, if you put that \$10,000 into your reserve and then pay it out as patronage refunds, there is no tax credit on it. If a corporation paid it out there would be a tax credit, but in the case of a co-operative paying it out as a patronage refund there is no tax credit. If a co-operative pays it into its reserve, that \$10,000 would be re-taxed every year on the basis of the capital employed.

Our position is simply this: If the Government permits the reduction of the \$20,000 by payment of interest to the members, why will it not let us pay it out as patronage refund and have it taxable in the hands of the members?

**The Chairman:** It would accomplish the same thing.

**Senator Lang:** It would avoid double taxation.

**Mr. Dierker:** It does create some serious problems in the capital employed formula as it is presently drafted.

One of the things that honourable senators should appreciate is that the increased tax load is not 3 to 5 per cent. As I mentioned, there is a present 3 per cent capital employed formula. It is not simply a 3 to 5 per cent increase. The formula has been substantially adjusted.

At the present time the interest that you can deduct, for instance, is the interest on borrowed moneys, other than to banks or credit unions. This is no longer permitted. Basically, there has been an addition to what must be included in capital employed and a reduction in what you can deduct.

**The Chairman:** Mr. Dierker, if we took your example or your suggestion, that if you do not have this capital formula limiting the amount of the patronage dividend and the whole amount were paid out as a patronage dividend, in the hands of the recipient that would be subject to his marginal rate of tax and the co-operative would pay no tax.

**Mr. Dierker:** Except for tax on non-member business.

**The Chairman:** Yes, non-member business and tax on moneys put into tax-paying reserves.

**Mr. Dierker:** Yes. There is one refinement that I should bring to your attention. Patronage refunds paid on consumer items—groceries, and so forth—are not taxable income under the proposal.

**The Chairman:** How would it work? Does the member get a credit from the co-operative whereby he can pick up groceries, or how does it work?

**Mr. Dierker:** In some cases, that is correct. In other cases, however, there is a general allocation to the member which can be re-invested in the co-operative. In some cases it is a cash payment.

**The Chairman:** In making your calculation of the credit to the member, the calculation in the first instance is made in dollars, is it?

**Mr. Dierker:** That is right.

**The Chairman:** And then the other thing is how he uses it.

**Mr. Dierker:** That is right.

**The Chairman:** He can use it to buy groceries, and I assume he gets substantial discounts because he is a member.

**Mr. Dierker:** Not generally, no.

**Senator Burchill:** Just to go back to the question of how this calculation is made: Patronage refund means it is calculated on the basis of the business you do with the co-operative. You purchase goods from the co-operative and you also sell to the co-operative so you have a two-way street. Now, when you say the business which is done, is that the total of your buying and your selling?



**Mr. Dierker:** This would be correct, yes. What you would do, senator, is you would categorize . . .

**Senator Connolly:** Who is "you"?

**Mr. Dierker:** The co-operative would categorize the various methods of business. You would categorize the purchases; you would categorize the selling, and you could have different refund rates in respect of the different activities.

**The Chairman:** Members may sell their product or whatever their production may be to the co-operative. Now, do they have a preferred position in selling as opposed to a non-member?

**Mr. Dierker:** I would think that the answer would have to be "no" to that. There are some provisions whereby some co-operatives in Canada do, under contract, require members to deal with the co-operative and to that extent there could be a preference in the sense of making the facilities of the co-operative available to members as distinct from non-members.

**The Chairman:** How do you calculate the non-members' business? That must be quite an item of accounting.

**Mr. Dierker:** It is a detailed item of accounting. All business done with non-members has to be accounted for and, generally speaking, what happens is that you calculate the same percentage of earnings of member business as of non-member business and lump them together. There is no way that you can divide . . .

**The Chairman:** You have to make the calculations on indirect items?

**Mr. Dierker:** That is right.

**The Chairman:** And I take it that those allocations are approved by the Income Tax Department?

**Mr. Dierker:** They are reviewed annually, anyway.

**The Chairman:** Well, perhaps "approved" is the wrong word. In other words, if the taxes were paid and the moneys were accepted without disputing the assessment.

**Mr. Dierker:** That is right.

One of the points that concerns co-operatives greatly is that this proposal will have the effect of substantially reducing the amount of moneys available for patronage refund. As some of you gentlemen may know, co-operatives get their equity capital—their corporate capital—by way of the re-investment of patronage refunds. The moment the patronage refunds are reduced the equity capital, of course, is being reduced. This is a serious consequence of this. The equity capital in a co-operative continues to revolve for the payment of members' equities.

**The Chairman:** The newspaper this morning, which is the only source we have at the moment of the proposed

amendment, recites this, and perhaps you will tell me whether it is reasonably accurate and what you think of it:

The Government now proposes that patronage dividends could not reduce income after interest to members, below the lesser of: 5 per cent of members' capital employed, or one-third of the income before patronage dividends, but after interest to members.

Is that reasonably accurate?

**Mr. Dierker:** That is accurate. There was an amendment before the house yesterday to provide that a co-operative has a right to elect the tax base on which it will pay, either the five per cent capital employed or the one-third income.

**The Chairman:** Is that satisfactory to the co-ops?

**Mr. Dierker:** No, it is not.

**The Chairman:** What is there that is not satisfactory? The fact that they use the capital base at all? Is that it?

**Hon. Mr. Phillips:** Would you appreciate the opportunity of choosing between Scylla and Charybdis, between the rock and the swirling waters? Is that the option given to you?

**Mr. Dierker:** That basically is the option given to us.

**The Chairman:** You mean you are going to drown in any event.

**Senator Connolly:** Have you stopped beating your wife yet?

**Mr. Dierker:** The one-third income situation is of assistance to co-operatives who are in very serious financial situations. It will help when you are at the door of bankruptcy on a very low income basis. Keep in mind, gentlemen, that we got these late last evening, but the calculations we have been able to make indicate that they are not satisfactory in the general operations of co-operatives.

**Senator Connolly:** Have you had discussions with officials in the Department of Finance about these points?

**Mr. Dierker:** Yes, we have.

**Senator Connolly:** Before these amendments were brought in?

**Mr. Dierker:** Yes, we did. The proposal the co-operatives made to the Department of Finance and to Mr. Benson was that co-operatives be permitted to deduct all patronage refunds made, and that at the time of the payment of these patronage refunds they pay to the government a withholding tax. One of the problems, as you appreciate, in patronage refunds, is that there has been a suggestion that if co-operatives pay patronage refunds the payment of the tax is delayed. In a corporation you have the payment of tax and then the distribution of dividends, and the ultimate tax

settling is fairly prompt. In the case of the co-operatives the patronage refund will be made and will be taken into income only the year after. We have attempted to answer this by saying that at the time of making the patronage refund the co-operative pay to the government a withholding tax, which would be creditable to members for the payment of tax on these patronage refunds, and get rid of the capital employed formula once and for all.

**The Chairman:** I notice, too, it is proposed in the amendments to phase out the additional liability created by this formula. What the paper says is:

Phasing in the new income tax rules in this way will give the credit unions and co-operatives time to adjust to their new taxable status.

The phasing in is that the rebates will be phased in over ten years by collecting one-tenth of the increase in the first year, two-tenths in the second year and so on. What comment have you to make on that? This is really attempting to make the treatment or the medicine more palatable. Or does it?

**Mr. Dierker:** It certainly is a form of carrot; there is no question about that. That statement is not in legislative form at the present time. We are presuming that it will apply to co-operatives. We have had some indication that it will.

**The Chairman:** Was this a request you had made in this form?

**Mr. Dierker:** No, we did not make this request. Our request has always been that the government should get rid of the capital employed formula once and for all and deal with patronage refunds as an expense to the co-operative doing business. Keep in mind that under all the incorporating statutes—and again we are talking about provincial legislation, as we were with the credit unions—co-operatives must allocate to their members the surplus earnings at the end of the year. It raises some horrendous problems when you consider that the Government is suggesting that the co-operatives keep one-third of their income as a form of discretionary income, which may well be in conflict with provincial statutes requiring them to distribute.

**The Chairman:** I take it these are co-operatives whose chief business is the sale of, say, farming machinery and equipment of all kinds?

**Mr. Dierker:** Yes, there are.

**The Chairman:** If you take the two positions, the co-operative position taxwise and that of the person who is not a co-operative but has a general business operation, in a general business operation the corporation would pay income tax on its earnings, and the shareholder receiving dividends would pay income tax at the marginal rate. For the co-operative engaged in the same field, your suggestion is that the only income tax on the co-op would be to the extent that they set aside tax paid reserves, they would have to clear them for tax purposes at regu-

lar rates, and so long as the capital formula applies that amount created by that formula would be taxable income. Is that right?

**Mr. Dierker:** This is what is proposed.

**The Chairman:** The sum total of those taxes on the co-op would be, I suggest, substantially less than the private individual engaged in that business would pay.

**Mr. Dierker:** To answer the question whether it is less or not, you have to take into consideration the corporation and its shareholder, and the co-operative and its member or shareholder. A corporation which has in fact paid tax can then pay out a dividend, in respect of which the member will receive a dividend tax credit, so that ultimately we get down to not too far from personal tax rates.

**The Chairman:** You think the dividend tax credit the shareholder would receive would balance out any advantage the co-op has in operating according to its methods and the lower rate of corporate tax it would be subjected to? That would be a balancing out in the hands of the shareholder.

**Mr. Dierker:** The rate of tax in the co-operative and in the corporation will be the same. The quantum of tax actually paid may be less after the co-operative has paid out patronage refunds.

**Senator Lang:** Otherwise co-operatives would incorporate, would they not?

**Mr. Dierker:** Would incorporate?

**Senator Lang:** Yes, if your tax was the same or greater than a corporation a co-operative could incorporate.

**Mr. Dierker:** This is right. Well, co-operatives are corporate bodies.

**Senator Lang:** But they could incorporate as a normal corporation.

**Mr. Dierker:** That is right.

**The Chairman:** If they did they would pay more taxes.

**Mr. Dierker:** That is not necessarily a correct statement, senator, because the patronage refund provision is available to corporations, though it is primarily adapted for co-operative methods of operation. Any corporation can make volume discounts.

**The Chairman:** What I am getting at is that the patronage dividend really parallels the dividend that a regular corporation might pay to the shareholders, does it not, having regard to the consequences in the hands of the receiver of the dividend?

**Mr. Dierker:** It certainly parallels it to the extent that it is a flowing out of the earnings into the hands of the individual.

**The Chairman:** Yes, and it is subject to whatever his marginal rate of tax might be.

**Mr. Dierker:** That is correct.



**Hon. Mr. Phillips:** You are midway between the reactionary and the Marxist, is that not it?

**Mr. Dierker:** That depends on which philosophy book I am reading.

**The Chairman:** Which one are you reading?

**Mr. Dierker:** There is one thing, gentlemen, that you should keep in mind when we talk about tax credits. It is that, under this proposal, and even under the amendments to the proposal on the basis of which co-operatives have the right to elect to pay this tax on this one-third of income, if they do elect to pay that taxes and then do elect to distribute this as patronage refund, there is no tax credit to the co-operative for that.

**The Chairman:** That is right.

**Mr. Dierker:** And keep in mind that if you pay tax on one-third of your income, that is one-sixth of your income in respect of which there will be no tax credit at all.

**The Chairman:** There appear to be balancing-out features. When the patronage dividend is in the hands of the receiver, he is not entitled to a dividend tax credit.

**Mr. Dierker:** We are not concerned with the payment of the patronage refunds that operate as an expense to the co-operative. What we are concerned about is the patronage refunds which could, if paid out of tax paid surplus; and there is no credit given for that. Secondly, if you put that money into reserves and do not pay it out as a patronage refund, you will every year have to pay tax on the money you put into reserve. That is one of the inconsistencies.

**Hon. Mr. Phillips:** I was interested in the first point raised. Why do we employ this concept of capital employed, as against all other taxing nations dealing with co-operatives who do not? What is the origin of it?

**Mr. Dierker:** It commenced in 1946.

**The Chairman:** The McDougall Commission?

**Mr. Dierker:** No. The McDougall Commission did not recommend it.

**The Chairman:** It was before them as part of their material.

**Mr. Dierker:** It came in in the form of legislation after the McDougall Commission had reported.

**The Chairman:** Yes.

**Mr. Dierker:** But the McDougall Commission did not recommend a capital employed tax.

**Senator Connolly:** Why?

**Mr. R. H. D. Phillips, Research Director, Saskatchewan Wheat Pool:** Mr. Chairman, could I respond to that? My understanding of the history of this, Senator Phillips, is that following the McDougall Commission the recom-

mendation was that co-operatives ought in fact to be able to distribute earnings to members and they would then become taxable in the recipients hands. But somewhere betwixt that recommendation and the legislation which followed, there was introduced the proposition that, notwithstanding, a co-operative, because it is a corporate enterprise, has corporate income, and this was a measure of that corporate income, and my understanding is that the 3 per cent rate which now applies was at that time a reasonable long-term rate, in long-term government bonds.

**Senator Lang:** That is right.

**Mr. R. H. D. Phillips:** You will recall that the white paper suggested that the percentage ought to be related to the Government's Treasury bills now.

**The Chairman:** Yes.

**Mr. R. H. D. Phillips:** And that the legislation advance is the number of five, which is somewhere midpoint in this and has no more rationale, in my view, than that. That is the history, as I understand it.

**The Chairman:** I know something about the McDougall Commission, because I was appearing before it on behalf of some people.

**Mr. R. H. D. Phillips:** I would like, if I may, Mr. Chairman, to respond to the question you had about the recurrence of the patronage dividend from a co-operative to its member, as being similar to a dividend on share capital in an ordinary corporation. This is an illusion, Mr. Chairman, and it is in this respect that the return paid by an ordinary corporation is a return on the basis of the recipient's portion of its ownership. The return in respect to a co-operative is a sharing of the total earnings, in the same way, if I may put it, that a firm of lawyers may share earnings among the partners.

**The Chairman:** Except that some of them do not share them equally.

**Mr. R. H. D. Phillips:** They do not in a co-operative, either. They share them on the basis of their participation in the business, and I presume that is how lawyers do it.

**The Chairman:** The shareholders share in the earnings of the corporation on the basis of the percentage of their holdings.

**Mr. R. H. D. Phillips:** That is right, but in a co-operative the shareholders have elected not to receive a return on the shares, literally, and this is allowed by law.

**The Chairman:** Are there any other questions on that point?

**Senator Connolly:** You say that in a co-operative the participants elect not to take a return on their interest in the co-operative?

**Mr. R. H. D. Phillips:** In some co-operatives, yes.



**Senator Connolly:** Surely, the patronage dividend is a return to them?

**Senator Burchill:** Not on the shares.

**Mr. Dierker:** Not on the shares. The patronage refund has no relationship to ownership.

**The Chairman:** If it does not, then everyone would get the same amount?

**Mr. Dierker:** No. The amount varies in accordance with the business you had done with the co-op.

**Senator Connolly:** It is based on use, on use of the co-operative.

**Mr. Dierker:** That is right.

**Senator Connolly:** The yardstick is variable from year to year, depending upon the amount of business you do with the co-operative.

**Mr. Dierker:** Exactly.

**Senator Connolly:** While in the case of a share, if the shareholder does not buy any more shares from one year to another, he gets the same percentage as he always would get in relation to the whole?

**Mr. Dierker:** That is correct.

**Senator Burchill:** Mr. Dierker, you indicated that you thought that possibly the change in Bill C-259 was due to the fact that your payments were not made in time. There was a factor of time there, in that your payments were not made until the following year? Did you not say something like that?

**Mr. Dierker:** I suggested that we proposed to the Government a system whereby co-operatives be permitted to pay out patronage refunds without reference to capital employed. At that time they paid a 10 per cent withholding tax.

**Senator Burchill:** But why is there that year's delay in sending in your tax? Why is it not possible to send it in in the year of the business?

**Mr. Dierker:** There is not a year. It is simply that the co-operative declares the patronage refund at the end of the year. It goes into the individual's next tax return. It goes immediately into the individual's next tax return.

**Senator Burchill:** It goes into the year in which you are operating?

**Mr. Dierker:** No, it goes into the year in which you receive the patronage refund, which may be the next year. It becomes income when it is made.

**The Chairman:** What you are really asking us is that we should support an amendment which would remove the capital formula for determining income?

**Mr. Dierker:** That is correct.

**The Chairman:** Is that right?

**Mr. Dierker:** That is exactly it.

**The Chairman:** Is there anything else? Let us assume that we did that. Whether the Government accepts it or not is another question. When it comes down to an issue as between the two Houses, and they both stand firm, that is another question that will have to be resolved at that time. There are all these interesting possibilities. Is there any other point?

**Mr. Dierker:** Mr. Chairman, if co-operatives were permitted to deduct patronage refunds without reference to capital employed, the balance of the related problems are automatically eliminated. If it stays in, there are many problems. As I indicated, there is no passing on of credit; you immediately get into the \$400,000 limit and we can go through the same type of discussion as we did with the credit unions. You have a mare's nest of problems in connection with capital employed.

**The Chairman:** Alternatively, you would want us to look at this on the basis that you might not achieve your objective in having the capital formula removed. You might have some second best course that you would want to put forward, is that right? Or, is it all or nothing?

**Mr. Dierker:** That is a difficult question for me to answer. We would hope that it is all. We would hope that we would get rid of capital employed. However, we have to be practical. If it has not been done away with in the amendments proposed yesterday by Mr. Benson, we would think there are substantial modifications that are required to the capital employed formula.

**The Chairman:** I will come back to that in a moment. Is there any way in which you could give an estimate as to what the difference in tax revenue would be, to the Government, between using the capital formula and not using it?

**Mr. Dierker:** I do not know. I do not think we could, because you have to estimate then what co-operatives would do. You have to keep in mind that the bill provides that co-operatives may, in fact, eliminate their taxable income to zero, providing they pay it out in interest. So we then have to guess whether co-operatives will pay interest, and, if so, how much. I do not know that anybody could really make an intelligent guess on that.

**The Chairman:** It would be practicable to follow that course and pay it out in interest, would it not?

**Mr. Dierker:** We think it is practical as a corporate move, but it is not what the co-operatives wish to do because they wish to pay out the earnings as a return on patronage and not as a return on capital, and the interest, of course, is a return on capital. Secondly, most co-operatives are incorporated on a share basis. Dividends are not deductible from this, even if they wanted to pay it out.

**The Chairman:** No, but what you said was that you could reduce your tax in the co-operative down to zero if you paid out your earnings in the patronage dividends.

**Mr. Dierker:** Right.

**Mr. Melvin:** The problem there, Mr. Chairman, is that for co-operatives this would amount to a voluntary

abandonment of their essential character. That they are certainly not willing to do.

**The Chairman:** Well, we are just exploring the possibilities here. Mr. Dierker gave the answer that the co-operative could reduce its tax liabilities to zero by paying out its earnings in patronage dividends. I am just pursuing that. What are the objections to following that course. Would they run out of working capital, or what?

**Mr. Dierker:** To pay it out as patronage refunds?

**The Chairman:** Yes.

**Mr. Dierker:** I think the comment I made was that co-operatives could reduce their taxable income to zero by paying interest on member equity to the extent of 5 per cent on capital employed and then paying the balance out as patronage refunds.

**The Chairman:** Yes.

**Mr. Dierker:** If the co-operative could pay out everything as patronage refunds, there would be no problem in the co-operative structure. From the best guesses that we can make, if this is permitted together with something in the order of a 10 per cent withholding tax, we should be very parallel to what the Government has proposed.

**Hon. Mr. Phillips:** Admittedly certain portions of the patronage dividends are not taxable in the hands of the recipients.

**Mr. Dierker:** That is right.

**Hon. Mr. Phillips:** There is a variability there with such things as foods and so on.

**Mr. Dierker:** That is right.

**Hon. Mr. Phillips:** Incidentally, is counsel to Seagram suggesting that beverages should be included in the patronage dividend deductions, or is it solely for pure foods and groceries?

**The Chairman:** Of course, you can always spend your dividends on the acquisition of products.

**Hon. Mr. Phillips:** I just wanted to know how it works out for patronage dividends.

**Mr. Poissant:** Mr. Dierker, am I right that you were suggesting that the real problem is a deferral of taxes, because some of the recipients of the patronage dividends would account for that revenue only in the following year although they are allowed to take it as an expense in the previous year. You have 12 months after the year-end to consider the payment of patronage dividends. The ordinary company would pay interest this year, would deduct interest this year and would calculate its income tax in this year, whereas you calculate your income and take into account only the patronage dividends paid in the following 12 months.

**Mr. Dierker:** That is correct.

**Mr. Poissant:** So there is a deferral of tax because they permit you to do that. Now you say you compro-

mise this deferral of tax which is the problem, really. So now we are willing to have a withholding tax on the amount paid, and what was the amount of tax you suggested? Was it 10 per cent?

**Mr. Dierker:** Yes, 10 per cent withholding tax.

**Mr. Poissant:** And that would be paid in the year in which you take into account the expenses. For example, in year one, even though the patronage dividend has not yet been paid, it will be paid in year two because you withhold the patronage dividend in year one.

**Mr. Dierker:** We would pay the withholding tax at the time of paying the patronage refunds.

**Mr. Poissant:** Which is still a year after, though.

**Mr. Dierker:** No. It should not be.

**Mr. Poissant:** Well, you have up to 12 months after your year-end to consider patronage dividends as an element of expense in a year.

**Mr. Dierker:** In an operating co-operative, the patronage refund is paid through immediately. The problem in deferment is not really in the co-operative. The problem in deferment is when the recipient will take it into his personal income and settle the final tax bill.

**Mr. Poissant:** There are two deferrals involved, I think. There is yours, because you would be allowed to take the expenses in the year after, although they would be taken as the current year's expenses, and then there would be the recipient's, who, it seems to me, would be taxed only in the following year.

**Mr. Dierker:** These things will of necessity balance themselves out as the co-operative operates. The withholding tax would be a compensation.

**Mr. Poissant:** At the time of payment. Well, at least some of the deferral would be reduced.

**Mr. Dierker:** It would be covered up.

**Mr. Poissant:** It would be covered up, yes, and you are suggesting a 10 per cent withholding tax for that purpose.

**Mr. Dierker:** We think that would be an adequate level, yes.

**Hon. Mr. Phillips:** Are the Government records clear on the point that we are the only country using the capital employed method in respect of co-operatives, where co-operatives function?

**Mr. Dierker:** I believe we have made that statement to the Government. They should be cognizant of it.

**The Chairman:** Mr. Dierker, if the capital employed formula were removed, then it would be easier for the co-operatives to reduce their tax liabilities to zero as co-operatives, except where they were creating reserves.

**Mr. Dierker:** That is right, yes.



**The Chairman:** And with respect to non-member business, which, incidentally, there has been no comment on, is non-member business a significant percentage of the total?

**Mr. Dierker:** Referring to across Canada the answer would be no. There are some individual co-operatives where the level is higher, but basically co-operative people have always felt that if the co-operative competes in the business market it should be dealt with as a corporation and as such they have no complaint with regard to income on non-member business.

**Senator Isnor:** The co-operatives do compete in regular business competition, do they not?

**Mr. Dierker:** In the sense of dealing with its members it is providing services to the members that they would otherwise go to some other place for, yes. To that extent it competes.

**Senator Isnor:** But dealing with it from the general public point of view, you cater to the public in general, do you not?

**Mr. Melvin:** The doors are open, sir, to the public, particularly in consumer co-operatives. To the extent that the public comes to the co-operative to make its purchases the co-operative is competing successfully and is quite prepared to pay tax on the earnings from that non-member business.

**Senator Isnor:** But your records would not show that.

**The Chairman:** Yes, they do.

**Mr. Dierker:** Yes. Our records show every dollar's worth of business. It is required that it be totally calculated.

**Senator Carter:** Do you keep the same accounts for non-members as for members? You distribute dividends in proportion to the amount of business each member has?

**Mr. Dierker:** Right.

**Senator Carter:** So you must keep a separate account for each member?

**Mr. Dierker:** That is correct.

**Senator Carter:** How do you find out? How do you know?

**Mr. Dierker:** Well, each member has his own membership number and when he makes a purchase this number is recorded and a computation is made at the end of a period to show the business done by that member with the co-operative. If it is a non-member, it is merely calculated in the total for non-member business.

**Senator Burchill:** Are you sure that taxes are paid on non-member business?

**Mr. Dierker:** Oh, yes, tax is paid on non-member business.

**The Chairman:** If there are no further questions on this point, is there a further point you want to move onto? Do you want to move into the area of modifications in the event that the capital-employed formula is not accepted?

**Mr. Dierker:** Well, I have already mentioned some of the areas that concern us greatly if the capital-employed formula continues. The first is that if co-operatives have to pay tax on this level and pay out patronage refunds out of this tax-free surplus, there is no credit. That to me seems to be inequitable.

**The Chairman:** That is in your brief?

**Mr. Dierker:** That is in our brief. We have also mentioned the fact that tax-paid surplus put into reserves should be annually retaxed. If there is going to be a capital-employed formula, it should be on member-contributed capital in the sense that it is on the moneys made available by the members to the co-operative. If you are going to deem a return on interest to members it should be on the money that they provide. It should not be on tax-paid surpluses which are annually provided. There are such other innocuous things in the capital-employed formula. For instance, if a co-operative revalues its assets for the purposes of security, or something like that, it would appear that this re-evaluation is included in the capital-employed formula and they will have to pay tax on the re-evaluation of their assets. It is a very innocuous package that has been put together. If for instance the co-operative gets a grant such as an area development grant, it goes into capital-employed even though it is not member-contributed capital. These are the things that are objected to.

**Senator Isnor:** But is it not up to you as to how you show it?

**Mr. Dierker:** No, it is provided in the statute that we must include that in the assets for capital-employed calculation.

**The Chairman:** What you are suggesting is that there should be a definition of "capital-employed" for the purposes of these provisions?

**Mr. Dierker:** Our suggestion is that if there has to be a capital-employed formula, the definition should be very simple and it is member-contributed capital, period.

**Hon. Mr. Phillips:** Are you therefore saying that if you retain the capital-employed method that patronage dividends should be assimilated to ordinary dividends? If the government retains the capital-employed method, are you saying that one aspect of the relief should be that the patronage dividends in the hands of the recipient should be assimilated like ordinary commercial dividends?

**Mr. Dierker:** Only those patronage refunds that come out of tax-paid surplus.



**The Chairman:** But we are not talking about what exists. We are trying to assimilate the position of the person who receives a patronage dividend as opposed to that of the person who receives an ordinary dividend—in other words a dividend tax credit.

**Mr. Dierker:** Well, you could not have a dividend tax credit for those patronage refunds that act as an expense for co-operative income, but you should have a dividend tax credit for those patronage refunds that the co-operative pays out of tax-paid surpluses. I also want to reinforce the comment that despite these objections, co-operatives basically object to the concept that their form of capital must have a computed return. That is in a nutshell.

**Senator Walker:** It is the change in principle that you object to?

**Mr. Dierker:** Well, the capital-employed formula as it presently exists, we object to its existing and to its continuing to exist.

**The Chairman:** Mr. Dierker, I was wondering if making the assumption that the capital-employed formula continues, you could do this sort of thing; could you give us the shortest statement in the world—other than just “yes” or “no”—say, four points as to modifications, without any development.

**Mr. Dierker:** Would you like to have that in writing?

**The Chairman:** Yes, and as quickly as we can get it.

**Mr. Dierker:** Within the next day or two.

**Mr. Martin Legere, Chairman, The Canadian Council of Cooperatives:** Mr. Chairman, as it is already midday, I will be brief.

First, I ought to thank you very sincerely for the wonderful welcome that you have given me.

We are happy to see that there have been some amendments since yesterday proposed for the bill, however we wish to tell you frankly that we are not satisfied with the proposed amendments, as I have the impression that the mistake is very simply being moved from place to place. I believe that it has still been forgotten,—and we have to say it again for the hundredth time perhaps—that there is a distinction to be made between a co-operative institution and capitalist institution. I believe that the problem is precisely at this stage where the distinction should be made, and I believe that the law-makers ought to be ready to introduce the amendments we are asking for. Moreover, I believe that the social role of cooperatives should also be considered.

I also believe that, in our country where a just society is preached, that consideration should be given to the fact that cooperatives and credit unions belong in this context. Unfortunately, in Bill C-259, no account has been made of the social fact of the cooperative movements.

Now, honourable Senators, I know your role is precisely to protect society, and we hope that in your recommendations, you will see to it that institutions such as credit

unions and cooperatives, which are institutions really close to the people,—we hope you will see to it, and I say it again; that amendments are made to the present bill, and that our recommendations, which have been presented to you, will be put into execution.

Once again, a very sincere thank-you for your kind welcome.

**The Chairman:** Thank you very much.

**The Chairman:** Honourable senators, it is 12 o'clock and we have one other submission. I am told that if we proceed now, the principals will take not more than ten minutes. If the hearing should take longer than that it will be because of the length of our questions. I am referring now to the submission from Allstate.

Is it agreeable, Mr. Atkinson, that we proceed now on that basis? We do not want to shorten your discussion in any way if you think you can do a reasonable job in ten minutes, we will start now.

I should say, honourable senators, that we have the representatives of Allstate and they are: Mr. John Atkinson, President and Managing Director, Mr. Donald J. McRae, Financial Controller; and Mr. Michael G. Welch, Tax Supervisor.

As a preliminary question I should like to ask Mr. Atkinson if we can have his assurance that we are “in good hands”.

**Mr. John Atkinson, President and Managing Director, Allstate Insurance Company of Canada:** Yes Mr. Chairman.

**The Chairman:** Do you wish to make an opening statement?

**Mr. Atkinson:** Yes. We are in Ottawa, Mr. Chairman and honourable senators, because of the grave concern that we along with our employees, have concerning the effect of the Tax Reform Bill on members of employees' profit-sharing plan. Some provisions of the bill would seem to be punitive and unjust to the employees.

In the brief I refer, of course, to the realization which is deemed to have taken place when the trust delivers to the retiring employee the shares which he has owned beneficially since they were purchased. Also I refer to the taxation of the resulting capital gain as ordinary income rather than as capital gain, thereby doubling the tax—in fact, much more than doubling the tax in most cases, because of the progressive tax rates.

We consider both of these provisions inequitable for reasons which are laid out in the submission before your committee, Mr. Chairman. I would like to emphasize that there is enormous concern and significance to the Canadian employees regarding our employees' profit-sharing plan. It undercuts their effort to provide for themselves in their retirement. This is especially true in the profit-sharing plans which count heavily on investment to achieve a worthwhile and secure retirement.

I would like to make a very brief commentary regarding the employees' profit-sharing plan as compared to the deferred profit-sharing plan. In our company, we have chosen to follow the course of the employees' profit-sharing plan; and 97 per cent of all eligible employees belong to our plan and pay taxes on all elements of income as they continue through their careers with the company. We are taxed on such items as the company's contribution to the plan, dividends from its allocated shares, income from general trust investments, lapsed credits due to those who have withdrawn from the plan before vesting into the plan, and, in the future, on taxable capital gains realized by the trust.

Now, in the deferred plan, the members of those deferred plans do not pay taxes on an incurred income basis. We are not suggesting for a moment that we should receive special benefit as it relates to capital gains under this bill. All we are asking is that the plan, under section 144 does not trigger a capital gains tax.

**The Chairman:** Then, as I understand it, if section 144 provided for a capital gains tax, your objection would not be the same?

**Mr. Atkinson:** That is right. We are accepting the principle of the capital gains tax.

**The Chairman:** The other point which you are objecting to is that a member continues in the plan he has to pay income tax over the entire period of the plan as the plan realizes earnings and as they are attributable to him?

**Mr. Atkinson:** No, we chose to follow this course right from its inception. What we are saying is that under section 144, the treatment of the employees' profit-sharing plan triggers a capital gains tax, and it is taken into income at that point. We feel that this is a mistake. It is so discriminatory as far as the employees' profit-sharing plan is concerned.

**Senator Walker:** The shares which you beneficially hold for the employees, do you pay tax on that all the way along?

**Mr. Atkinson:** Yes, sir.

**The Chairman:** Yes, you pay income tax on them.

**Senator Walker:** And when he benefits from it, it is considered *in toto* and he has to pay tax on it.

**Mr. Atkinson:** One of the great benefits to us was that we paid our taxes as we went along, with the sure feeling that we would not be taxed on it when we took the plan out. Now, we accept this as a continuing principle; but we are deeply concerned about the fact that when the trust delivers the shares to us it triggers an income tax, under this bill, at our personal rates, which is discriminatory.

**The Chairman:** Is this the sum total of your submission?

**Mr. Atkinson:** Yes, this is the sum total.

**Senator Walker:** This must be a mistake.

**Mr. Atkinson:** Yes, we think it is very discriminatory and we have communicated that to the department, but up until the present, it has not been changed.

**The Chairman:** It is hard to figure out the reason or logic behind levying the full income tax rate on a capital gain in this circumstance. This is a capital gain that occurs in the same way that all capital gains occur.

**Senator Cook:** There should be no change in the beneficial ownership because the trust holds the shares for the employees in any event.

**The Chairman:** That is right.

**Senator Walker:** And the tax is paid all the way through.

**Mr. Donald J. McRae, Financial Controller, Allstate Insurance Company of Canada:** I feel there is one other point which we should raise, and that is when the employee retires and is given his shares, under the present legislation, he is going to be taxed at that time without really realizing the sale of those shares; he is going to be taxed right away. Whereas in other types of trust he can get his shares, and he can sell them over a period of time, thus reducing the amount of taxes that we would have to pay. However, under this legislation, as it applies to our fund, he will be taxed as soon as . . .

**Senator Isnor:** Taxed on what?

**Mr. McRae:** On the capital gains.

**The Chairman:** On the capital gains, yes.

**Mr. McRae:** . . . as soon as those shares are delivered to him from the trust.

**Senator Beaubien:** Whether he sells or not.

**Mr. McRae:** Yes.

**The Chairman:** Then, there are two areas of capital gain, one that occurs during the current operation of the plan . . .

**Mr. McRae:** And then again when we sell the shares.

**The Chairman:** Not when you sell the shares, but when they are delivered.

**Mr. Atkinson:** Yes, when they are delivered, but subsequent to that, when we sell them.

**Mr. Michael G. Welch, Tax Supervisor, Allstate Insurance Company of Canada:** If the trust realizes a capital gain, it is passed on to the employee in the year in which it is made and he pays tax on it. The point we are making is that his interest in the plan is of a capital nature, and he has paid tax on everything that went in to the trust. When he receives the shares from his capital interest he should be able to receive them as such and only pay a tax when he disposes of them. They have been his, beneficially, from the beginning. And he should pay tax only when he disposes of them.



Then it should be a capital gains tax, although it is applicable to only half the total amount. So it would appear that there are two inequities here that seem hard to understand.

**The Chairman:** I should point out that under section 52(5), dealing with the cost of property transferred by the trustee under the employees profit sharing plan, it says:

(5) Where any property has, after 1971, been transferred to a beneficiary by a trustee under an employees profit sharing plan,

(a) subsection (1) does not apply in respect of the property;—

And this is the real stickler:

(b) the beneficiary shall be deemed to have acquired the property at a cost to him equal to its fair market value at the time of the transfer.

So, there is a deemed realization at that time.

**Senator Beaubien:** At the time of the transfer, whether he owned it before or not?

**The Chairman:** Whether he sells it or not.

**Mr. Poissant:** Mr. Chairman, upon reading section 144, is this the point that you are making, it is deemed to be a cost acquired by the taxpayer; but is there a deemed realization by the trust at that time?

**Mr. Welch:** That is the second point; then we must consider clause 144(4). First of all it is clause 144(7).

**Mr. Poissant:** Yes, the exemption for capital gain realized from the trust is clause 144(7), a deemed realization by the trust.

**Mr. Welch:** That is a point you would also have to take up after considering clause 144(7). That is the definition of disposition of clause 54(c) should be made applicable to clause 144(4). The definition says "shall be this," but goes on that for greater certainty it does not include:

(v) any transfer of property by virtue of which there is a change in the legal ownership of the property without any change in the beneficial ownership thereof,

That section should be made applicable; it is not at present.

**Mr. Poissant:** That is for the ordinary trust; there is no change in actual ownership.

**Mr. Welch:** That is right; in case clause 144(7) were amended and clause 144(4) remained as it is.

Secondly, clause 52(5) should be made to read as does clause 107(2), which applies to all other trusts. That is, it specifically excludes a deemed realization.

**Mr. Poissant:** Is that a deemed realization in clause 52(5), or a deemed cost to the taxpayer?

**Mr. Welch:** That has relationship to clause 144(7)(f).

We are saying that everything that cannot be attributable to these things will be taxed as income, and it says

the portion, if any, of the increase in the value of property transferred to the beneficiary by the trustee that would have been considered to be a capital gain made by the trust in 1971 if the trustee had sold the property on December 31, 1971 for its fair market value at that time,

**Mr. Poissant:** In other words, we only need the deemed realization by the trust, because it would be in one of the exceptions. You are suggesting that this is ordinary income because it says that it is not in one of the exceptions. It is not a capital gain realized by the trust. Clause 52(5) is a deemed cost to the taxpayer, but we have no reference to a deemed realization. Clause 52(5), I agree, takes the cost based on fair market value, but nowhere do we have a deemed realization at that time; maybe it should be by the trustee.

**The Chairman:** Clause 52(5) only establishes the value to the taxpayer, which is fair market value at the time of the transfer.

**Mr. Poissant:** But who realized the gain?

**The Chairman:** That is a question of whether it is the trust.

**Mr. Poissant:** It is income, because it is not a deemed realization by the trust.

**Mr. Welch:** At present the word "disposed" in clause 144 is taken as not being a deemed realization.

**The Chairman:** But clause 144(4) makes the gain in the trust, or the loss as the case may be, a capital gain or capital loss to the employee.

**Mr. Welch:** As far as the trust sells my shares and gain is allocated to me as capital gains and I pay tax on it in that year. The tricky part of it is, what is the definition of disposition? When the trust gives me my hundred shares on my retirement, forgetting clause 144(7) and going back to clause 144(4), it provides that in a disposition by the trust. So we must have the security that disposition would not be interpreted in that way.

That is why I suggested that the definition of disposition in clause 54(c) should be made applicable to clause 144(4).

**Mr. Poissant:** But are you saying that you would not like this to be a deemed disposition by the trust?

**Mr. Welch:** All we are really asking is that the shares in the trust and any monies in the trust are of a capital nature to the member, and he should be able to receive either the money or the shares without triggering a capital gain. The only way a capital gain is triggered is by a deemed realization which, although it may not use the word "deemed" is the effect of clause 144(7) and it could be the effect of clause 144(4).



**Mr. Poissant:** Yes, but if we have a deemed realization of a capital gain, we only solve part of the problem. First we should have a roll-over; the cost base of the trust should be the cost base of the taxpayer.

**Mr. Welch:** Yes.

**Mr. Poissant:** If there is to be one, it should not be in the hands of the taxpayer but in the hands of the trust. If there is a roll-over there is no deemed realization.

**Mr. Welch:** One obvious suggestion is that clause 144(7)(f) instead of providing "the portion, if any, of the increase," should just say "the increase of the value of the property transferred" is excluded.

**Senator Cook:** There does not seem to be any rationale for a deemed realization.

**The Chairman:** No, it can be dealt with in a practical manner without any assumption of a deemed realization.

**Mr. Poissant:** Just a roll-over would solve all our problems.

**Mr. Welch:** Defining "disposition" as in clause 54(c) would cure the problem of clause 144(4). However, clause 144(7) is the less desirable of the two and must be solved first. In other words, clause 144(7)(f), instead of saying "the portion, if any," should read "the increase in the value", because it is clause 144(7) which triggers this tax to start with.

**Mr. Poissant:** As ordinary income.

**Mr. Welch:** That is our first request. We do not think that is right. Secondly, if that is changed, we are also worried about clause 144(4), because I cannot find any definition of disposition in the bill which would apply to that. There is a good definition at clause 54(c) which should apply to it but it has to be specifically set forth, because it is in a different section.

**Mr. Poissant:** In your opinion clause 54(c) would not apply to the employee in the profit-sharing plan?

**Mr. Welch:** It says that disposition is not a deemed realization.

**Mr. Poissant:** That is the definition of disposition and there is no restriction.

**Mr. Welch:** Yes, it defines disposition, but it says for greater certainty does not include any transfer of property, which is property such as our shares, by virtue of which there is a change in the legal ownership without any change in the beneficial ownership.

With that definition included it could not be held that disposed in clause 144 includes handing them over. Our view is that handing them over to the employee is not a disposition and we want it excluded.

**Mr. Poissant:** In other words clause 54(c) could be amended to make it clear that it does not apply in the case of shares; that is the roll-over.

**Mr. Welch:** The other point is that other trusts under clause 107(2), which are not necessarily retirement plans at all, are specifically excluded. They specifically do not have a deemed realization. In other words, clause 52(5) should read as does clause 107(2). Section 107(2) applies to other trusts and not a profit-sharing trust. It says quite specifically that when a property is handed over to the beneficiary, he receives it at what they call the cost amount, at the original cost of the property. He is deemed to receive it not at its current market value but rather at its original cost. This is very important.

**Mr. Poissant:** In other words, an amendment to 54(c) would do the trick; in other words, "to exclude"?

**Mr. Welch:** Yes. Section 54(c) should be made applicable to section 144(4).

Section 144(7)(f) should be made to read, not "the portion of" but rather "the increase of".

**The Chairman:** That makes more sense.

**Mr. Poissant:** Would you give us a draft of that?

**Mr. Welch:** I did not want to propose a specific amendment.

**The Chairman:** However, you are being asked to now, and very quickly. We will, of course, give you today and tomorrow in which to do it; but we would expect any amendments by Monday.

Thank you, gentlemen. That concludes today's hearing. The committee will adjourn until next Wednesday morning at 9.30 a.m.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

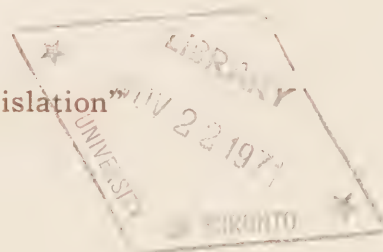
The Honourable SALTER A. HAYDEN, *Chairman*

No. 42

WEDNESDAY, OCTOBER 20, 1971

Sixth Proceedings on:

"Summary of 1971 Tax Reform Legislation"



(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)



# Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, October 20, 1971.

(50)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further consider:

"Summary of 1971 Tax Reform Legislation"

*Present:* The Honourable Senators Hayden (*Chairman*), Blois, Carter, Connolly (*Ottawa West*), Desruisseaux, Gelin, Hays, Isnor, Molson, Smith, Walker and Willis—(12).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant and Mr. Alan Irving, Legal Advisor.

## WITNESSES:

### *Massey-Ferguson:*

Mr. Peter N. Breyfogle, Comptroller;  
Mr. Roy W. MacLaren, Assistant Vice President,  
Public Relations;  
Mr. H. Arnold Sherman, Assistant Comptroller,  
Taxation;  
Mr. Jahan P. Wleugel, Treasurer.

### *Canadian Jewish Congress:*

Mr. Wolfe Goodman, Q.C.:  
Mr. Saul Hayes, Q.C., Executive Vice President;  
Mr. Barry Clamen, C.A.:  
Mr. J.H. Berger.

At 11:50 a.m. the Committee adjourned.

2:15 p.m.

(51)

At 2:15 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Blois, Carter, Connolly (*Ottawa West*), Desruisseaux, Gelin, Hays, Isnor, Lang, Smith and Willis—(11).

*Present, but not of the Committee:* The Honourable Senator McDonald—(1).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant and Mr. Alan Irving, Legal Advisor.

## WITNESSES:

### *Aluminium Company of Canada Limited:*

Mr. John G. Lees, Vice President;  
Mr. W. J. Reid, Vice President and Treasurer, Aluminium Company of Canada Limited.

At 3:50 p.m. the Committee adjourned until Thursday, October 21, 1971.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, October 20, 1971.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. We have several submissions today, the first being by Massey-Ferguson. Later in the morning we will hear the Canadian Jewish Congress. This afternoon we will deal with Alcan Finances Limited. Following our adjournment this morning we will resume at 2.15.

The appearances on behalf of Massey-Ferguson are: Mr. Peter N. Breyfogle, Comptroller; Mr. Roy W. MacLaren, Assistant to the Vice-President, Public Relations; Mr. H. Arnold Sherman, Assistant Comptroller, Taxation; and Mr. Jahan P. Wleugel, Treasurer.

Do you intend to make an opening statement, Mr. Breyfogle?

**Mr. Peter N. Breyfogle, Comptroller, Massey-Ferguson Limited:** Yes. Mr. Chairman and honourable senators, I would like to open my comments by saying on behalf of Massey-Ferguson that we are very grateful for this opportunity to discuss with you our views on the Tax Reform Bill.

It has become popular in recent years to play down the value of multi-national corporations to the economies of the countries in which they operate. This is an attitude which I personally consider unreasonable and I thought it might be useful for you if I quoted as an example some facts on Massey-Ferguson in Canada.

- Total assets employed in Canada are \$230 million.
- We export from Canada 75 per cent of our production and we export two dollars of goods for every one dollar that we import.
- In Canada we have one of our major engineering centres which is, amongst other things, the centre for our world-wide combine engineering activity.
- Total Canadian employment exceeds 4,000 persons.
- Our world-wide headquarters are located in Canada, providing work not only for the company's own employees, but also requiring such outside services as lawyers, accountants, investment bankers, etc.
- We have more than 60 per cent Canadian shareholders and the dividends our shareholders receive result from operations throughout the world.

These facts demonstrate that Canada plays not only a significant role in Massey-Ferguson's total operations but

also that our activities in Canada are important in the Canadian economy.

Since we had the privilege of appearing before you in May, 1970, much has happened to modify the proposals contained in the White Paper on tax reform, however the basic problem still remains. In my comments on that occasion I highlighted the four objectives explicitly recognized in the White Paper

1. The Canadian tax system should not encourage nor discourage foreign investment by Canadians.
2. Canadian companies competing in the foreign market should not be subject to more onerous taxes than their competition (particularly U.S. competition).
3. Canada should promote a climate hospitable to the unrestricted flow of capital across international boundaries.
4. Canadian tax laws should not permit the evasion of Canadian tax through artificial arrangements.

Bearing in mind the economic environment of the past few months and in particular the announcement of Mr. Benson last week, I would suggest that, even more than normally, industry and government share two basic desires—to create jobs for Canadian citizens, to create profit for Canadian shareholders, and in achieving these purposes to create revenue for the Canadian Government.

I said at that time that the White Paper proposals were in fact in basic conflict with the first three of its own objectives, and that the only principle that was given real recognition was the fourth—the anti-avoidance objective. The situation remains basically the same today despite the modifications between the White Paper and the Tax Reform Bill. Indeed, the draft legislation goes even beyond the stated intentions of the Minister of Finance during the presentation of the bill. The result is to increase the tax burden of Canadian companies, and in so doing ensures that the first three objectives which I have just mentioned cannot be achieved.

In the brief we prepared for discussion at this meeting, and in particular in the appendices attached to it, we have gone into some detail on possible alterations to the bill to ameliorate the situation. I do not believe it would be worthwhile for me to repeat these points at this stage, as you have all received the material.

Rather than comment in more detail on the Tax Reform Bill, I would like to preface our discussions with four basic points which, in our view, are more important than any specific technical contribution on the bill which we might make.

1. We have found the bill, as it affects multi-national corporations, to be extremely complex and, quite frankly, a frustrating diversion from the serious business questions



which we face—questions which have been so obviously accelerated by the recent United States' action.

2. The effect of the proposals relating to the taxation of the international income of Canadian-based multi-national corporations will be substantial. The proposals will result in a loss of international competitiveness or the departure of such corporations from Canada. While we cannot believe that this represents the intention of the Canadian Government, one or the other, or both, of these results are only a matter of time, if the proposed changes are enacted.

3. Quite apart from this long-term result and in addition to it, we are convinced that now is the wrong time for Canada to establish its long-term policies in the area of international trade and the multi-national corporation. Each of the major trading companies of the world is now engaged in adopting a stance for negotiations to maintain or expand its trading position. For Canada at this time to drastically impair its own competitiveness in international trade appears to us to be almost an incredible course of action.

4. The international provisions assume and require external treaty negotiations to be workable. This is clearly no time for the opening up of provisions of existing treaties or attempting to work out new treaties with the many countries with whom they are needed if the new approach is not to have the most serious adverse effect on our international competitive position. I doubt if any one of us would like the job of renegotiating the U.S. treaty today.

We question therefore the wisdom of attempting in a hurried manner to advance specific suggestions for technical improvements in the bill. Rather, we recommend simply deferring corporate and international provisions of the bill for at least a year. This delay will permit further study, allow time for the international trade picture to become more clear, and free business to deal with today's business problems without diversion of energy to cope with new tax provisions. These tax provisions will do nothing to improve our ability to contribute to the growth of the Canadian economy directly, or to enhance our ability to compete in the world economy and therefore contribute in the long-term to the attainment of the great potential of Canada.

**Senator Isnor:** What is the percentage of your export business?

**Mr. Breyfogle:** Seventy-five per cent of our production in Canada is exported from Canada.

**Senator Walker:** What about to the United States?

**Mr. Breyfogle:** Somewhere over 70 per cent of production. In other words, 70 per cent out of the 75 per cent.

**The Chairman:** Are your exports subject to the United States' surcharge?

**Mr. Breyfogle:** Most of our exports are not subject to the surcharge. However, they do get caught by the "US only" requirement for the investment tax credit, which is supposed to be reduced from 10 per cent to 7 per cent. That is a direct penalty.

**Senator Connolly:** Will the DISC program affect you?

**Mr. Breyfogle:** The DISC program will affect us not only because the US manufacturers of farm machinery will have a substantial financial advantage in exporting to Canada, but also because as a company we have tended to keep the greater part of our north American manufacturing facilities located in Canada rather than in the United States. Therefore we lose. Because of that, we do not have the opportunity that our competition has.

**The Chairman:** Let us analyse that. I take it that at present your competitors in the United States do export to Canada?

**Mr. Breyfogle:** Yes, sir.

**The Chairman:** You expect that in the atmosphere of the DISC it could lead to more exports, is that right?

**Mr. Breyfogle:** They will have an opportunity of obtaining a substantial benefit from a tax point of view. In 1970 the trade balance against Canada was \$113 million in farm machinery. It consisted of \$274 million imports by Canada and \$160 million exports from Canada to the United States.

**Senator Connolly:** What is the imbalance?

**Mr. Breyfogle:** Last year the imbalance was \$113 million.

**The Chairman:** The DISC would work to your disadvantage in the fact that the domestic United States manufacturer and exporter would enjoy a lower corporate tax rate in the United States on that part of his earnings which resulted from foreign operations.

**Mr. Breyfogle:** Yes.

**The Chairman:** What is the percentage of discount off the regular corporate rate?

**Mr. Breyfogle:** I should like to ask Mr. Sherman to answer that question.

**Mr. H. Arnold Sherman, Assistant Comptroller, Taxation, Massey-Ferguson Limited:** The present proposal is that the DISC company will be able to set up profit in its own books on the total transaction, on what the manufacturer manufactures and sells to the DISC, and the DISC resells to the company located in the foreign country, such as Canada.

They have three options. They can either take 4 per cent of the sales price as their profit, they can take 50 per cent of the total profit of the whole transaction, including the manufacturer's profit, or they can take the normal pricing basis if they feel that it is better for them. But in the third case, it is subject to the usual tax by the United States IRS authorities under section 42.

**Senator Connolly:** For the record, what does IRS mean?

**Mr. Sherman:** The Inland Revenue Service of the United States. In either of the first two cases, there is a small additional advantage. They can add some 10 per cent of their export promotion expenses to this profit. They look at the three possibilities and take the one that is most favourable. Profit in the DISC is never taxed until it is distributed to the shareholders of the DISC.

**The Chairman:** The concept is that you have the manufacturer in the United States who manufactures the equipment. Then you have a domestic sales organization in the United States that will obtain the foreign market and will be the vendor and exporter in that market. Regarding the 4 per cent that you were talking about as one of the options, they could take 4 per cent of the total dollar amount of the sales and bring that into the DISC. I am referring to this exporting organization. It is domestic in form.

**Mr. Sherman:** DISC means Domestic International Sales Corporation.

**The Chairman:** They can bring that directly into profit. Is that a tax-paid profit, or is it subject to tax after that?

**Mr. Sherman:** It is subject to tax when the DISC organization distributes it to its shareholder. The shareholder would normally be the manufacturing company in the United States. This tax can be deferred indefinitely. There is no requirement to make a distribution. It can be loaned to the parent company provided it is invested in export related assets. Export related assets are defined so broadly that effectively the DISC can retain the profit while lending the tax back to its parent company. In other words, there is no need for the tax to be paid for ten years.

**The Chairman:** Is it included in the definition of the use to be made of this money that it can be used to provide additional equipment to manufacture more exportable products?

**Mr. Sherman:** Yes.

**The Chairman:** And that is all without any tax deduction? In other words, this is tax deferral on a grand scale.

**Mr. Sherman:** Yes.

**Senator Connolly:** Would your American affiliate qualify under the DISC legislation?

**Mr. Sherman:** Yes.

**Senator Connolly:** There are so many questions I would like to ask.

**The Chairman:** That is a very interesting question, Senator Connolly. Would you like to develop it?

**Senator Walker:** We would like to know why they would, with the balance of trade the way it is.

**The Chairman:** Senator Walker, what I was thinking of here was that there are Massey-Ferguson affiliates operating in the United States.

I take it, Mr. Sherman, that the Massey-Ferguson affiliates in the United States manufacture a product which you export to Canada?

**Mr. Sherman:** Yes.

**The Chairman:** How much of the imbalance in exports that come to Canada from the United States is contributed to by your operations in the United States?

**Senator Walker:** That is a good question.

**Mr. Sherman:** We export to the United States \$2 for every \$1 we import, and we represent more or less 50 per cent of the farm machinery exported from Canada.

**Senator Connolly:** How much of the United States export of farm machinery do you represent in your United States companies?

**Mr. Sherman:** We would represent a little over 10 per cent of the exports from the United States into Canada. The United States exports twice as much into Canada as it imports from Canada. Our picture is exactly the other way around.

**The Chairman:** So that your American affiliates exporting from the United States to Canada could qualify under the DISC legislation?

**Mr. Sherman:** Under the DISC legislation we would set up a DISC corporation and receive the benefit for those goods which we manufacture in the United States and which we import into Canada.

**The Chairman:** Do the United States companies, who export to Canada and who are in competition in the export area, have other advantages by reason of being United States companies—advantages that are not available to you?

**Senator Walker:** Other than those under the DISC legislation.

**Mr. Roy W. MacLaren, Assistant to the Vice-President, Public Relations, Massey-Ferguson Limited:** At the present time the United States exporting corporations have been able to defer profit by the use of offshore subsidiaries. Although the United States enacted the sub Part F legislation in 1962, major corporations in the United States do not have any problem getting around those provisions because there are exceptions and alternatives and groupings that permit a U.S. corporation not to be penalized by the existence of this sub Part F legislation.

As of today a Canadian corporation is in the same effective position. Under the present Income Tax Act they do not have to pay income tax on dividends from foreign subsidiaries. There is an equivalent situation to the position of a United States corporation. However, once Bill C-259 is enacted we would not have this possibility to follow.

I do not feel it is clear from Bill C-259 that we would be taxed in Canada on the profits of our DISC if our United States subsidiary had a DISC, because that section of the bill has to be regulated. It seems clear to me that if we did have a DISC we would lose all of the advantage because when it retained the profit the profit would then be taxed in Canada.

**The Chairman:** Yes, because the profit of the DISC would enable your export company to maintain without tax in the United States, and you would have to bring it into your Canadian income and it would carry the full Canadian rate.

**Mr. MacLaren:** Yes.



**The Honourable Lazarus Phillips, Chief Counsel to the committee:** Would you not be subject to this extraordinary situation, that your DISC company in the United States would be an affiliate and if you lend the money to your parent on the deferral you would then have non-business income? You therefore would have foreign accrual property income which would be effectively taxed in Canada under the proposed amendments in this new bill that we are discussing.

**Mr. MacLaren:** Yes. What I am not clear about is whether we would not also be taxed on the DISC profit as well.

**Hon. Mr. Phillips:** Except that the indication is that the DISC profit would really result from normal business operations and, presumably, it might come under foreign accrual property income.

**Mr. MacLaren:** It might not.

**Mr. Sherman:** There is uncertainty in our reading of this area of the bill.

**Hon. Mr. Phillips:** But you do have the extraordinary situation where you get the DISC benefit in the United States, whereas automatically you are affected by foreign accrual property income. Incidentally, this would not be in 1976, but in 1973.

**The Chairman:** Yes.

**Hon. Mr. Phillips:** When speaking of an extension for a year are you suggesting that the sections of the law as presently drafted should come into effect on January 1, 1974; and when you speak of a deferral of a year with respect to dividends are you suggesting that such dividend income come into effect in 1977, rather than in 1976? I am wondering what you mean by deferral by a year. Could you develop that?

**Mr. Sherman:** What we are requesting is that consideration be given to deferral of enactment of the bill by a year, rather than the time cut-in of the provisions of the bill being deferred for a year. Our purpose there is to provide more time for deliberation, for calculation of the impact of the bill, and for reviewing some of the difficult areas of the text of the bill in terms of its application to multinational corporations, in particular. We believe that if this year is taken the character of the bill will be quite drastically changed, bearing in mind the trade problems which are facing Canada and many other countries.

**Hon. Mr. Phillips:** This is a very important point, Mr. Chairman, and honourable senators. Are you asking for the deletion of that section which deals with international income pending further consideration? Mere postponement by a year is the very thing that is presently covered in the draft. It seems to me you are either asking for deletion of that section pending further study or, alternatively, that 1973 should read 1974 and 1976 should read 1977.

**Mr. Sherman:** We are asking for deletion pending further study.

**The Chairman:** You appreciate that there are many beneficial things in Bill C-259 and, therefore, your request

could not take the form of a request that we suspend the coming-into-force date of the bill.

**Mr. Sherman:** We are not proposing this for the bill in total, of course, sir.

**The Chairman:** Only for those sections that particularly affect your operations?

**Mr. Sherman:** Yes.

**Senator Connolly:** May I ask this general question? It does not really relate to the technical area you are discussing. You are obviously an important multinational Canadian-owned corporation. Are there many other such corporations in the Canadian economy? We do not want to be legislating here for one particular company, so perhaps you would give us some indication of the scope of this problem in terms of other Canadian-owned multinational corporations.

**Mr. Sherman:** If I could start by making a general answer to this question, it is this: Our belief is that the world is becoming rapidly more technology-oriented and that industry—national corporations and multinational corporations—will rely on a high degree of technology for the base of their future growth. It seems to us that Canada has two choices for its future development. It can either encourage multinational corporations, because a company operating solely in Canada, bearing in mind the population of Canada, is not large enough to support the technological base that is required to compete with other countries—

**Senator Connolly:** In some areas.

**Mr. Sherman:** In more and more areas as the world's history progresses.

**Senator Connolly:** All right.

**Mr. Sherman:** The other alternative is to obtain this technology from subsidiaries of multinational corporations based in other countries. We believe the former is the better approach for Canada.

I think Mr. Wleugel can recite you a list of these various companies in the Canadian economy.

**Mr. Jahan P. Wleugel, Treasurer, Massey-Ferguson Limited:** Such corporations as Alcan, Brascan, some of the brewery companies, International Nickel Company. The Polymer Corporation, which is a Crown corporation, is also a multinational corporation. All these companies are indeed affected by this regulation. I am quite sure there are others that can be mentioned, and that you will know of many other examples. These are the important names.

**The Chairman:** You did not mention Alcan.

**Mr. Wleugel:** I am sorry, sir.

**Senator Connolly:** It was that point that I thought we should have on the record, because in fairness to the witnesses we want to make sure that it is not just their problem; it is the problem of a good many Canadian-owned multinational corporations.

**Senator Walker:** Are they taking the same attitude in the present situation as you are?



**The Chairman:** Alcan is; we now have their brief and they will be heard this afternoon. I cannot conceive of any of them not taking that position.

**Senator Molson:** Did we not have that experience in considering the White Paper?

**The Chairman:** We did.

**Senator Molson:** I think the record far enough back would show that we have a great many multi-national companies who are very seriously affected.

**The Chairman:** All the briefs are still available, so we have quite a record compiled already. I was wondering which one of you would care to tackle this question. Suppose we take your situation operating abroad. You would have a foreign affiliate. Let us take the case where you control that foreign affiliate, and the case where you may have only 49 per cent because of national laws in that country. Let us take those two instances and follow through what happens to the earnings of those companies by reason of Bill C-259. Take the first situation, a foreign affiliate which your company controls, which has earnings. Go ahead and tell us what happens under the bill.

**Mr. Wleügel:** Could we, for instance, take our Mexican subsidiary? Would you first like one we control, or one where we have only 49 per cent?

**The Chairman:** These are two instances that I would like to have developed.

**Senator Connolly:** For the sake of making the record clear, I take it we have finished discussing the DISC problem and are now going on to the more general picture.

**The Chairman:** The DISC position in the States has adverse effects on Massey-Ferguson, or perhaps we should say adverse aspects. For our purposes now perhaps that is as much as we need.

**Senator Connolly:** That is right.

**The Chairman:** Now would you get back to my illustration?

**Mr. Breyfogle:** Could I perhaps make one more comment on DISC. DISC is one part of a United States program, which will be difficult for other countries to cope with. However, it is only one part of an environment in which a company can do business on a multi-national basis. Perhaps of as much significance as DISC itself is the relationship of DISC to the other opportunities granted by legislation in various countries to do business. We therefore feel that the DISC is very appropriate in relation to our discussions on Bill C-259, because there are things we now have which provide assistance to multi-national corporations, which provide an off-set to the DISC in some way but not as a complete off-set. Bill C-259 takes those away, and this is most important to us.

**Senator Connolly:** Would you think that a DISC legislation in Canada would be a good thing for the Canadian-owned multi-national corporations?

**The Chairman:** You mean something like the DISC legislation?

**Senator Connolly:** Legislation, yes.

**Mr. Breyfogle:** In theory, yes, it would appear to be a good thing. We are concerned about the cost of such a program in Canada, and therefore whether it is practical, or whether there are alternatives that would maintain Canada's competitive posture without going to the lengths of DISC.

**The Chairman:** But what you have now in Canada under our tax laws works satisfactorily as an off-set to DISC operations in the States.

**Mr. Breyfogle:** I would say as a partial off-set to DISC.

**The Chairman:** You have been able to live with it.

**Mr. Breyfogle:** There has not yet been a DISC in the States, fortunately.

**The Chairman:** When you say "partially" what do you mean? If you had DISC in the States and you continued with the present law in relation to your offshore operations and the bringing home of the earnings, to what extent do you mean it would partially off-set it?

**Mr. Sherman:** There would need to be further relief, I think, to take account of the fact that a Canadian corporation pays its income tax very much more quickly than a United States corporation, so there are different cash flow consequences. DISC is very much a matter of cash flow.

**The Chairman:** What is the difference in the period for cash flow?

**Mr. Sherman:** A Canadian corporation begins to pay right at the beginning of its fiscal year. The United States corporation has a delay of several months, and the payments are spaced out more over a longer period. I am sorry I do not have the information in my head, but there is a considerable gap. We did look at the timing, and there is quite a big difference in favour of the United States corporation.

**Senator Carter:** Do you foresee developments in other countries that might compel the United States to modify their DISC legislation?

**The Chairman:** What you are asking them to do is look in the crystal ball world wide to see if they can see anything brewing there that might be inclined to compel the United States to abandon or reduce its DISC.

**Mr. Breyfogle:** I think the history of events since August 14 has demonstrated that the United States economy, with all its problems, is still a very significant economy in world affairs. It is still a very highly self-contained economy, and it can go its own way. The DISC advantages are very material in the United States. On the other hand, the sort of advantage provided by many European countries, for example, through tax rebates and turnover tax that is refunded on exports, does not put them in a very good position to put pressure on the United States Government to remove the DISC.

**Mr. Wleügel:** I think the DISC has perhaps been driven a little out of proportion as far as being an example of typical tax devices used is concerned, because here in Canada you naturally look very much more closely at what the United States is doing in these areas. For

instance, Germany has for years had the same type of incentives, not more in connection with the matter of setting up a separate corporation, which really the DISC essentially is, but as a simple tax device in their own tax laws, making for what in essence are either accelerated depreciations related to investments abroad or, in essence, actually permissions in write-off against German domestic taxes on investments abroad.

Just to mention one example, the United Kingdom had its Export Corporation Act, which permitted, actually also legalized, a DISC or a tax deferral of even a larger extent than the United States. This was discontinued in 1966-67 essentially because of exchange control regulations in the United Kingdom. On the assumption again there that the basic reasons for having it would still be valid, one could also speculate that if and when the monetary crisis and the imbalance of exchange rates are being settled, the United Kingdom might take their export corporation concept up again. There is a multitude of ways of doing it. The Japanese do it by permitting the companies to have a leverage of one-to-ten, and substantial direct subsidies to exports. I think we should be very careful here in Canada, not necessarily to say—because the U.S. might find the DISC is the ideal solution on the basis of its setup, on the basis on which it operates—that we should necessarily follow just because of that. I think we would have to look very carefully at what is required.

**The Chairman:** I did not gather that there was any suggestion here that DISC should be adopted in Canada.

**Mr. Wleugel:** No.

**The Chairman:** You were starting out by saying that the system we have at this time, in bringing the dividends home without paying any Canadian tax on them, does give some advantage as an offset to Canadian export sales. It permits them to be a little more competitive. We are not saying that DISC would do the job better. Each country evolves its own tools, you may take it, in fiscal policy, in taxation, in tariffs, in incentives, in subsidies, and in an infinite variety of things. But my question has not been answered yet.

**Senator Connolly:** I am afraid we diverted the witness from your question.

**The Chairman:** I would like to get back to that now.

**Mr. Wleugel:** The basic question?

**The Chairman:** Yes.

**Mr. Wleugel:** You mentioned you would like two specific examples. We would like to take the example of the U.K. group of companies which is a subsidiary, as far as Massey-Ferguson Limited is concerned. It is a holding company in the U.K., with operating subsidiaries in the U.K. that is one example. We would like, as a second example, to take a Mexican minority controlled subsidiary. It is a simple example and I think it makes the point very clearly.

With your permission, we should like to add a third example, which is actually in specific legislation. For instance, in a country like Brazil, you have specific incentives through taxation to invest portions of your tax money, as you have to, in the northeast of Brazil, as part of

the development of that area. All these three groups have very specific problems related to the current bill. With your permission, Mr. Chairman, I would like to ask Mr. Sherman to go through these technically in detail, to follow the route of dividends and other problems in these three typical examples. There is a multitude of others, but I think these will do.

**The Chairman:** Those three will do. Now, Mr. Sherman.

**Mr. Sherman:** Mr. Chairman, we start with the U.K., which has a nominal comprehensive tax treaty with Canada, and we must assume that there will be a treaty in effect for the purpose of this discussion. Therefore, under Bill C-259 there will be no Canadian tax on dividends paid by the U.K. to its Canadian parent. However, so far as the foreign accrual property income is concerned, the consequences are not at all clear, either from the bill, which does not have too much on, nor from the Department of Finance press release.

For example, take a group such as ours, of manufacturing companies, trading companies, export, agency companies, where altogether there are probably 30 companies in the U.K. of which perhaps 10 or 12 are active. Of these companies, some would be in a loss position, just from the way things operate, and under the U.K. tax system one company can make good the losses of the other.

We are afraid that if we did that, that payment would become foreign accrual property income. We are not sure what the consequences are, but we are afraid of them.

There are similar problems. For example, if our U.K. engineers were to develop something and another U.K. company wanted to use it, and the company, the third party using it, were to pay a fee, we are fairly certain that that royalty or fee for technical services, or whatever it was, would be part of the foreign accrual property income.

The consequence of any of our U.K. companies having foreign accrual property income is that that income becomes taxable as earned to Massey-Ferguson Limited, whether or not we declare it as dividends, whatever we do, even if we have no intention of bringing it back because the funds are required for U.K. expansion.

There is a further category I did not mention, which is probably more important, that is, intercompany interest. We have a holding company, a Canadian company would make an advance to that company, and then the advances would be used, perhaps, as they are required, by different operating companies. To the extent that interest was charged on those advances within a group of U.K. companies, this would probably be foreign accrual property income and again taxed in Canada as earned. We have to charge interest under U.K. tax rules; if we do, we are taxed in Canada.

**Senator Connolly:** At present, you would not be taxed, under the existing law.

**Mr. Sherman:** That is right. That is the U.K. situation.

**The Chairman:** Just stopping right there, you have a series of subsidiaries in the U.K. and they are subsidiaries of the chief company in Canada. Let us take the inter-relationship there. If one of those companies makes a loss and



another one makes a profit, for Canadian tax purposes you are not entitled to offset.

**Mr. Sherman:** No.

**Senator Connolly:** Under the new bill.

**The Chairman:** Under Bill C-259.

**Mr. Sherman:** Under Bill C-259, the results of each individual company are of no concern to us, because there is no question of taxation on dividends. It is only the question of foreign accrual property income, which is a new concept.

**Senator Connolly:** It is a new concept?

**Mr. Sherman:** To the extent that one company has foreign accrual property income and the other has what one might call a foreign accrual property income loss, we are not permitted to offset them. It is one way taxation.

**Senator Connolly:** Would it be a temporary, even a partial advantage, if there were such things as foreign accrual property income profit and foreign accrual property income loss?

**Mr. Sherman:** Yes, this is one of the minor measures that would help, certainly.

**Senator Connolly:** You would still have the problem of taxing the foreign accrual property, if you had foreign accrual property income, under the new Bill C-259, which you have not under the existing law.

**Mr. Sherman:** That is right.

**The Chairman:** Is there any difficulty by reason of the fact that it is conceivable under this bill that something which produces earnings from active business operations might lose that character under Bill C-259 and become in part, or altogether, foreign accrual income property?

**Mr. Sherman:** We really do not know what the concept of an active business is, and I have not been able to find any lawyer in Canada who could tell me what the concept is. It would be unwise for us to proceed on the basis that some of these things are not applicable, since undoubtedly the Department of National Revenue, when it comes to audit our 1973 return, will attempt to tax us on its viewpoint.

**Hon. Mr. Phillips:** It is always unwise to depend upon lawyers in doing things in that way.

**The Chairman:** We are not looking for any rebuttal evidence.

**Mr. Sherman:** We do operate through one holding company in the U.K. which holds a group of many subsidiaries. That is our corporate structure in the U.K.

**The Chairman:** That holding company is the one which would remit directly to the Canadian company?

**Mr. Sherman:** Yes.

**The Chairman:** Then by that route what one would ordinarily think of as income from active business operations could, under this bill, very well be foreign property accrual.

**Mr. Wleugel:** Since it is routed through a holding company, I think anybody looking upon the corporate structure in the U.K. would say that it is the only sensible way of setting up the corporate structure financially in the way we run the interactions between the various units. We have a holding company which is obviously and absolutely a corporate arrangement, and the question that arises in our minds is whether we will get stuck with taxes actually, potentially, or possibly on the basis of our normal operating income. The answer is something we do not know.

**The Chairman:** You are saying that the bill is defective in that it does not define some very essential terms.

**Mr. Breyfogle:** We consider the bill is defective in that it does not properly define a large number of terms.

**Mr. Wleugel:** Particularly in the section on international income, which is what we are particularly concerned about.

**Hon. Mr. Phillips:** I wonder, Mr. Chairman, if you will allow me to suspend the consideration of the two other countries, because this has a direct bearing on what we are now discussing. This Senate committee took the position under the White Paper that we were putting the cart before the horse in dealing with the whole question of international income. We so stated in our report at pages 42 and 43, and on the whole history of taxation of international income we took that position.

In effect, we said, "Put through the treaties first and we will know what our treaty countries are and we will know what are not treaty countries." Then, in dealing with the laws of each treaty country or non-treaty country, a multinational corporation will know the incidences of taxation within reason.

When I speak of international income I am speaking of that section which deals with international income of Canadian taxpayers, not the reverse—that is, the income of non-residents and income of Canadian sources—and I should like to know whether we would solve the problem for the present with the suggestion that there are three alternatives: One, that we ask for the deletion of the whole section because of the chaotic and confused situation in the modern world. Two, that we ask that 72 read 73, and 76 read 77, so that we have a respite of two years rather than one year. Three—and this is the one that I like best and would like your reactions to in relation to the Chairman's request—that in regard to the income of the Canadian multinational corporation in respect of any company from a source other than Canada, the application of the present law be suspended until such time as there has been either the completion of a treaty with a country, or a statement by Canada that it is not able to get a treaty. Essentially, the whole section covers what is an affiliate, the treatment of dividends from the affiliate, and, this foreign property accrual income. The determination of what an affiliate will be, of what dividend income treatment will be like, and what foreign property accrual income will be like will depend upon the treaties. This is the delay as covered by the bill in section 72 and moving into section 76. Would not the multi-national corporations be better off in suggesting that the application of this section be suspended until such time as we are dealing either with the treaty country or non-treaty country? In



the interval the whole subject matter could be dealt with by the Government either by way of revising its thinking on the domestic wording of the legislation and the regulations therein, or by determining whether there is a treaty. That is why when you deal with Canada and the U.K. you have one set of rules, whereas with respect to Mexico, which you are going to come to, you have another set of rules, and with respect to an undeveloped country you will have another set of rules.

**The Chairman:** In that connection, Canada would not be at a disadvantage in dealing with any questions that could be classified as tax avoidance.

**Hon. Mr. Phillips:** Definitely not. That is right.

**The Chairman:** That whole field is open. They are administering the present statute on the basis of agency. That is, that where there is a foreign company that is wholly owned by a Canadian company and all the management and direction comes from the Canadian company, in their assessments the Income Tax Department have been assessing the income of that foreign company as income of the Canadian company on the basis of agency. They have been making these assessments. Some of them are under appeal and some of them have been settled. So there is ample scope in the present law to distinguish between what is a genuine, bona fide business operation outside of Canada, and those efforts which this bill attempts to deal with on the basis of passive income by bringing that income directly into the income of the Canadian company. There is not the urgency because a lot of tax revenue might be escaping the tax collector; there would not be that urgency even if the application of these sections were suspended for an extra year beyond what is contemplated in order to get a proper understanding. Of course, every one will have to agree that it is good for Canada to have multi-national operations.

**Senator Hays:** In that regard, Mr. Chairman, what kind of money are we speaking of?

**The Chairman:** Do you mean in dollars of tax revenue?

**Senator Hays:** Yes.

**The Chairman:** I am not sure we have that figure.

**Mr. Sherman:** Mr. Chairman, the White Paper referred to a figure of \$10 million. There is no reference to that in the 1971 Summary, however.

**Senator Hays:** How much would that affect Massey-Ferguson?

**Mr. Sherman:** We do not know what the provisions mean, and consequently we are not able to guess. It is too wide a range.

**Mr. Wleugel:** It would depend largely on our own level of income all over the world. In a normal year we might have \$40 million after tax. After all, if we sell in the order of over a billion dollars a year, it might be in the order of \$4 million, \$5 million or \$6 million. Something like that. That is purely a guess on our own situation.

**Senator Connolly:** I am sorry, would you mind repeating that?

**Mr. Wleugel:** If we say that our normal world-wide income is \$40 million after tax on a billion-dollar sale, that is probably a reasonably historical number. It is not one that we have achieved lately. On that basis, probably income which would be questionable would, perhaps, be in the order of \$4 million, \$5 million or \$6 million.

**Senator Connolly:** You might have to pay 50 per cent of the total estimated revenue.

**Mr. Wleugel:** Again it depends upon many assumptions and it is unclear to us, quite honestly, what the bill really means for us. We know a few areas where the bill definitely means something, but most of them are grey areas where we do not quite see the impact because of the unclear definitions related to developing countries where we operate.

**The Chairman:** We are going to consider Mexico in a moment, but your U.K. discussion has provoked this thought so far as I am concerned, that supposing Bill C-259, with all these provisions we are talking about, is enacted, then this might force Massey-Ferguson to establish just one operating company in the U.K. and carry on all the other corporate operations as branches of that company. That is just a suggestion. Having done that, you would certainly get a pooling of your losses and profits in the branch operations, because they would all be coming into just the one company. If you did that, what would be the result so far as this bill is concerned?

**Mr. Breyfogle:** I would like to answer that. The proposal you have made—

**The Chairman:** Well, it was not a proposal; it was a suggestion.

**Mr. Breyfogle:** The suggestion you have made would be very difficult technically because of the U.K. capital gains tax, and I believe this is where a country gets into very serious trouble if it tries to extend its own taxation pattern around the world, because it is extending its own taxation pattern into a multitude of different taxation patterns based on totally different concepts and theories of taxation. Some things that are defined as foreign accrual property income in Canada would not be so defined in other countries, because those other countries already have an alternative method of raising their tax revenue. These are alternative taxes which we are paying in doing business in those countries. Hence, the addition of foreign accrual property income, and the proposal that you suggested, and the capital gains that might be inherent in such a reorganization, are direct penalties to the multi-national corporations operating abroad when Canada has the type of legislation proposed.

**The Chairman:** The making of adjustments that would appear to minimize the impact of this legislation as far as Canada is concerned might create an entirely new group of problems in the other country.

**Mr. Breyfogle:** If we might come back to the discussion we had on the amount of tax involved, if we were to proceed with the implementation of Bill C-259, I do not believe it is possible for us as a company to put a number on this today. Bearing in mind the ramifications of the tax bill as proposed and also bearing in mind the situation we are in,

we do not have income diverted from Canada as a company. We have taken steps to legally and within the tax laws of the country within which we operate to minimize our tax bill. If this bill is passed, some of these steps will in fact mean tax penalties in Canada, not in the countries in which we operate, and as a result of these we would rearrange these steps. The rearrangement of these steps will not mean more tax revenue for Canada, but it will mean more revenue for those other countries in which we operate.

On the other hand, as Canada gets into this situation and as Bill C-259 begins to affect more and more multi-national companies in their operations—we have had two examples announced recently of companies who have left Canada because of this situation—Canada will lose jobs. Even if the \$10 million as outlined in the White Paper of incremental tax revenue comes to Canada, because of the bill—and this is something which we question as to whether it will happen or not—that is, if I may use the vernacular, peanuts in relation to the simple unemployment benefits that Canada may have to pay out due to the loss of jobs. If you then add the social cost of unemployment on top of that, I think there is a very poor cost benefit situation in the enactment of the international provisions in Bill C-259.

We therefore feel that politically there is a sound and valid reason for deferring the international aspects of the bill, and we endorse very strongly the Chairman's statement that within the current bill the government has the ability to ensure that income is not diverted from Canada.

**Senator Hays:** What would this \$4 million tax bill, or the \$46 million that you speak of on \$1 billion worth of business, do to your company?

**Mr. Breyfogle:** I would like to reply to that by saying that I do not think it will be that much, and certainly it will not mean that much extra tax paid in Canada. It will make us less competitive. As I mentioned in my opening remarks, I hope it will not make us leave Canada, but it will certainly impose penalties, and as a result it will mean the losing of jobs in Canada and abroad, and it will lose profits to Canadian shareholders which are taxable.

**The Chairman:** If I might follow that up. Would you just say what are the different operations that are actually carried on in Canada now?

**Mr. Breyfogle:** In Canada we have the manufacture of combines for the total North American market and for some overseas markets. This is our largest combine plant, and it is one of the largest in the world.

**The Chairman:** And what is the amount of employment that it gives directly?

**Mr. Breyfogle:** Our total employment in Canada—and I cannot give you the combine plant by itself at this stage—is 4,200 to 4,300 people. It ranges up and down according to activity levels, and it has been up to 5,000 when the farm economy was more buoyant. We have a foundry here in Canada, and we have very extensive machine shops and press shops. We also do assembly of balers and a very wide range of implements, many of which are exported as well. We have discussed with the Department of Industry,

Trade and Commerce other possible options for manufacturing in Canada which are under review. This, of course, will depend upon the outcome of Bill C-259, and also, upon the trade relationships between the United States and Canada.

**Mr. C. Albert Poissant, Tax Consultant to the Committee:** Mr. Chairman, may I ask the witness a question?

**The Chairman:** Yes, certainly.

**Mr. Poissant:** You are recommending in your brief that consolidated income tax returns ought to be allowed. Let us examine the situation in light of your first recommendation that this whole group of sections be deleted. Let us examine this, first, on the basis of foreign affiliates only, and, secondly, on the basis of the combination. I realize you are not making this recommendation; but you are making a recommendation on behalf of the group. Let us examine this in two parts: one for all of the outside countries except Canada, and one for the total group including Canada. Would that be of any benefit to you? I am referring to page 9, item 7, which permits Canadian corporate groups to file consolidated income tax

**Mr. Sherman:** That refers to Canadian corporate groups; in other words, Canadian companies.

**Mr. Poissant:** I see; by groups you did not mean all groups?

**Mr. Sherman:** No, Canadian companies.

**Mr. Poissant:** I thought the word "groups" meant all of the companies, but it is strictly Canadian companies. Would it be of any help if we could have consolidated tax returns for foreign affiliates?

I see two problems here: First, those countries where they do not levy taxes on foreign affiliate companies and, secondly, where the tax is an indirect taxation rather than a direct taxation. This is a problem because once you have incentive with one country you do not want to give it back to that country because that incentive is the reason you are there in the first place. But could we not have an average tax for total world-wide income, except Canada, which would be nil in the country where you obtain the incentive? Could we not have an average income throughout the world and an average top? Would that not take into account this indirect type of income which the Government is after? Secondly, would that not take into account the incentive that you are being offered in other countries where the tax rate is zero which reduces the average? Thirdly, would this not eliminate the problem that exists in countries where you have losses as well; where you cannot carry the loss against other types of income?

**Mr. Sherman:** It is similar in concept to the United States Sub-part F and they have made it work by offering several ways out to the big companies. If it were written in the way Bill C-259 has been written, with no ways out, and extended to consolidating it world-wide, my judgment is that it would be unworkable because of the complexities involved. One example of this would be foreign exchange. You can translate the financial statements of these foreign companies using this principle, in seven different ways and come up with seven different results according to the way you want to look at it. I can see difficulties in that one



small area alone. It would mean you would have to have a small book to translate the financial statements.

**Mr. Wleugel:** And not only that, but there is income being transferred into Canada which is the second part of the bill as it is proposed, as well as your example where there could be taxation of areas of income which were never transferable to Canada in any form because of the exchange, or the regulations, et cetera.

**The Chairman:** Yes, the concept of this provision as it is stated by the minister was that he wanted to put the companies operating outside of Canada through their foreign affiliates in the same position they would be in if they were operating within Canada. Now, what you say is that this is utterly impossible.

**Mr. Sherman:** Yes.

**The Chairman:** They can do it, however, by saying that if you have earnings abroad they are, for tax purposes, earnings of the Canadian company; and if you have not paid full taxes abroad then you pay the difference between what you paid abroad and what the Canadian rate would be here. This would cut right through the problem of foreign exchange—the problem of exchange control and restrictions of transfer of funds. It just ignores all these problems.

**Mr. Wleugel:** That is correct.

**The Chairman:** And it is a desert in which they want you to operate.

**Senator Molson:** It was mentioned that one or two multinational companies have left the country recently or have ceased operations. Would you care to identify those companies?

**Mr. Breyfogle:** The two companies that have been identified in the press are the Patino Company and the Hunter Douglas Company.

**The Chairman:** Now, Patino is a mining company and Hunter Douglas is—

**Mr. Sherman:** It is a manufacturing operation in Canada.

**Mr. Breyfogle:** They manufacture building materials and architectural products.

**Senator Connolly:** Are these U.S. owned?

**Mr. Breyfogle:** No, they are Canadian.

**Mr. Sherman:** Hunter Douglas is Canadian.

**The Chairman:** These are Canadian corporate companies regardless of what their ownership might be.

**Mr. Wleugel:** It was substantially owned in Canada, so I understand from the press reports of the *Globe and Mail*.

**The Chairman:** This is something which easily can be followed up. Now, can we get on to Mexico because this illustrates something else.

**Mr. Sherman:** Do you want me to answer the honourable Mr. Phillips' comments about the deferment of the provisions before I go on to the situation in Mexico? Mexico is a country where there will be no treaty.

**The Chairman:** No; you are operating in Mexico, and you have Bill C-259 in force in Canada.

**Mr. Sherman:** That is right.

**The Chairman:** And the interest in your operations in Mexico is a minority interest because of the laws of Mexico? A foreigner may not have a controlling interest there; is that right?

**Mr. Sherman:** That is right.

**The Chairman:** I just want to know how that works.

**Mr. Sherman:** There cannot be a treaty between Canada and Mexico because Mexico has said that they are not interested in entering into tax treaties with any countries. They have no tax treaties. So we would be operating under Bill C-259 without the benefits of a treaty. Profits from the Mexican company, to the extent of 49 per cent, would be distributed as dividends. To the extent that they were distributed, 49 per cent would come to Massey-Ferguson in Toronto. We would receive them subject to tax in Canada with a credit for the corporate income tax in Mexico which is currently on a sliding scale up to a maximum of 42 per cent, along with credits for the withholding tax on the dividends. On the face of it, the combination of the two taxes would mean that Canada would not ask for any additional taxes. However, the Mexican Government has some laws also. They are not tax-sparing, but they are laws to encourage new and necessary industries. Under their law, for instance, they would look at our company in Mexico and indicate that two of our products, two major tractors, are necessary to Mexico. Therefore, they have reached an acceptable degree of Mexican content so the income tax rate will be only 25 per cent. The combination of the 25 per cent Mexican tax rate and the withholding tax would mean that there would be an additional tax paid in Canada on our dividends from Mexico.

**The Chairman:** The simple answer is that the incentive earning derived in Mexico is taxed away in Canada.

**Senator Connolly:** It is 50 per cent of it. It goes from 52 per cent down to 48 per cent in time. Is that right, Mr. Chairman?

**The Chairman:** Yes.

**Senator Connolly:** Not the whole of it. It would be taxed at Canadian corporate rates.

**Mr. Sherman:** With a credit for the 25 per cent.

**Senator Connolly:** That is right.

**Mr. Sherman:** To turn to the other aspect of foreign accrual income, this does not appear to be affected in any way by the existence of a treaty. In the case of Mexico, we do not control the company, consequently they would be at liberty to invest surplus funds in any manner. We, as a shareholder, presumably would have our representatives participate in any discussions held by the directors as to the course of action. However, to the extent they realize income from these investments, we would be taxed on 49 per cent, whether or not it was distributed to Canada.

**The Chairman:** Yes, because the earnings in that Mexican company are transposed into Canadian company earnings.



**Senator Molson:** Even in a minority position?

**Senator Hays:** Yes, even though you do not receive them.

**The Chairman:** Yes, a minority position does not make any difference.

**Senator Connolly:** Would the current exchange rates prevail for valuing the amount of the Canadian taxable income in that case?

**Mr. Sherman:** This is explained in a press release of the Department of Finance, that it will be provided for by regulation. I do not really understand it, but I do not think they intend to attempt to convert anything until the time of remittance of a dividend.

Just how foreign accrual property income is determined in a case where property is fluctuating widely, I do not know.

**Senator Connolly:** It would depend on the day the remittance is made.

**Mr. Sherman:** There is no remittance.

**Hon. Mr. Phillips:** It is an accrual basis.

**Senator Connolly:** Of course, that would be a deemed remittance.

**The Chairman:** Yes.

**Senator Hays:** What would your board of directors do in the event Bill C-259 were passed? Would this mean you would leave Mexico as a majority shareholder? Would there be any alternative?

**Mr. Breyfogle:** I do not believe it is proper for us to speculate on what the board of directors would do if the bill is amended. Tax treaties and tax evolution in other countries are also involved. We would have to present individual cases to the board after careful study in order to have a clear picture. At that stage the decision would be made.

**Senator Hays:** How would Canada treat losses in those countries?

**Mr. Sherman:** There would be no dividend, therefore no tax. However, in the meantime, if the company earned \$50,000 from investments while it lost \$500,000 on its operation, we would be taxed in Canada on the \$50,000 earned. The half-a-million-dollar loss is forgotten.

**The Chairman:** That would be passive income.

**Mr. Sherman:** Yes.

**Mr. Breyfogle:** Taking that to a logical extreme under circumstances which can develop in complex tax environments where heavy incentives exist, it could well be worth while for a non-controlled company with only a minority interest to so arrange its affairs that it takes what is in fact foreign accrual property income and loses on an operating basis. That may be the best solution for that company in its local and business environment.

**Mr. Wleugel:** And for the majority shareholders.

**Mr. Breyfogle:** Yes; this is something we cannot change. Further, with respect to companies where we have only a small investment and virtually the total management goes on day to day or even month to month without participation by Massey-Ferguson, we may not discover the existence of a foreign accrual income. We could be in default because of either record-keeping problems or even a desire by the local management to not totally reveal the situation to us as a small minority shareholder in that company.

**The Chairman:** Are there any other features of this area you wish to discuss?

**Mr. Sherman:** The third example, of Brazil, is in a middle category. There is no treaty at the moment but there is some indication that one may be signed before 1976. The corporate tax rate in Brazil is quite low as an incentive to corporations to invest in the large area of north-eastern Brazil and the Amazon region, which are underdeveloped. Our wholly-owned subsidiary there has the opportunity to pay a corporation tax at only 15 per cent, provided the other 15 per cent of the total 30 per cent rate is invested in approved projects. They can be loans or actually investment in shares. In the case of loans, they will pay interest; if it is shares, they will pay dividends, not in cash, but in stock. That is customary in Brazil. However, under Bill C-259 the definition of a dividend includes a stock dividend. This is a change from the present law.

The position with respect to our subsidiary in Brazil is that we would wish to take advantage of this opportunity to invest in the north-east. This helps the Brazilian subsidiary's business, in addition to the public relations value of being able to say we have applied so many thousands of cruzeiro to a well known project. Our name would appear on the list of major corporations involved in these important projects. The badly needed development of these areas is also a social consideration.

The alternative is to pay it to the Government as tax. Given the opportunity, we prefer to make the investment, which may some day yield a return to us.

Because we pay such a low corporate tax rate which, combined with the dividend withholding tax is substantially below the Canadian corporation tax rate, any dividends paid by our Brazilian subsidiary to Canada, in the absence of a treaty, will be fully taxable in Canada, with a credit for some part of the tax paid in Brazil.

We do not know what the position would be in the event a treaty were signed. We are making investments which will yield income between now and 1976. We do not know what the consequences will be in 1976, because we do not know if there will be a treaty, nor what such an instrument would provide with respect to these investments.

I do not know what we ought to do in the light of these possibilities.

**The Chairman:** Yes, but you do know that incentives gained in any other country that apply in abatement of your tax there will be taxed away from you in Canada under this bill.

**Mr. Sherman:** Yes, tax-sparing does not apply to this situation.

**Mr. Wleugel:** In this specific example the income derived from an investment in the north-east can in no circumstances be remitted to Canada. This is part of the Brazilian regulations, so it is not even a temporary exchange problem. It is a permanent part of the legislation in Brazil, that you cannot remit the results of these investments in the northeast to a foreign country. You can remit them to your Brazilian operating company, but you cannot remit them to the Brazilian operating company in Canada.

**Mr. Sherman:** Whether or not there is a treaty, that income is foreign-controlled income earned in Canada, although it can never be remitted to Canada. We have to take some of our Canadian profit and pay that to the Canadian Government as tax on the Brazilian investment income.

**Senator Hays:** How do the United States and the United Kingdom treat this sort of investment in their tax laws?

**Mr. Sherman:** The United States effectively remits a credit by the use of averages. A United States corporation with a world-wide operation is permitted to average its taxes, with the result that it can take its Canadian profit, taxed to 50 per cent plus 15 per cent on withholding tax, and its other high tax areas, and use that profit, and the tax credits that result, to offset the situation in countries like Brazil where there are incentives. As a practical matter it is able to avoid paying tax on these incentives.

**Senator Hays:** Both the United Kingdom and the United States would receive the benefit.

**Mr. Sherman:** The United Kingdom has a different method of taxing foreign income. There is no attempt to tax that kind of thing unless there is a dividend, and then there is a complicated underlying tax credit.

**Mr. Poissant:** Have you seen the recent amendments to Bill C-259?

**Mr. Sherman:** Yes, I have seen them.

**Mr. Poissant:** Have they changed the problem that you raise in Appendix VII?

**Mr. Sherman:** I only received them yesterday. I have not had a chance at this particular point.

**Mr. Poissant:** One change was made in the case of the exit tax which corrected one point that you had in mind.

**The Chairman:** We have certainly gone into the core of this problem, and we may have it again this afternoon with some variations as it affects Alcan.

**Hon. Mr. Phillips:** Have you been in touch with the Finance Department with respect to proposed amendments on international income? And, if so, do you know when such amendments can be expected?

**Mr. Sherman:** I have been in touch with the Department of Finance. I think their words were that they will take a look at them. That is as far as they go.

**The Chairman:** How long ago was that?

**Mr. Sherman:** A couple of months or more.

**The Chairman:** Then there has been an opportunity to do something, if the will were there to do it?

**Mr. Sherman:** Mr. Benson, in his speech the other day, said that he was not proposing any amendments to foreign income. He said, "We have already received a number of presentations relating to the passive income provision, and it seems clear that some changes to the law in this area should be made before the provisions take effect. However, we have concluded that it would be premature to introduce changes at this time before all representations have been received and given the study they require."

**The Chairman:** That would include any representations that we might make.

**Mr. Sherman:** Presumably.

**Mr. Poissant:** That makes your position stronger, if they have not yet had a chance to study all the briefs.

**The Chairman:** If in the course of the next week you have an opportunity to study the amendments and find anything that is relieving, I hope you will let us know.

**Mr. Poissant:** Mr. Chairman, there is no amendment. I have them all here. There is no amendment except in the case of capital loss raised in their "exit tax". They change the word "disposal" for the words "capital gains".

**Mr. Sherman:** We are keeping in touch with the Department of Finance.

**Hon. Mr. Phillips:** You started your presentation by suggesting that the provisions of international income be suspended for a year. We then tried to clarify the situation between suspension for a year and deferment of the section generally, and we introduced the concept of the application of the sections in relation to consummation and non-consummation of treaties.

Leaving aside complete deferment, which may be unrealistic, which do you prefer? Your request is that the applications be suspended for a year, or, alternatively, that the international sections come into play in respect of each country, depending upon the determination or finalization of a treaty or determination that there is no treaty in respect of source of income.

**Mr. Breyfogle:** If it is not possible to defer introduction of the international section for an additional year, I believe we should combine the three ideas that have come forward during our discussion so far. Firstly, I believe that we should introduce changes in the legislation as outlined on pages 7, 8 and 9 of our brief. Would you like me to read those pages into the record?

**The Chairman:** No. Let me have a look at them first. We have adopted a different practice from last year. At the last hearing on the White Paper we incorporated the briefs. We found, however, that the account that we received from the Printing Bureau, charging us for their service, was a very substantial one. We therefore decided that we should read the briefs and not necessarily incorporate them as part of the record. It is enough if you refer to the pages. The reference will be in the record, and we can then read the appropriate pages.



**Mr. Breyfogle:** Perhaps I should read the two pages for the convenience of the committee. I shall commence at the bottom of page 7 of our brief.

**Senator Connolly:** These are recommendations?

**Mr. Breyfogle:** Yes:

As an alternative to deferral or withdrawal of the international section of the Bill, the following is a brief summary of minimal amendments which we suggest:

1. Re-define "foreign accrual property income" to restrict it to "diverted income" as was the expressed intent of the Government. Exclude from "foreign accrual property income" income which has not been diverted from Canada.

2. Re-define "foreign affiliates" to include only companies controlled directly or indirectly by a Canadian corporation, as many Canadian companies will neither have nor be able to obtain the necessary information for compliance when a control situation does not exist.

3. Include relieving provisions with respect to foreign accrual property income, to permit deficiencies in one country to offset income in another and to provide loss carry forward and carry back provisions no less favourable than those in effect in Canada for Canadian business income.

**The Chairman:** Stop right there, please. Mr. Benson made a statement and his idea was, for the purposes of taxation, for foreign affiliates to be treated as if they were operating in Canada. But if they do not give you your loss carry-forward and loss carry-back, they are not doing that.

**Mr. Breyfogle:** That is correct.

No. 4: Permit foreign tax credits to be averaged, so that credits in high tax jurisdictions can be used to offset liabilities in low tax countries.

No. 5: Permit tax exemptions for foreign subsidiaries involved in corporate reorganizations.

No. 6: Amend the "Exit Tax".

**The Chairman:** Or departure tax.

**Mr. Breyfogle:** Yes.

No. 7: Permit Canadian corporate groups to file consolidated income tax returns.

No. 8: Eliminate the tax advantage granted, perhaps inadvertently, to foreign-owned Canadian finance companies.

In addition to those amendments, Mr. Chairman, I believe that, as an alternative to a one-year deferral to the introduction of the legislation on international corporations, we should include both a one-year deferral in the application of these provisions and the proposal suggested by Mr. Phillips that the application be deferred until tax treaties are negotiated with those countries involved.

**Hon. Mr. Phillips:** On a seriatim basis.

**Mr. Breyfogle:** Yes. I believe we need the extra year because of the difficulties in tax treaties, and if you do not introduce this extra year's deferral of application, we will

perpetuate an additional period of uncertainty of waiting for tax treaties to be negotiated.

**The Chairman:** We understand what you mean, but if you say the coming into force date of the legislation is deferred until tax treaties are negotiated, that might be a deferral forever. There are some countries who will not negotiate tax treaties.

**Mr. Breyfogle:** On the basis of knowing that, even if the tax treaties are implemented, for example, on foreign property accrual income, we would have a problem. At least, with the one year's deferral we have another year in which to get our business in order and ensure that we do not penalize the Canadian economy and our Canadian shareholders by not being able to make the decisions which are necessary for the ongoing operation of our businesses.

**The Chairman:** Are there any other questions? We have had a good run on this and we will have a further run over some of the ground on which we have acquired some knowledge from you. I believe we have the substance of your problem. Thank you very much.

**Mr. Breyfogle:** Thank you, sir.

**The Chairman:** Honourable senators, we have one other submission this morning, from the Canadian Jewish Congress.

On the list of appearances we have Mr. Wolfe Goodman and Mr. Saul Hayes.

**Mr. Hayes,** are you going to make an opening statement?

**Mr. Saul Hayes, Q.C., Executive Vice-President, Canadian Jewish Congress:** Honourable senators, first I would like to thank you for hearing us. I would like to introduce the members of this delegation and explain why we are here.

To my immediate right is Mr. Wolfe Goodman, of the firm of Goodman and Carr, Barristers and Solicitors, Toronto. To his right is Mr. Harry Berger, Director of the Allied Jewish Community Services and also Director of its Committee on Foundations and Endowments. To his right is Mr. Barry Clamen, an accountant with the Montreal firm of Richter, Usher and Company. I am the Executive Vice-President of the Canadian Jewish Congress.

The Canadian Jewish Congress is an umbrella organization interested in the welfare of the Jewish community and its relationship to its citizens across the country. The head office is in Montreal, and it has offices in a number of cities of Canada.

I would like to introduce the delegation and its view by saying that we are here, perhaps happily, because we have no personal interest. It is not a matter of profits or material aspects. We are here on behalf of that private sector of Canadian life which deals with philanthropy, monetary efforts for the commonweal, and that whole conspectus of activities which the private sector has traditionally in Canada effected for the good of the Canadian community. While we are here, you might say, in the interest of the Jewish community, frankly without any mandate, what we are going to say will presumably be the same things which are being said, or which will be said, by any group of dedicated voluntary members of the community who wish



to advance the interests of charity, philanthropy and welfare. In that respect I say, therefore, we are here not in any personal capacity or on behalf of any given group of dividend receivers or shareholders, but in the common interests of the community at large.

We greatly fear that some of the aspects proposed under this tax legislation will severely crib, cabin and confine the activities of that private sector which I relate to. My accounting friends are more familiar with the details of it.

With your permission, honourable senators, Mr. Goodman will lead off. I assure you in advance that our brief will be short because it is narrowed down to the simple perspectives of the aspects of it which deal with welfare and philanthropy.

**The Chairman:** Mr. Goodman, perhaps you can tell us how the bill adversely affects the purposes of your organization.

**Mr. Wolfe Goodman, Q.C., Canadian Jewish Congress:** Yes, Mr. Chairman. The problem is a familiar one to this committee. This committee examined the White Paper on Tax Reform and in the course of its investigation it recognized the problem which would arise if a donor or testator gave property to charity which had substantially appreciated in value while he had held it. Your committee, sir, stated in its review of the White Paper at page 61:

With respect to gifts of property to museums and other charitable organizations, the Committee wished to retain to the extent possible incentives for the continuation of such gifts, while at the same time, not permitting taxpayers an unfair use of such donations for the purpose of realizing tax benefits not basically contemplated by the taxing statute.

On balance, therefore, your committee came to the conclusion that there should be no capital gains tax imposed on gifts of property to museums, universities or charitable organizations, but that a taxpayer should not be permitted to deduct in the computation of his income a greater amount under section 27(1)(a) of the present Income Tax Act than the cost or value at valuation day to him of the asset donated. Your committee, therefore, succinctly examined the problem and characterized it. We merely wish to draw to your attention that the bill has not resolved this problem, but has in some ways aggravated it.

**Senator Connolly:** For the sake of the record, Mr. Goodman, would you give us an example?

**Mr. Goodman:** Yes. Imagine that an individual, under his will, leaves to a community camp council his summer property, including surrounding land, which cost him \$10,000 in 1972 and which was worth \$35,000 at the date of his death in 1980. He will be deemed to have disposed of this property immediately before his death for \$35,000 resulting in realization of a capital gain of \$25,000, one-half of which, or \$12,500 will have to be included in computing his income for the year in which he died.

**Senator Connolly:** At his marginal rate.

**Mr. Goodman:** At his marginal rate, yes. The problem may be somewhat more acute in respect of a gift of depreciable property because there the rule is that the property

is deemed to be disposed of at the average of its undepreciated capital cost; that is, its depreciated value in non-technical terms, and its fair market value at the date of death. In those circumstances, if the property has appreciated substantially in value during his lifetime over its original cost there will be a liability for recapture of capital cost allowances, which of course are taxed in full as ordinary income, and also a possible liability in respect of a taxable capital gain, which of course is only half of the gain involved.

In the example in the brief, in paragraph (b), there is a fully rented factory building, which cost \$400,000 in 1972; in 1980 it depreciated to \$200,000. Let us suppose a fair market value of \$700,000, and bearing in mind the type of inflation that has occurred in the last 20 years, it does not seem impossible to imagine those figures. The donor, the testator, would be deemed to dispose of the property at the average of \$200,000 and \$700,000; that is, at \$450,000. This results not only in recapture of the capital cost allowances of \$200,000 taken during his lifetime, which must be brought into income, but also in a taxable capital gain of \$25,000.

The provisions in respect of *inter vivos* gifts are slightly different, because there a single rule is applicable to both depreciable and non-depreciable property; that is, it is deemed to be disposed of at its fair market value. Therefore, with an *inter vivos* gift of depreciable property, such as a factory building or office building, or what-have-you, the tax would be considerably more onerous, involving both recapture of capital cost allowances in many circumstances, and also taxable capital gains.

It is not difficult to understand the concern that the Department of Finance and the draftsmen of this bill felt in respect of what they regarded as unjustifiable tax benefits. We would be blinding ourselves to reality not to recognize that in certain circumstances the situation in the United States, for example, does result in what appear to be unjustified tax benefits. For example, an individual gives marketable securities to a charity; they cost him \$1,000; they are worth, say, \$5,000 at the date of gift; he gets a charitable donation deduction for \$5,000 under United States law, but he is not regarded as having realized a taxable capital gain. Presumably the desire of the draftsmen of the bill was to put such an individual in the same position as though he had disposed of these marketable securities first, and then given the remaining cash to the charitable organization. One can well appreciate that in respect of marketable securities this is perhaps a reasonable rule. Unfortunately, as is the situation with the five-year revaluation rule, what might be reasonable in respect of highly marketable securities might be most unreasonable in respect of property which it is not intended to dispose of.

**Senator Connolly:** In other words, what you are saying is that he makes this gift and has to make an additional payment out, and it will cost him the amount of the capital gains tax to make his gift?

**Mr. Goodman:** That is correct, sir. When we are talking about the type of gifts to which I have referred, this can be terribly onerous. I was recently involved in a very large gift to Canadian institutions of art worth several millions of dollars. While I cannot speak for the donor, who has

since passed away, I cannot conceive of a gift of that sort being made in 1980 under legislation similar to Bill C-259, where it would result in a substantial cash payment by the donor for the privilege of making this gift.

**Senator Connolly:** That would apply whether it is done by way of gift or by way of bequest under a will.

**Mr. Goodman:** Yes, sir. The *inter vivos* gift situation is a little easier to deal with, because we do have a charitable donation deduction during the individual's lifetime.

**Hon. Mr. Phillips:** In any event, on the question of *inter vivos* gifts, the assumption is that with the elimination of gift taxes at the federal level it ceases to be relevant, does it not, under Bill C-259?

**Mr. Goodman:** Certainly, gift tax is not the problem any more.

**Hon. Mr. Phillips:** That is what I wish to point out. It is currently, but from the point of view of dealing with Bill C-259 the real problem is the disposition at death.

**Mr. Goodman:** Yes, sir.

**The Chairman:** On the application of the capital gain.

**Hon. Mr. Phillips:** On the application of the capital gain. Under Bill C-259, the federal Government has indicated that gift taxes will not be applicable any more at the end of 1971. Therefore the real issue we now have to face is not in relation to gifts *inter vivos* but only in relation to gifts on demand.

**Mr. Goodman:** May I respectfully make a comment on that?

**Hon. Mr. Phillips:** Yes. I am wondering whether I am right there.

**Mr. Goodman:** I do not think you are entirely right, sir.

**Hon. Mr. Phillips:** Let us develop it, then.

**Mr. Goodman:** As far as both gift tax and estate tax are concerned, specific exemption is provided from the application of both for gifts to charitable institutions. With the elimination of gift taxes and estate taxes at the end of 1971, as contemplated by this bill, our only concern is with the tax on the deemed capital gain, either at death or on the making of an *inter vivos* gift.

**The Chairman:** At death or on realization, on disposal, "otherwise than".

**Mr. Goodman:** Yes, if we regard an *inter vivos* gift as a realization, certainly it is a disposal.

**Hon. Mr. Phillips:** I see your point.

**Mr. Goodman:** It is deemed to be a realization at fair market value for both depreciable and non-depreciable property.

**Hon. Mr. Phillips:** In respect of capital gains?

**Mr. Goodman:** Yes. Under the bill no distinction is made between *inter vivos* or testamentary gifts to charitable institutions, and to any other donations. It is the failure to

discriminate between these charitable and non-charitable beneficiaries that is at the root of our difficulty in the present case.

**The Chairman:** All they have done is to remove the half on gift tax and estate tax, and got another half now on capital gains, which may pick up the slack that they are losing.

**Mr. Goodman:** Yes, but that is, of course, a more general question on finance and fiscal policy, on which I could not comment. Whereas in the past great care was taken to ensure that charitable giving, both during one's lifetime and at death, was not inhibited by tax laws, no such care has been taken in the new legislation.

**Senator Connolly:** In other words, if I may give a concrete example, a will is in being today and the testator is still alive, the will provides for, let us say, a fund of \$100,000 to be disposed of at his or her death. Under the present law there is no gift tax, because it a testamentary disposition, and because it is a charitable bequest it does not attract any duty, succession duty or estate tax.

**Mr. Goodman:** That is quite correct.

**Senator Connolly:** However, if that will were not changed and the testator died after 1972, they the application of the capital gains tax might very well have an affect.

**The Chairman:** Except that it would not affect dollars if the gift was of so many dollars.

**Senator Connolly:** No, it would not affect dollars except in the sense that it would decrease the liquidity of the estate, because there would be capital gains tax to be paid by the testator's estate.

**The Chairman:** Only if he gave assets, depreciable assets or non-depreciable assets, and there is some gain on death as against cost.

**Senator Connolly:** Yes, precisely. I am assuming that there is a gain at the time of death.

**The Chairman:** First of all, one must assume that the disposition is in kind and not just dollars.

**Senator Connolly:** Yes, of course. I agree there. I am talking now about, say, a will which provided that the balance of the corpus of the estate shall go to such-and-such a charity.

**The Chairman:** If that is in the form of a depreciable asset, then you have this capital gains profit.

**Senator Connolly:** And the will that is in being today and is not changed until after 1972 might very well mean that there has been an appreciation over cost, resulting in attracting a capital gains tax.

**The Chairman:** A lot of wills will have to be restudied. They have been restudied a couple of times in the last couple of years because of threatened changes and they will have to be restudied again.

**Senator Connolly:** From the point of view of these witnesses and the point of view generally of the Canadian community, it seems to me that if the proposed law does



what the witness says, and I have no doubt that it does, then it is going to be extremely difficult for people to make up their minds to make charitable bequests in their wills, because of the danger of capital gains tax. Is that the burden?

**Senator Hays:** They could give cash.

**Senator Connolly:** Then they have paid the tax.

**The Chairman:** I suppose they could even get at you for this. If your will directed that the proceeds on the sale of certain assets be paid to certain charitable organizations, then in arriving at the proceeds of the sale, if there is a gain, the testator's estate has run into a capital gain problem. I do not think he can defeat it just by giving the proceeds of sale of the depreciable asset instead of giving the asset itself.

**Mr. Goodman:** Not only that; I would question whether it would be desirable.

**Senator Connolly:** On your point, Mr. Chairman, it goes to the question of liquidity of the estate.

**The Chairman:** Yes.

**Senator Connolly:** If people are going to be in doubt about how liquid their estate will be, they will probably, when they come to make their will, take the easy way out and say they cannot take chance on making a charitable donation of the magnitude they originally proposed. Some other device may be adopted. Perhaps some gift will be made, but it will not be the kind that heretofore has been made with full assurance.

**The Chairman:** It may be that they will have to keep the property that they are giving in the form of non-depreciable property so that at least they will avoid the tax.

**Senator Connolly:** That is the most difficult thing in the world for a testator to do. How does a testator know what his estate is going to be like ten years hence?

**The Chairman:** This appears obviously to be interfering with giving for charitable purposes.

**Mr. Poissant:** Mr. Chairman, would you permit me a question?

**The Chairman:** Yes.

**Mr. Poissant:** Mr. Goodman, how could you equate a situation like this, where a donor has \$20,000, made up of \$10,000 in cash and \$10,000 in the value of depreciable assets? He has two gifts to make, one to his daughter and one to a charitable organization. You would say that no doubt he would give to the charitable organization the item which may have recapture depreciation. He does not want to be caught with recapture depreciation. How do you equate a situation like this, where the donor would use the charitable donation to get rid of his capital gain tax and the recaptured depreciation?

**Mr. Goodman:** I recognize that, where we are talking about property that is intended to be sold by the charity, such as the marketable securities that I gave in a previous example—

**The Chairman:** Is there not a deemed value in those circumstances?

**Mr. Poissant:** There is a deemed value now, under Bill C-259.

**Mr. Goodman:** One can understand the situation in which the legislature, Parliament, says that upon the making of a gift of marketable securities these securities would be deemed to be disposed of at their fair market value. This is designed to prevent the situation arising which arises in the United States where, immediately upon the making of such a gift, the charity that receives it disposes of the shares and realizes the money without payment of any tax liability and the government therefore loses the tax on what otherwise might be taxable as a capital gain.

**Senator Connolly:** Let us stop there for half a second. Say you observe this, that the gain there goes to the charity.

**The Chairman:** It may be that is part of the solution of this problem. If you transfer the realized gain, as a benefit to the charity and not as a liability of the deceased and his estate, would that accomplish what you are looking for?

**Mr. Goodman:** That seems possible, sir, particularly since our primary concern is with that type of property which is not going to be disposed of by the charitable organization that we are speaking of. I give the example of the summer camp and a gift. We would expect that the charitable institution would retain that in perpetuity, or substantially in perpetuity. One could understand, therefore, that if an obligation were imposed upon the charitable institution to pay, upon realization of that asset, the amount of tax which the donor might otherwise have paid on it if he had given it to a non-charitable donee, that might be an acceptable solution.

**The Chairman:** What you do is twofold: you would impose the capital gain and the incidence of that on the charity; and you would defer the tax until realization.

**Senator Hays:** Could that not be covered by a clause in the act under exemptions?

**The Chairman:** Yes.

**Senator Hays:** And ministerial discretion to exempt?

**The Chairman:** I would not even have ministerial discretion.

**Senator Hays:** You get that today in the United Funds. These are all exemptions. You can apply for them.

**The Chairman:** This would have to be a specific provision, to isolate the capital gain.

**Senator Connolly:** I think what Senator Hays is talking about is ministerial discretion in determining whether a given organization is charitable.

**The Chairman:** Yes. I am assuming that, when one is talking about a charitable organization, it is one that is registered.

**Senator Connolly:** One that is approved.

**The Chairman:** Yes.



**Senator Connolly:** I may be wrong about the theory of taxation in respect of charitable organizations. These organizations are non-taxable and non-profit organizations. If they make a capital gain or any other kind of gain, out of a bequest made to them, through good management, because they are charitable I do not think they should be taxed. I may be out of step with current theories of taxation, but I think this is implicit in our law today, is it not?

**Mr. Goodman:** Yes, it is certainly implicit in our law today.

**Senator Hays:** Just to a point.

**Senator Connolly:** What is the point beyond which it is not implicit?

**Senator Hays:** If you want to give away money today, you pay estate tax on it.

**Mr. Goodman:** Not if you give it to a charitable organization.

**Senator Connolly:** Not on charitable gifts. I think it is an absolute provision of the law.

**Mr. Hayes:** Mr. Chairman, may I intervene? Senator Connolly's point is one that should be pursued. He says he may be out of line on the matter of what the taxation interest is. He is not out of line on the whole concept of what charities are all about. Therefore, where the sector of private giving and the management by voluntary efforts of charities is concerned, it would be a dangerous step even to permit the idea that later, when the charity gives it up, there will be a capital gain which will then be exigible.

**Hon. Mr. Phillips:** I agree with you 100 per cent. I think that is a dangerous, retrogressive step.

**Mr. Hayes:** For example, Mr. Goodman's point is that if a man gives his property, his summer camp, and the charity needs it and uses it for ten years but on the eleventh year the whole concept in our welfare society is changed and summer camps of this kind are no longer part of the mores of the community, it could be a terrible imposition on it then to have to pay the realizable value.

**Mr. Goodman:** That is right.

**Senator Hays:** On the other hand, I know of churches in expanding cities that have bought corner lots every four blocks and have not been taxed on them, knowing that they were not going to put churches on them.

**Senator Connolly:** But they are going to put churches on them.

**Senator Hays:** No, they do not. I happen to know that many of them have sold those lots and have taken the profit. They sell them as the cities expand. I think the tax people have a concern in matters of that kind where there should be a deemed realization of the sale.

**The Chairman:** I was simply pointing out that there are two routes open: one is to transfer; and the other is to defer. If you transfer the incidence of capital gains tax from the testator, then you are not inhibiting giving, because you are not putting any extra burden on his

estate. If you impose the gain and defer the tax until the depreciable property has been realized on, at least you are not defeating the tax revenues completely. Whether this is a retrograde step in the business of charitable giving I do not know. All I was looking at was how you could make the incidence of tax the least onerous.

In the example of the camp property, what would the least onerous be? If it had no further use for such purposes but was in the centre of a large development for real estate and subdivision purposes, or parks, where it might produce a lot of money, then either the charity would enjoy all that fortuitous gain or the tax revenues would gain a bit. It would be one or the other. The question is which way would you go.

**Mr. Poissant:** Mr. Chairman, I think the roll-over free of tax is a good sign, but perhaps there should be some measure to control the avoidance of tax such as, for example, the institution having to keep the gift for a certain number of years after which it would be homefree and would not be penalized unduly. On the other hand, we should make sure that the charitable organization is not used as a conduit for avoiding tax. Perhaps there could be a certain provision that would help to overcome the possibility of such abuses at least for inter-vivos gifts.

**Hon. Mr. Phillips:** Mr. Chairman, I should like to take a hand in this. If I may respectfully say so, I think we are off on the wrong foot. It is not the duty of this committee to consider taxation of charitable institutions on certain conditions. That is a positive act of tax policy. What we are considering is whether there should be a tax on the donor in an *inter vivos* gift or the person who died on a testate succession. That is our problem. It is not the problem of going into the whole area of whether charitable organizations or museums or universities, et cetera, should be taxed.

In my humble view, the situation is simple by precedent. It has never been accepted as a tax avoidance or a tax minimization if on death money was given to a charitable foundation or to museums or hospitals. You could give away your entire estate to a hospital and you would not only minimize taxation but would eliminate it completely. That is an important social concept, and there is no reason why that concept should not apply simply because we eliminate succession duties and replace them by a capital gains tax. If we eliminate succession duties federally and introduce a capital gains tax, then we should give to the donor and to the testator the same privileges they had in respect to succession duties. In other words, no deemed realization of any nature whatsoever to a donor or a testator in respect of deemed to be capital gains. Period.

Whether you have the odd case of playing around with situations in which there are listed securities and all the rest of it, once you introduce qualifications into that rule you are striking at the very heart of the point that Mr. Hayes presented here, that we are dealing with a sector of the community that is not indulging in profit. We have already, since 1917, introduced the concept under succession duties that that sector is free of taxes. Why should we not adopt the same principle now that we are eliminating succession duties and introducing capital gains simply by saying that the exemption in toto which was given for succession duties be now given for capital gains—period.

You may get the odd case of the kind to which Mr. Goodman referred, where persons will in certain instances handle the securities by way of gift. So what? It goes to an institution that will be using the money for humanitarian and social purposes.

**The Chairman:** The principle is just the same.

**Hon. Mr. Phillips:** The principle is just the same, yes.

**The Chairman:** Whether I make a gift of securities which have a built-in capital gain or make a gift of a property which, by the time I die, has a large built-in capital gain feature, the principle is the same. What you are looking at is the same. Are you going to look at the end view, which is charity? And if you are going to look at it in that light, then it may well be that this is what we should say and that, therefore, capital gain should not be brought into that picture.

**Hon. Mr. Phillips:** Why should capital gains which now replace the succession duty receive worse treatment than succession duties received by way of total elimination of tax liability on disposition?

**Senator Connolly:** I should like to make one remark, Mr. Chairman, arising out of the point that Senator Hays made. If the charitable organization is engaged in the business of real estate, and if it is buying real estate and not using it for its own charitable purposes, that is a different kind of thing and it is covered by the present legislation.

**Mr. Goodman:** May I say that that would be illegal anyway, because the corporate powers of a particular charity would not allow it.

**Mr. B. Clamen, C.A. Canadian Jewish Congress:** Mr. Chairman, I think it is important to note that if there is no exemption from the capital gains tax, then charities are the ones who are going to suffer as a result of that. To go back to Mr. Poissant's example of the estate with \$10,000 in cash and \$10,000 in some asset which has appreciated and which might trigger a capital gains tax on death—if there was the exemption, I think the point that Mr. Poissant was making was, of course, that the testator would give the asset which had appreciated to the charitable organization in order to avoid the capital gains tax and give the \$10,000 to his family. But I think the reverse situation would be that if there is no exemption, he would give the appreciating asset to his family, but he would not give the full \$10,000 to the charity. He would have to hold back \$2,000 or \$3,000 in order to pay the tax which has accrued on that appreciating asset, and I think that is the important point.

**The Chairman:** The sum total of what you are saying is that if this proposal remains the way it is, you are inhibiting charitable giving.

**Senator Molson:** Mr. Chairman, I am somewhat puzzled at a good deal of this development, because I do not think it matters at all if somebody gives away a property worth \$10,000 to a charity because it makes his estate look better, as long as he gives it to charity. I do not know why we are spending all this time questioning his motives. I do not think that aspect should come into the picture at all.

**The Chairman:** Well, Mr. Clamen and I have reached that conclusion now, that the end use is what we should look at. And that is precisely the point you are making.

**Senator Molson:** Well, I have been listening for some time to Mr. Poissant's example, and I am not in the least disturbed if the man should give \$10,000 one way or another, as long as he gives it, unless we want to eliminate the whole principle of giving to charity, in which case let us tax it and tax the capital gain, and so on. Otherwise it seems to me that this is quite unreasonable.

**The Chairman:** But we moved along the line of the process of elimination and we tested all these things and have now eliminated them and you approve of the elimination.

**Senator Molson:** We have eliminated them in our ideas.

**Mr. Clamen:** In addition, Mr. Chairman, there would be sufficient anti-avoidance there provided the testator did not receive anything in return for divesting himself of an asset for charitable purposes. To my mind that is sufficient anti-avoidance.

**The Chairman:** It may well be too that the will speaks at death, so I suppose the latest point in time at which the man is making the gift and the value of it is at his death.

**Hon. Mr. Phillips:** And he does not enjoy the tax benefits; the poor devil is buried.

**The Chairman:** Maybe that is one way of avoiding it.

**Mr. Hayes:** That is called the final solution.

**Senator Connolly:** A consummation devoutly to be wished. That is what Hamlet says.

**The Chairman:** Is this the sum and substance of your presentation?

**Mr. Goodman:** Yes, sir. I should like to add just one comment. The concept of deemed realization at death has apparently been adopted in our legislation from the British legislation of 1965, and it is of some interest that in 1971 the United Kingdom Parliament abolished deemed realization at death. I suspect that one of the reasons for the abolition is the sort of problem that is before us today.

**The Chairman:** And a new government.

**Mr. Hayes:** Mr. Chairman, I thank you very much for listening to us and appreciating our point of view.

**Mr. Poissant:** Mr. Chairman, may I also record that the remarks I made here were just to bring up the arguments. Otherwise I entirely agree with your point of view.

**The Chairman:** That is quite all right.

Gentlemen, we resume our sitting at 2.15 when we will hear from Alcan Finances Limited. That will involve some variations as to form and fact of the principles that were dealt with by Massey-Ferguson this morning.

Then, tomorrow we have a busy day. We have The Canadian Bar Association at 9.30 in the morning and we have the Independent Petroleum Association of Canada, and Simpsons-Sears Limited. In the case of the last named, their presentation will be dealing with the question



of deferred profit-sharing plans. If you remember, last week we had Allstate Insurance here and their presentation involved profit-sharing plans. There are differences between the two categories of profit-sharing plans. This fits in very nicely, because it will enable you to take a broader look at the provisions in the bill dealing with trust, and where they exclude from the benefit of being a trust profit-sharing plans, deferred profit-sharing plans, registered retirement savings plans, pension plans, etcetera and the element of taxation involved in doing that.

So this will enlarge the area and we will have the problem in greater depth, to decide just how we are going to deal with it.

We will adjourn until 2.15 p.m.

The committee adjourned.

Upon resuming at 2.15 p.m.

**The Chairman:** Honourable senators, I call the meeting to order. This afternoon we have the submission by Alcan Aluminium Limited. Those appearing are: Mr. John G. Lees, Vice-President, Taxes, Alcan Finances Limited; and Mr. William J. Reid, Vice-President and Treasurer, Aluminum Company of Canada Limited.

I understand that Mr. Reid is going to make an opening statement. Then the questions can follow.

**Mr. William J. Reid, Vice-President and Treasurer, Aluminum Company of Canada Limited:** Thank you, Mr. Chairman. I would like to say in opening that I am pinch hitting for Mr. N. V. Davis, the President of Alcan, and for Mr. Paul Leman, President of Aluminum Company of Canada Limited. As some of you may know, Mr. Leman has been ill this past month, and Mr. Davis could not be with you today because of a board meeting, but he does send his apologies.

I would like to open my remarks, honourable senators, with a few words about the general state of our industry. The state is one, as you probably know, of over-capacity in the world, declining volume and prices, and inflationary pressure on our cost structure. I would draw to your attention that both Reynolds and Kaiser in the United States have recently declared losses for the third quarter of the year. Generally speaking, our industry is operating at between 80 and 85 per cent capacity. About one million tons of excess inventory is hanging over the world market.

We are entering a period of great uncertainty and economic difficulty and we feel, based on our present forecasts of demands supply, that this will continue for the next two or three years.

The President of Alcoa, Mr. Krome George, has recently expressed the public view that we are entering a critical period in the industry in which the survival of some of the runners may be at stake. Naturally, the management of Alcan is concerned that Alcan survives through this difficult period and that we will be in a position subsequently to grow and prosper. Thus, it seems to us that the foreign tax aspects of Bill C-259 presents us in Canada with another negative cost factor at a time when we do not need any more bad news.

I would like to refer to Bill C-259 in general. Our broad conclusions from a study of the bill are that we agree with many of the points raised by Massey-Ferguson Limited in their brief this morning. However, in our brief we have concentrated more on the passive income proposals of the bill which are naturally of vital interest to Alcan because of the increasing international and global character of our business. As Mr. Paul Leman has earlier pointed out to you, Alcan's effective income tax cost in consolidation is already higher than that of its major United States competitors. Moreover, these United States competitors and the United States itself appear to be moving in the direction of reducing the effective tax load on our competitors by such expansionary incentives as DISC and the investment tax credit which you are all aware of.

Alcan is looking for tax relief in Canada in order to maintain its competitive posture, and in this context, honourable senators, the foreign tax provisions of Bill C-259 threaten us with substantially increased direct tax expense. Moreover, the quantum of such increased expense is impossible to define precisely because of the uncertain definition of the terms. Exactly what is income from property under the terms of the act? Does it include profit from foreign exchange contracts? Does it include interest on receivables on short term investment proceeds? Does it include proceeds from the sale of technology locally developed, and so on and so forth? There is a great degree of uncertainty in the act.

In addition to the potential increase in the direct tax burden, there would be the administrative cost of compliance involving endless complexities, comparative national tax structures, and the necessary intrusion into the detailed affairs of our overseas affiliates. Such intrusion and the additional cost would be most unwelcome in such countries as Norway, Japan, India and Brazil. Alcan has major holdings in all of these countries and they value their national independence and local autonomy. Alcan does not willingly wish to incur the heavy compliance costs in Canada and abroad and the local suspicions which would be engendered by the intrusion of the Canadian head office and Canadian tax structure into local management, prerogatives and practice.

In this connection I would like to cite to you a practical case, that of the Nippon Light Metal Company in Japan. The Nippon Light Metal Company happens to be the largest aluminum producer in that country, much as Alcan is in Canada. Alcan owns 50 per cent of the shares and this is a company which lists in its statement approximately 125 investments in companies fully owned, partially owned, and minority investments. These, of course, are the investments where we feel the compliance cost would have to be borne in dealing with the provisions of this bill.

To think of the complexities of compliance in this one instance, to say nothing of our holdings in Norway, Brazil, India, and so on, involving a maze of subholdings which even we hardly know about in detail at this stage, the unusual tax structure of the country of Japan and, moreover, the necessity of working in the Japanese language—Japanese statements, and what-not—makes us literally recoil in shock at the prospect.



If the bill passes in its present form, Canada will be the only country in the world with such complex and intrusive rules governing the taxation of foreign affiliates.

**Senator Connolly:** Just on that point, sir, what you are suggesting is that under this bill, the head office of Alcan in Canada would be more and more involved in the day-to-day operations of the investment program, particularly as it relates to the Nippon Light Metal Company. Is that correct?

**Mr. Reid:** That is right.

**The Chairman:** Did I understand you to say, Mr. Reid, that they would or that they should? There is a big difference. Perhaps they should but by reason of the setups in those countries they cannot. In the interests of the requirement of compliance and the extent they may be able to protect themselves against some of these things, certainly they should interfere. Whether you can or not, I do not know.

**Mr. John G. Lees, Vice-President, Taxation, Alcan Finances Limited:** Is it timely to talk on this point?

**The Chairman:** Yes.

**Mr. Lees:** This is a classic example. We have 50 per cent of the shares. We do not have 51 per cent and we do not have the casting vote. Between the Government of Japan and the various establishments we know that we do not control that company. They will run it as they wish, consulting us when they wish to consult us.

Until we received this statement from Price, Waterhouse, prepared two years ago, we did not know that they had 125 subsidiaries. We were aware that they had a few, but not 125.

**The Chairman:** Do you not receive financial statements?

**Mr. Lees:** Yes, from the main company showing so much for investments, but it took Price, Waterhouse years of digging to get an analysis, and they produced a statement like this and one of the entries states "others, approximately 100 accounts less than 150 million yen each" and it tells us what the interest on the dividend income was. Even Price Waterhouse cannot find out what those hundred investments are. We have shown this to the department and have asked them what are we going to do.

**Senator Desruisseaux:** Not even a total?

**Mr. Lees:** We have total revenue, total investment, but no details.

**Senator Connolly:** No breakdown?

**Mr. Lees:** No breakdown.

**Senator Connolly:** And some are portfolio?

**Mr. Reid:** Yes, if we were to comply with the law it would force us to go back and investigate every one of those affiliates to find out if we had to pay tax on it or not.

**Mr. Lees:** We could go to the Japanese and say, "Sirs, do not invest in these companies unless you take at least 20 per cent so we will have at least 10 per cent." That is a rule regarding whether you have a so-called affiliate or not. We

could ask them not to invest in companies less than 20 per cent owned, and right away the Japanese are going to say, "We will run this business." The next thing we could say to them is, "When you invest do invest by equity and not by debt, giving rise to interest." And they would say, "Everything is done on banking debt and over-priced interest in Japan and interest revenues"; and we will be in a conflicting position with the board of directors in Japan. Our president, Mr. Davis, has told us quite clearly that we should not discuss this with them. The Japanese affiliate will run this business; and if there is a tax problem we will absorb it in Canada because we have never asked them for this kind of information. They will question our motives. Price Waterhouse have told me that they will refuse to be put in a position of getting tax information because it would ruin their reputation as auditors because the Japanese would not believe that this was purely tax information they were seeking. They would be suspicious that we were trying to get something out of them.

**Senator Desruisseaux:** Are you the only Canadian company in this kind of situation with the Japanese?

**Mr. Lees:** The only one of which I know.

**Mr. Reid:** We are certainly the only Canadian company with a situation of this utter complexity. I am sure that other firms have Japanese subsidiaries, but not with such a large scope and not of this size.

**Senator Connolly:** But your comments are not restricted to Japan. You have chosen Japan as an illustration, but the same situation can apply—

**Mr. Reid:** Yes, we have chosen Japan because it seems the most outlandish in terms of language, custom, and general difficulty.

**The Chairman:** Let us analyse this a little bit. What you are saying is that in Japan, because you have only a 50 per cent interest, you do not control it; and, not being able to control it, there are certain accesses that you do not enjoy by way of getting information that would be pertinent to the compliance that ALCAN must make to this bill. So you are pointing out that that is a complexity. But Japan is just one instance. There are other countries where you have different problems I would imagine.

**Mr. Reid:** Yes.

**The Chairman:** Let us say that you are operating in a country where there are tax incentives; where you have a tax holiday. This is a more practical aspect of the matter, it strikes me, because you are going to pay tax on the incentive.

**Mr. Lees:** Let us stick with Japan for a moment. Their rate of tax, if you look at sheet 1 of Exhibit "B"—let us look at their rate of tax from the Price Waterhouse statement. This is the financial data and how we would comply with the law in respect to this company. This company had a rate of tax in 1970 which was 30 per cent of income, and in 1969 it was 41 per cent. This was because Japan enjoys incentives there. But the difference between that rate and the Canadian rate in that year would be a tax which Alcan Aluminium Limited would have to pay. So, even though this is a publicly registered company—in other words, you

can buy these shares on the Japanese stock market—they are registered in Japan, and taxes are being paid as on on-going business, it does not pay the same level of tax as you would in Canada. But this is a concern regarding every one of those examples you have touched on. These companies are paying taxes, but because of the difference in computing income tax, they would pay less than the Canadian rate and Alcan Aluminium Limited would have to pay the difference.

**The Chairman:** This is the point I am making. That is the effect in many countries, and the effect on you as a multi-national company that if the provisions of Bill C-259 apply, Canada is going to tax away the incentives that you get in other countries.

**Mr. Reid:** Yes.

**Senator Connolly:** They are going to tax the incentives but would they be taxed away?

**The Chairman:** It depends on the rates. I mean, you will get an offset for the amount of the taxes that have been paid in the foreign country; but if that rate is lower than the Canadian rate, then you are going to be paying Canadian taxes on the rest of it.

**Mr. Lees:** At this point, we are only talking about passive income. And in our brief we are saying that every serious company worth its salt has some kind of passive income because it will have surplus cash. By definition, if it is successful it will have these problems. Most of the countries we deal with have rates of tax which are lower than the Canadian rates. So, by definition we will pay some tax, to the extent that they have these sundry incomes.

**Hon. Mr. Phillips:** Even though it is not related to the so-called diverted income?

**Mr. Lees:** Yes, sir, that is correct.

**Senator Gélinas:** How long have you had this investment with the Nippon Company?

**Mr. Reid:** Since 1952.

**Senator Gélinas:** And it is only recently that you found out what the investments were?

**Mr. Reid:** No, I think we have known that they had a large portfolio investment. We have known that there have been a large group of investments, but—

**Senator Gélinas:** But not 125?

**Mr. Reid:** Not to my knowledge. I worked on the Japanese situation a few years ago, but I did not realize that there were 125 of them. This is new information which defines the amounts and the scope and, of course, focuses it in the light of this new act. It is sharpening our vision a bit.

**Mr. Lees:** Sir, I suggest that the point here is that in looking at this kind of investment, Alcan's position has been to avoid asking for that kind of information.

**Senator Isnor:** Why would you not ask for that information?

**Mr. Reid:** They are operating quite well, and they are producing very good results, and as long as they are doing well, we tend to leave the subsidiaries alone.

**Senator Isnor:** That does not matter. You are still entitled to know what is going on, I would think.

**Mr. Lees:** You could say that, but if another person is extremely touchy and inclined to fly up at the least suggestion, it gives you cause for thought. You do not ask an idle question just to get information. You are very careful and you only ask what you need to ask. It is a prickly affair.

**Mr. Reid:** May I just speak to that for a moment? When we bought this interest in the company in Japan in 1952, we got it at a reasonable price. The Japanese have not forgotten that we bought in at a very propitious time. I feel it fair to say that we would never get that 50 per cent if we were trying now.

**The Chairman:** Mr. Reid, are we not running along a parallel line there? Let us get into what is the hard core of the problem. The hard core of the problem is the effect or the cost of compliance.

**Mr. Reid:** And the additional cost of taxation, or the additional taxation burden on us.

**The Chairman:** Yes, of course. When you used the expressed "compliance cost", did you mean the administrative cost of complying or the extra cost in the way of paying more taxes to Canada?

**Mr. Reid:** In my mind I separate the two into an additional effective tax cost to us as an industry, and compliance with the administrative information burdens both in Canada and with our subsidiaries to supply information.

**The Chairman:** But the major problem is the increased tax cost.

**Mr. Reid:** Yes, I would think that is the major problem.

**The Chairman:** Then the cost of compliance, administratively, develops this way: First, it involves substantially more work in documentation and information to be collected; second, in that connection having regard to the way in which operations are carried on and accounting is done in some countries, you may not be able to get all the information anyway.

**Mr. Reid:** We are not sure that we can get all the data. That is what we are saying, I think.

**The Chairman:** You might have to face an arbitrary assessment, if you did not produce all the information.

**Mr. Reid:** That is right, sir, and there would be a cost of compliance in terms of our relationships with these overseas affiliates, which jealously guard their national prerogatives.

**Senator Connolly:** Have you discussed this with the tax department?

**Mr. Lees:** Yes, sir.

**Senator Connolly:** Does the tax department see any way out of this for you?



**Mr. Reid:** Not yet.

**Mr. Lees:** They just buttoned their lips.

**Senator Connolly:** I guess they do not know.

**Mr. Reid:** I guess ours is a rather complex case in the general scheme of things.

**Mr. Lees:** They ended up by saying, "But you will comply, won't you?" They put the question mark there.

**The Chairman:** Well, gentlemen, you are here first of all because we invited you, but, in any event, it was even indicated in the Department of Finance that perhaps you should come before this committee. The way I interpret that is that perhaps they are looking for this committee to do some of the study in depth in order to see what the answers are rather than face the problem in the department itself at the stage at which they are now. If we accept that as being the job we should do, then let us get on with it, but you have to give us some of the answers.

We know what the problem is in Japan. While you can tell us a lot more about it, and we might want some more information about it at a very early stage, Japan does present a very complex problem in gathering the information and even in your giving them directions or ways in which they might go so that your increased burden of tax in Canada would not be as great. Is that right?

**Mr. Reid:** That is right, sir.

**The Chairman:** Let us take a few other countries and see how you get along. How about Norway?

**Mr. Reid:** Norway is a big investment. Fifty per cent is owned by the Norwegian government, with a number of subsidiaries as well. It is not nearly as complicated as the Japanese structure.

**The Chairman:** Would they be subsidiaries of the Norwegian company?

**Mr. Reid:** Of the Norwegian company, yes, sir.

**The Chairman:** Is that 50 per cent investment a statutory limitation in Norway? You cannot increase your 50 per cent?

**Mr. Reid:** Yes, by agreement we cannot increase our investment. The Norwegian government owns the balance of the shares.

**The Chairman:** Well, you cannot control the Norwegian government, so if you were desirous of acquiring any more they would have to be willing to sell.

**Mr. Reid:** That is right.

**Mr. Lees:** As this is the biggest smelter in Norway the chances are nil.

**Mr. Poissant:** You have referred to the Japanese companies and the Norwegian companies. Are those companies Japanese-based and Norwegian-based, or could they be deemed to be international companies? In other words, are they Japanese resident corporations or Norwegian resident corporations?

**Mr. Lees:** The Japanese have reached the growth point where they are ready to move out. For example, the Nippon Light Metal Company is now in the process of developing a mine in Fiji. It has a share interest with us in another mine in Malaya for raw materials—bauxite. It is not beyond the bounds to think that they will begin to move into the Philippines and other areas in the Far East.

**The Chairman:** By way of carrying their own Japanese company forward or by setting up a national company in the country where they are going to carry on operations?

**Mr. Lees:** One would imagine they would form their own subsidiary of which Nippon Light Metal would own 100 per cent of the shares, and it would evolve from there.

**The Chairman:** They would form it in the particular country.

**Mr. Lees:** In Thailand, for example, or wherever it was. It would be the normal type.

**The Chairman:** Is there a requirement in countries like Malaya, Thailand, and Fiji that there must be a percentage of domestic ownership?

**Mr. Reid:** Not in Malaya, to my knowledge. The company in Malaya is owned 75 per cent by Alcan and 25 per cent by Nippon Light Metal.

**Senator Connolly:** Generally, in the underdeveloped countries these rules are not as rigid as they are in the more developed countries like Japan and Norway.

**Mr. Lees:** That is right.

**The Chairman:** Are there incentives in these companies where it is proposed to carry on mining operations? Incentives like accelerated depreciation?

**Mr. Lees:** Yes. Malaya, for example, gives very generous investment allowances over and above bonus depreciation. All the countries have incentives of different kinds. Some are better; some worse.

**The Chairman:** Do they have in those countries periods of tax holidays, as I refer to them?

**Mr. Lees:** They have what is termed, in the British style, "pioneer legislation". Malaya has some of that, and Taiwan has a piece of it. Mind you, we are speculating. This Nippon Light Metal has been growing rapidly with the Japanese economy and has only gone abroad for raw materials.

Let us turn to Norway, which is in the position where the Aluminum Company was ten years ago. The Norwegian company is aggressively interested in seeking markets in Germany and in France and in Britain and would like to buy subsidiaries. We have been attempting to persuade them to stay with Alcan and not to buy their own subsidiaries. We have said that we would assure them a market for their aluminum through our subsidiaries. I do not think you can predict how that is going to come out five years from now. They may well invest and have their own foreign tributaries and subsidiaries.

**The Chairman:** I ask you stop right there. You can say without speculation, that the earnings generated in these



various parts, if this legislation should become effective, would come in to Alcan of Canada as earnings and the only deduction you would have would be whatever your tax cost was. If you are existing and progressing in those countries by reason of those tax benefits, then you are going to pay Canadian tax on those benefits.

**Mr. Lees:** To the extent that the participation in our hands was less than 10 per cent, this is correct. If we had more than 10 per cent, I would say that the only concern then is as to whether or not there is this so-called passive income. The legislation, as we know, is very complex and one has constantly to remember whether one has more than a 10 per cent interest in the underlying equity or less. Now where we have a 50 per cent interest in this Norwegian company, so long as it takes a 20 per cent or more interest in any other foreign venture, and they mind it simply as a branch plant with no sundry income, no interest income, we will get along. The tax bill would not be fair to say that it would penalize us on that.

**The Chairman:** All right; let us stop there and let us take a look at an example of that situation. Let us take Norway and let us say that you have a 50 per cent interest there. If this bill and its provisions on foreign income passes into law, will you be affected in relation to the earnings of that Norwegian company in any way in which you are not now affected so far as Canada is concerned?

**Mr. Lees:** Yes, sir.

**The Chairman:** Will you illustrate how?

**Mr. Lees:** This company is a specific example which is right in front of us today. Our engineers in Canada invented or devised a new scheme to control pollution in smelters. They devised it some years ago. What they needed was a big production-sized operation to test it out and to make sure it worked and was effective. The Norwegian Government was ahead of the rest of the world on pollution legislation. This Norwegian affiliate of ours said, "Please, come and try this new device in our operation; it is the best idea we have heard yet." With their help this device was perfected. Today the world is crying for this kind of technique and know-how. It is not a patentable idea, mind you, but it is one that people will pay you a royalty to get. The Norwegians say, "The deal is 50-50; it is half our idea too because we did the perfecting of it." Alcan agreed with them that it should be 50-50. We now have third parties, people in whom we have no interest in Germany and the States coming to us and saying, "Please sell us your know-how." So you are going to see profits in the books of this Norwegian company for their half of the income from royalty, and I say that is income from property.

**The Chairman:** But your half of what may be generated out of those royalties would be passive income.

**Mr. Lees:** There is one half that comes directly to the Aluminum Company and that is taxable income here, while half goes to Norway, and half of that half comes back here as passive income and is taxable, and this is the problem we are talking about.

**The Chairman:** Well, first of all, we eliminate the half that comes directly to Canada because even under the present law you are taxed on that. So then what we are dealing

with and what we are concerned about is half of the half, and if that is passive income—

**Mr. Lees:** It is taxed.

**The Chairman:** Then you will be hurt in regard to taxes in a way that you are not presently being hurt.

**Hon. Mr. Phillips:** In addition you are taxed even though you do not receive it since it is permissive income.

**Mr. Lees:** That is correct. And the Norwegians are extremely tough with their dividends, and trying to get them to increase their normal dividend to give us something extra to pay the tax is another problem.

**Hon. Mr. Phillips:** Your only resource then would be to say that it is active business income rather than royalty income.

**The Chairman:** Either that or write something into the statute defining active business.

**Senator Connolly:** Mr. Chairman, could you direct me to where there is a definition of passive income?

**The Chairman:** It is in clause 95(1)(a).

**Hon. Mr. Phillips:** Did you intend to put a question, Senator Connolly, or may I continue?

**Senator Connolly:** I wondered whether the definition included tax incentives in the foreign country in question. I am looking at clause 95(1)(a), and at the subheadings (i) to (iv). I wonder whether the definitions there include things like tax incentives and tax holidays and things like that that the Chairman has been talking about.

**The Chairman:** The question of a tax holiday is that you are looking at offsets in the other country that you will get credit for on the Canadian tax rate. For instance in Thailand they give you a tax holiday, then you do not have a tax credit there and therefore you are paying tax on 100 per cent of the income that would come over. Something else I would draw your attention to is that they do not define "active business" so far as I can see. In 95(1)(a) they talk about "from businesses other than active businesses." Now what does that mean? It may well be that the income source in Norway originally may be from what you and I should understand to be an active business operation, but it can get converted en route to you, and may end up as passive income in your hands. It looks as though something needs to be rewritten there, but at the moment I cannot say what it is.

**Hon. Mr. Phillips:** Continuing along that line, Mr. Chairman, suppose we got away from this esoteric concept of an affiliate—which after all is a new concept and is not necessarily bad—and went back to a controlled corporation, and suppose that in that controlled corporation we could define "active business" as distinct from property or, broadly speaking, investment income then I think that substitution of investment income of some type for foreign accrual property income would improve the situation. "Property" can be derived from property used in active business activities, which is one of the confusions.

If we reverted to controlled company and investment income, could you live with that tax on permissive income?

**Mr. Lees:** If we took investment income, as I understand it.

**Hon. Mr. Phillips:** Royalty income in my opinion on that basis would be active business income.

**Mr. Lees:** I think it is money laid out to buy long-term bonds or shares in an amount of less than 10 per cent; just a few bonds.

**Hon. Mr. Phillips:** Surplus monies not needed for the active running of the business.

**Mr. Lees:** I would say it is probably zero. I gave some figures to Mr. Reid in Alcan's consolidation. There is a total of \$30 million in the 70 accounts made up of inter-company dividends. Much of that is dividends from German subsidiaries to German parents. This with interest on bank accounts and so on, but almost all of it representing marketable securities, where we have bought and sold stocks and bonds, totals in the order of \$300,000 or \$400,000 in the whole group. We could live with a problem such as that.

The only area in which we have to be careful arises in our Indian subsidiary. It issues bonds, receives money a year in advance and puts it out at interest; I do not consider that to be investment.

**Hon. Mr. Phillips:** Let me put it this way: the Government is in love with FAPI and there is a romance with foreign accrual property income. We are faced with the situation in which we are asking, possibly, for a bill of divorce, or we suggest to them that we wish to live in this romance under certain conditions.

Let us assume for the sake of argument that, even though some would go along with you, we ask for deferment of the section, or even complete elimination. Further, assume we must live with what I would call a romance, or let us call it FAPI or investment income. It would appear to me that, provided there was a control or, at least, proof of active participation in investment policy—one or the other—and provided the income was confined to investment income in the true sense of the word, that would be, at least, a common ground for compromise.

**Mr. Lees:** I agree. That is the sense of our brief. We have made specific textual language suggestions which we think accomplish precisely that purpose.

**The Chairman:** The word "dividends" somehow in the hands of those drafting this bill must have been equated with investment income. Apparently no thought was ever given to the fact the earnings from which those dividends were generated were the earnings on the active operating business. Why should they lose their character because the manner in which they are paid off is by declaration of a dividend? Why should they have another label because they are dividends? Should the basis not be to determine the origin or source and type of operation which produced this earning?

**Mr. Lees:** I would not condemn the bill on that basis. I think they endeavoured very hard to allow income to come from a factory in Germany. It goes from that subsidiary to a German parent, and from there to a holding company based in the Netherlands. Let us say we have a financial

arrangement in this, and thence it goes to Canada. They have endeavoured very hard not to obstruct that flow of the earnings back to Canada.

A situation in which the money is taken in Germany and it is decided not to send it back to Canada, but to purchase bonds or shares in Bayer or Volkswagen in Germany, presents a problem.

I take it that Mr. Phillips is saying they do have a problem and if we are to have a marriage with FAPI, we must not quarrel if a German subsidiary buys shares in Volkswagen.

**Hon. Mr. Phillips:** It is merely postponement of a dividend out of surplus at that stage.

**Mr. Lees:** Yes, but the money might come back to Canada, where the shares would be bought.

**Hon. Mr. Phillips:** It is postponement of the increase of a dividend rate.

**Mr. Lees:** That is correct, but this is the purpose of our brief. We are not choosing to argue that issue.

**Mr. Reid:** Under your definition would a controlled company be one exceeding 50 per cent?

**Hon. Mr. Phillips:** That is my point. There should be no tax on permissive income unless it is diverted income; in other words, unless it is tainted. However, on the assumption that permissive income is taxed, surely it should only be taxed if the taxpayer had something to say about the policy of the investment. The control should be real control.

It would appear to me that the simplest alternative, as I said before, if the romance with FAPI is to continue, is to say, "For heaven's sake, if you are going to tax us, do not tax us on the value based on when we were in control and when, through control, were responsible for this permissive income".

**Mr. Lees:** That is correct. A Japanese example can be taken as a case in point.

**Mr. Reid:** That definition of control and a closer definition of the meaning of foreign accrual property income would narrow it down significantly.

**Hon. Mr. Phillips:** With that, plus the definition of an active business, you would be in the ballpark.

**Mr. Lees:** Broadly speaking I would say so. Let us take another example of a problem where that would not be perhaps an entirely adequate solution. We have a \$10 million problem facing us in the next five years, \$10 million of FAPI income in Britain. It is a holding company which issues convertible bonds in the British market. These bonds, if the company is successful, are ultimately converted into shares. This money is then left as an open account advance to a wholly-owned subsidiary to build a smelter permitted by British law due to the British need for smelters because of their balance of payment problem.

Under the British tax law, interest during construction cannot be capitalized. The advice was to keep the interest expense in the holding company and when the smelter goes into operation, instead of just charging that interest



at cost, add a point or two. For instance, if the interest rate had been 10 per cent, 12 per cent would be charged thereafter. Over a period of seven or eight years interest during construction will in effect be recouped against the smelter profits.

At this point I have to tell our management that the holding company will be generating a huge passive income which is now to the figure of \$10 million, with \$5 million Canadian tax to be paid.

They will recoup it in later years in Britain, but there will be no tax paid in Britain because of the large incentives. There will be no credit for British tax. It is a mess. Our answer to this is minimum exemption.

**Hon. Mr. Phillips:** Suppose we pushed this thing further and said that you were subjected to passive income provided you had control, and that it was passive income resulting from investment derived from retained earnings. That would cover the point.

**The Chairman:** It is not in any sense diverted.

**Hon. Mr. Phillips:** Of course, it does not answer all your problems.

**Mr. Lees:** Perhaps we could take a leaf from the American book. They refer to dealings between a subsidiary in the same country, all in Britain, Germany, or Japan, where you cannot have passive income. It is only when you deal with third parties, with independent people or foreigners from that country that you have passive income. Perhaps we could take a leaf from their book. It is one of our suggestions that where the transaction gives rise to this passive income all within one national boundary, it is then scratched out.

**The Chairman:** You say that there should be a common pocket.

**Hon. Mr. Phillips:** You say that it should apply when there is a bill of divorcement but not when there is a retained romance. But you will not get it, on the assumption that you will not be able to draw a distinction between territorial arm's length and non-arm's length. It appears to me that it would narrow it down very much. It would dilute it considerably by an extension of the meaning of actual business, plus passive income resulting from control, and from income resulting from retained earnings.

**Senator Connolly:** Senator Phillips, this might be the appropriate time for you to explain to us the meaning of diverted income.

**Hon. Mr. Phillips:** Diverted income is commonly expressed as being related to income subject to Canadian tax, and which because of its territorial use, is acquired in a foreign jurisdiction.

**Senator Connolly:** In that sense, would the term "diverted income" be used in connection with investment in a smelter in Britain, and invested in a new enterprise there? Would that be an example of it?

**Hon. Mr. Phillips:** I would say that is not diverted income at all. In my opinion it is strictly a bona fide extension of the company in the United Kingdom which has paid its business tax in the course of its business operations in the

U.K. and then uses its surplus in the ordinary way of expansion. Surely that should not be regarded as passive income.

**The Chairman:** One of the difficulties here, Mr. Lees, is that if you are able to equate incentives and that sort of thing, which you enjoy in operations elsewhere in the world, to a tax credit that you would be entitled to apply against Canadian tax, it should be of considerable help, should it not?

**Mr. Lees:** I am not sure that I understand you.

**The Chairman:** I thought that one of your complaints was that in operating various offshore companies in different parts of the world you enjoy all the incentives, but that Canada taxes them because you have no offsetting tax credit. Is that not a problem for you?

**Mr. Lees:** In a way. We have many cases of perfectly fine companies where the statutory rate is only 40 per cent. I would not care to say that, even where they paid their full tax of 40 per cent, we should pay 10 per cent or 8 per cent in Canada on some transaction of the kind that we are talking about. I would use the analysis only for certain kinds of problems.

**Mr. Reid:** That is, of course, one of the worst examples of the tax differential.

**The Chairman:** If you have a tax incentive, the net result is that a corporate tax of 40 per cent in a foreign country might only be 20 per cent, which widens the gap and you would have to pay on that amount in Canada.

**Mr. Lees:** Another example where the bill reaches ridiculous heights is that where you have an American subsidiary which is trying to increase its business by acquisition, you buy 100 per cent shares and you do a merger. You merge that company into your base company so that it becomes a division, and the profits of the acquired company are available to use up your losses from investment credits.

**The Chairman:** If you use up your losses in a foreign jurisdiction you reduce the income.

**Mr. Reid:** You reduce the effective income tax.

**The Chairman:** Not only the income tax, but also the amount that would be attributable to you as earnings in Canada, in connection with FAPI.

**Mr. Lees:** You have to get the credits to offset FAPI.

**The Chairman:** You would have to equate the same amount of tax losses to the tax credit.

**Mr. Reid:** Or having used the losses from prior years, to offset them against the profits.

**Mr. Lees:** I would define the problem more carefully, rather than to compute what these credits would be, which in itself is very difficult.

**Hon. Mr. Phillips:** Would consolidation help you, in addition to the points that we have been discussing? Suppose the Government reversed its position generally on the whole question of consolidation, which was pressed by this



committee and supported in this instance by the committee in the other house—or alternatively we supported them. We have both pressed for it. If we succeeded in getting consolidation generally, not necessarily in any relationship to the subject matter that we are discussing, and if we confine passive income to the manner I have indicated—to wit, investment income, preceded by controls, and investment income resulting from surplus or retained earnings—would not the overall effect put you in a pretty fair position?

**Mr. Lees:** We opted very strongly for that. We still think it is a good idea.

**Mr. Reid:** It would help us in Canada. That would be another plus for us.

**Hon. Mr. Phillips:** I am taking the overall picture and pushing for the things that are arguable rather than dealing with some of the sophisticated and abstruse features like, for instance, your reference to the handling of the situation in respect of particularly subsidiaries in one country as distinguished from other countries where there is a tendency to be bogged down when you begin to specialize in the repress for relief. We will shortly be asking your opinion on the question of deferment of the application of the section for a while in relation to tax freeze. Sticking to our knitting for the moment, suppose the suggestion were made along the lines that I am saying: back to consolidated tax returns, back to control instead of affiliate, back to business to be more specifically defined, and passive income to be the result of the use of retained earnings. It would appear to me that you would narrow down the area where you could be damaged.

**Mr. Lees:** That is correct.

**Hon. Mr. Phillips:** Very considerably.

**Mr. Lees:** Very considerably.

**Hon. Mr. Phillips:** As a remedial measure, therapy rather than surgery at this stage.

**The Chairman:** It would be interesting to have your view on that point, Mr. Lees.

**Mr. Lees:** As a note of caution, I mention that Mr. Reid did not get a chance to finish his paper. In it he makes the point that our industry is reaching a crisis. Mr. Krome George, President of ALCOA (Aluminum Company of America), is suggesting somebody has to go out of this industry. When he met with Mr. Benson he said that somebody is going to be a gobblee and somebody is going to be a gobbler; what does he want Alcan to do? I would be worried that if we have to gobble up, or try to gobble up, our directors would have to be worried that they would be buying a horrible tax problem. That is what I have stressed, that one of the things we need is the American style 25 per cent of sales exemption. This is what worries me. I think that given the shape Alcan's business is in today your suggestion is adequate, we could live with it.

**The Chairman:** If you took 25 per cent of sales and put it in a pocket labelled, "untouchable profit", that is the profit of Alcan. Is that the way you want to do it?

**Mr. Poissant:** No. The 25 per cent is the passive income. If it is within 25 per cent there is no passive income. That would settle Alcan's problem. No doubt this is agreeable to you. How about the other companies? Would you have any ideas?

**The Chairman:** How can you jump to 25 per cent? How can you just say that if the amount of so-called passive income does not exceed 25 per cent of sales, then it is not to be treated as passive income? Is that what you are saying?

**Mr. Poissant:** That is what they say. That is what the Americans are using now. They say, "That would serve our purpose. Then we don't have to worry."

**The Chairman:** That is really very arbitrary.

**Mr. Poissant:** It is copied from the United States.

**Mr. Lees:** The American is 30 per cent. If you want to negotiate us down to 10 per cent, we could probably say we might live with 10 per cent, which is arbitrary.

**Mr. Poissant:** Which is not bad. It means to say that in any type of international co-operation there must be in some places a certain amount of passive income, or diverted income, but it could be for only a very short period, like your \$10 million, which is not really your active business, but because of certain circumstances it must be, or as the chairman said before, perhaps it will lose its identity because income from one has become divided with the other one. If it was within a certain range—you say 25 per cent; the chairman may say we could use another percentage—that would solve a fair amount of problems, because then it would be treated as ordinary income, which because of the process is normal.

**Mr. Lees:** I think the American rationale is: "We don't mind if you have a little bit of passive income. We don't want you to be principally engaged in or primarily devoted to getting passive income". They use 30 per cent as an arbitrary mindless rule to say that if you get less than 30 per cent you do not even fill in the forms. This is all we are saying: give us that kind of a rule, plus these other two changes that Mr. Phillips mentioned, and we will live with it pretty well.

**The Chairman:** Mr. Lees, you started to analyze the so-called permissive or passive income. A great deal of it in a large multi-national operation is just the wise application of money that is available at the time and not needed in the active business operation to produce money.

**Mr. Reid:** Cash flow.

**The Chairman:** That is a sound economic principle, is it not?

**Mr. Reid:** Yes.

**The Chairman:** Therefore, maybe you should not correlate income produced in that fashion and call it diverted income, or passive income. In other words, you have to distinguish the character. If it is legitimate and makes economic sense and you are not doing it as a business, you are not doing it as a business, you are not in the business of doing it, then why should it come in that rule? It should

not come in the rule. Is that not right? Your idea of the American 25 per cent of sales as an arbitrary figure is perhaps a quick, short way of dealing with the problem and saving a lot of calculations, documentation, accounting and everything else. If you started with the kind of analysis I was talking about it might take a long time and cost a lot of money.

**Mr. Lees:** Oh yes.

**The Chairman:** I cannot understand why there should be penalty because a large multi-national company uses moneys not immediately required for the general purposes of the business. They use that to earn money which they will need in the future.

**Senator Connolly:** And the earnings from which they will ultimately take tax, and perhaps higher tax.

**Mr. Reid:** Let me give as an example the Indian operation, which is quite large. In the Indian Aluminum Company we have 65 per cent. They are allowed to pay their dividends once a year, with exchange control and whatnot. As they built up their cash flow to provide for dividends they would naturally invest it, presumably in securities and market instruments, and arrange some short term passive income, I suppose. This presumably would fall into the net of the present law, which seems undesirable.

**The Chairman:** You are referring to Bill C-259. Do not let us call it law before it is law.

**Mr. Reid:** I am sorry, the bill. You are quite right, senator.

**Mr. Poissant:** Mr. Lees, would you in those percentages exclude or include the know-how and royalties in your mind? You had in mind that one must be excluded before arriving at the calculation.

**Mr. Lees:** As I say, we made our own studies, which tell me that from what we have seen so far 10 per cent on a group basis, grouping all of them, is probably inadequate.

**Mr. Poissant:** Including or excluding royalties and know-how.

**Mr. Lees:** We would not mind. First of all, we say that any royalties coming to an affiliate of the company are out; you do not count it. Then we would not mind about the Norwegians. By definition, that is out, because it is not controlled. I think that kind of a problem gives one enough room, not to worry too much about defining too precisely what is income from property. Our sensitivity and worry on that level would go down, we would be less nervous.

**Mr. Poissant:** Say, 10 per cent in your case, based on your own experience, would do and you would be home free, there would be no problem? That means all we would have to do would be that "other than active business" would include less than 10 per cent, as it would be deemed to be passive income or other than active business. That would be included in the active business.

**The Chairman:** Not less than 10 per cent of what?

**Mr. Poissant:** Of sales.

**Mr. Lees:** Quite. I think we would be all right with that kind of rule. I am trying to think of the many situations we

have. We constantly think of national groups, so that we have a holding company and a subsidiary and we have to add them together. Often our local managers want the holding company separate from the subsidiaries, for all manner of reasons. Sometimes this is royalty income, although attached to the holding company, which does not have much in the way of sales. It would be necessary to do some fine draftsmanship—which I think we have supplied.

**Mr. Poissant:** Is that 25 per cent included in your draft?

**Mr. Lees:** Yes, it is at 91.2. I have 10 per cent in there. There was a split conflict of interest. It is Exhibit C.

**Mr. Poissant:** You have 25 per cent. Shall we call it the Alcan amendment?

**Mr. Lees:** Right.

**Mr. Poissant:** Instead of the \$500 suggested, which is too small.

**The Chairman:** It has been suggested that, due to the complications in this phase of the bill, international as well as income, where the provision is that it comes into force in 1973, that should be 1974; and where the provision is that it comes into force in 1976, that should be made 1977. In that way two things might be accomplished: there might be an opportunity to deal with treaties; and also a better understanding of the problems could be gathered in that further period of time. What would your view be on that?

**Mr. Lees:** Mr. Reid was quizzing me last night about administration. We could only applaud that step, because we are absolutely terrified as to whether we are going to have the staff to do the job. I think that is correct.

**Mr. Reid:** That is correct.

**The Chairman:** Remember that under our income tax law every taxpayer is his own assessor. You assess yourself, and if you go wrong you pay the penalty. All they do is tell you when you have not followed the right rules or got the right interpretation; but you have to be your own assessor in the first instance.

**Mr. Lees:** In our case, what it means is a lot of educating of people abroad, as to new forms to be designed and translations to be made. People in National Revenue who administer this tell me they are going to ask them to file a piece of paper for each subsidiary, with a copy of its tax return attached. In all innocence, what they do not realize is that in Brazil and in some of these places they do not prepare a tax return until two years later. And some of these tax returns are monumental in thickness. The tax return would become several bushel baskets of paper; this is what they literally ask for. I think we all need time to sort out that kind of thinking.

**The Chairman:** So you would approve such a recommendation?

**Mr. Lees:** Yes.

**The Chairman:** Failing that, you make some recommendations in your brief. They really involve modifications of sections in the bill, to lighten the impact on what you think the sections mean and the effect they will have on you. Would you feel that those recommendations, if they were



adopted, would meet your situation and perhaps make you a "globbler" instead of a "globblee"?

**Mr. Lees:** Yes, sir.

**Hon. Mr. Phillips:** May I put a further question, Mr. Chairman? A further approach by way of suggestion this morning was, that cumulatively, 1973 would read 1974 and 1976 would read 1977; and, in any event, that the sections themselves, with respect to passive income and dividends from affiliates, should not come into effect in respect of the passive income or the dividends of a particular country, until such time as it is established that the country from whence the passive income is deemed to come, or the dividend does come, is a treaty country, with a definitive treaty, or when it is established that there will be no treaty in respect to that country.

The background of that is that this committee—rightly, in my opinion—took the position in its report on the White Paper that we were putting the cart before the horse in dealing with this whole business of foreign income. There is acceptance of the principle, in the sense that we have a law which comes into force in 1972 and 1976, and so on, obviously for the purpose of getting the treaties put through. It has been suggested—and I personally like the suggestion—that we get back to logic and say, "Do not apply the new sections until such time as you have either worked out a treaty or have not worked out a treaty," because the method of treatment of the passive income and the dividend is related to the existence or non-existence of a treaty and, when there is a treaty, obviously to the terms of the treaty.

**The Chairman:** In doing that, you are not challenging any principle in the bill. All you do is defer its coming into effect for a further period of time.

**Hon. Mr. Phillips:** Frankly, the hope is, Mr. Chairman, that if that is done, the Government will have the opportunity to think it out a little more carefully . . .

**The Chairman:** That is right.

**Hon. Mr. Phillips:** . . . and will relate treaty negotiations to the problems that have been submitted to them for consideration.

**The Chairman:** If you interfere with something that is the pride and joy of the author, by direct attack, saying, "Suspend it," that is one thing. If you simply say, "We need more time to understand it," that is simply taken as meaning that you are not challenging the principle. Of course, time may challenge the principle.

**Mr. Lees:** Mr. Chairman, may I reply to Mr. Phillips? I would say sections 91 to 95 should not involve treaty negotiations in principle, because the whole sense of the sections, if they have any meaning, is to catch those Canadians who are avoiding Canadian tax.

**The Chairman:** Yes.

**Mr. Lees:** They should be looked at in that regard. I would not be prepared to negotiate that with a foreigner. That is a domestic problem; it has to be regarded as a domestic policy and it should be settled here. I do not think it is negotiable.

**Hon. Mr. Phillips:** But the question of tax relief on dividends, as distinguished from passive income in terms of credit, is closely connected with treaties. You have to have your treaties in order to know what you are paying. You are dealing with two factors. We have been concentrating on passive income, but the second one deals with the question of dividends.

**Mr. Lees:** If I were to approach it, I would get section 95 right. I believe they are gross now. Passive income should be aimed at diverted income. I believe we have suggestions for that.

**The Chairman:** When we put emphasis on the tax treaty side of it, that is not the important side which you feel the emphasis should be placed on.

**Mr. Lees:** Yes.

**The Chairman:** To the extent that these sections are intended to deal with tax avoidance, you are right. That is something that we can deal with in Canada and we now have enough law to deal with it.

**Mr. Lees:** I feel that government should retain somewhere, either by order in council or at the discretion of the minister, the right to permit a Canadian company to receive a tax-free dividend where the minister is satisfied that tax avoidance was not involved and the tax situation required the investment to be made in Uganda or in Mexico where the investor receives tax incentives. We will never negotiate treaties with some of these countries. I think the minister should have the authority to think it out and say, "Yes, we will give this one exemption; it deserves it".

**The Chairman:** If our reference to tax treaties bothers you a bit, we will forget that we said it. Let us take only the position that the chief design of section 95 is in connection with diverted income or tax avoidance. They are complicated and the taxpayer certainly is going to have to know his position. He could be inadvertently subjecting himself to penalties, so he should have the full time to study it and perhaps make full representations. Would you agree to that?

**Mr. Lees:** Yes, sir.

**The Chairman:** I have not mentioned tax treaties; I have not shocked you at all.

The Minister of Finance has stated on more than one occasion that the purpose of the provisions of the bill was to put a foreign affiliate in the same position as it would be if it were carrying on business in Canada. These provisions in the bill do not do that. They penalize the foreign affiliate as against a Canadian operation in Canada. Is that not correct?

**Mr. Lees:** That is correct.

**The Chairman:** So there is an over-exaggeration on this question of tax avoidance.

**Senator Connolly:** Mr. Chairman, could we have an example of just what you mean? I am not controverting it, but I think it would be helpful to have an example for the record.



**The Chairman:** What I am saying is that if your Japanese company was operating in Canada, I assume it would be part of the overall operation of the Aluminum Company of Canada Limited. Is that right?

**Mr. Lees:** Mr. Chairman, could I give three examples? This is a good question and it illustrates several points in our brief.

**The Chairman:** All right.

**Mr. Lees:** Many of our big Canadian companies are acquiring American subsidiaries, and if we take the example of an American subsidiary manager who wishes to acquire other companies, and the Canadian parent company gives him approval and agrees to raise money for him, he then buys up the shares and he makes a statutory amalgamation. However, he has been operating at a loss for the last two years; he has had losses, but he is seeing his way out. Now, if he makes an amalgamation, as I understand sections 86, 87 and 88 of the bill, he will be deemed to have realized a capital gain on anything he gets from that newly acquired subsidiary. The newly acquired subsidiary is an intangible asset—goodwill being a good example or some shares—anything which is in that subsidiary—he will have to deem an arbitrary capital gain. His American subsidiary is operating at a loss: it will not pay anything for the next two years, but the parent company in Canada will have to pay tax at the rate of 48 per cent on the deemed gain.

If a Canadian subsidiary purchased another Canadian company and made an amalgamation there are generous exceptions and reliefs and there would be no such tax. However, if your American manager said, "Look, I have this little division over in Chicago and I want to put it in a separate corporation—this guy is getting too big for his boots and I want to let him out"—he would transfer those assets to another company. This is covered under section 86 or section 87, I think. In Canada, if you took your Vancouver assets and put them in another subsidiary you pay no tax on the deemed gain on the transfer of those assets provided you retain 80 per cent of them, but if your American manager transfers assets you will have to pay tax on the deemed capital gain.

**Senator Connolly:** Simply because he is out of the country.

**Mr. Lees:** And there is no relief extended to the foreign corporation. I am sure it is an oversight, but it is in the bill.

Our English company is going to have losses for three more years because they are getting this smelter started. It is going to have sundry income. If our Canadian subsidiary had losses and at the same time had sundry income, obviously we would have some relief, but we will have to pay tax with respect to our English company because we have this FAPI. The company is operating at a loss and they do not allow us to take the loss on the ordinary basis to reduce the FAPI.

I would say those are the three most effective places where there is discrimination against our foreign affiliates.

**The Chairman:** Are there aspects here that we should discuss from your point of view? If there are, now is the acceptable time.

**Mr. Lees:** As Mr. Reid stated earlier, we did read the Massey-Ferguson brief with some appreciation because they did cover a great deal more ground than we did. We were rather single minded. We are terrified of this FAPI business. We would desire some of the points raised in the Massey-Ferguson brief to come to pass. I did notice that they neglected to talk about the instalment payment of income tax. I think it is depressing that Canada is the only country in the world which causes a corporation to pay income tax in January on its current year's liability.

**The Chairman:** Well, Mr. Lees, we have enough problems without attempting to rewrite accounting by corporations. It is really payment in advance; that is what it amounts to.

**Mr. Lees:** Yes.

**The Chairman:** I would think that FAPI could be made acceptable if you wrote a real definition of FAPI in terms of relating it to tax avoiding and diverted income. If you have any real FAPI income, you are prepared to pay tax on it, is that right—in the definition I have indicated?

**Mr. Lees:** That is correct. I would think that Alcan would not have very much of that sort of thing. It becomes so complex that as soon as you put down words to say these things, you have to be very cautious.

**The Chairman:** If you sit on money and you do not invest it in short-term investment while you are waiting to use it in your business operation, then, from a tax point of view, you are doing well and you are reducing the instance of tax. But the moment you apply it, you may fall into the category of passive income, depending on where you provided the money and where it is used. In any event, if you earn income on it, that income would be taxable. You would get caught in with FAPI, perhaps in a big way.

**Senator Lang:** The witness mentioned that he was terrified of the impact of these FAPI sections. If the bill went through in its present form and became law, could you re-organize the operations of Alcan to avoid this problem?

**Mr. Lees:** In my opinion, no.

**Mr. Reid:** You could take the ultimate step.

**The Chairman:** The ultimate step might be that what is left in Canada might be merged into a branch operation.

**Senator Lang:** That is what I am thinking of. You could convert your overall world operations so that the Canadian operation became a subsidiary rather than a parent.

**Mr. Reid:** Yes. It is a question of plus and minus. This is tipping head offices away from Canada and making them into branch companies.

**Senator Hays:** Would you consider a holding company in the United States controlling your Canadian operations?

**Mr. Reid:** We would have to think carefully about that.

**The Chairman:** Over the years much effort has been put into to ensuring that that situation did not exist.

**Mr. Reid:** But these things tilt towards those solutions.

**The Chairman:** They are tilted towards the United States or to the United Kingdom.

**Mr. Lees:** Or to Amsterdam.

**The Chairman:** It is a problem that should be avoided.

**Mr. Lees:** Alcan's Canadian shareholding has grown astronomically over the years. Canadian shareholders would have to be consulted. I do not think they would suffer economically if we were to go elsewhere.

**Senator Isnor:** Why do you paint such a dismal picture of the situation over the next two or three years?

**Mr. Reid:** The time factor arising out of aluminum investments is quite lengthy. For one reason or another excess capacity has been built into the world aluminum picture, largely through the coming into the industry of newcomers under incentives from government, which are attracting investment into the industry. The aluminum industry is over-built. For one reason or another the demand has not proceeded as anticipated. We anticipate there will be a period of over-capacity in the industry.

**Senator Isnor:** You mean in your own industry?

**Mr. Reid:** In the aluminum industry. Surplus inventory overhangs the market and we have to wait for growth to pick up the difference. We are suffering from competitive forces in the industry.

**Senator Isnor:** It appeared from the way you said it that it was a general statement.

**Mr. Reid:** It applies to the aluminum industry throughout the world.

**Senator Lang:** It applies also to the pulp and paper industry and to others.

**The Chairman:** No doubt we will hear the same story when representatives of the pulp and paper industry appear before us in a couple of weeks.

**Hon. Mr. Phillips:** They are hopeful that the new bill will get them into trouble with the amount of paper work required.

**Mr. Reid:** We have in our favour an average 8 per cent growth rate, which we hope will eventually eliminate this problem, provided that the production by newcomers into the industry does not proceed at a faster pace.

**The Chairman:** We shall have before us tomorrow morning representatives of the Canadian Bar Association, who have quite an extensive brief. We shall hear also from the Independent Petroleum Association of Canada and from Simpsons-Sears Limited. Simpsons-Sears will be dealing with the narrow point of the deferred profit-sharing plan and the treatment of trusts under the bill. The representatives from Simpsons-Sears will be appearing in the afternoon. The committee will adjourn until 9.30 tomorrow morning.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 43

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THURSDAY, OCTOBER 21, 1971

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Seventh Proceedings on:

“Summary of 1971 Tax Reform Legislation”

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(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

“With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as many be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.”

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Thursday, October 21, 1971.  
(52)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further examine:

“Summary of 1971 Tax Reform Legislation”

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Carter, Connolly (*Ottawa West*), Everett, Gelinas, Haig, Hays, Isnor, Lang, Molson and Smith—(13).

*Present, but not of the Committee:* The Honourable Senator McDonald—(1).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel; Mr. C. Albert Poissant, C.A., Tax Consultant and Mr. Alan Irving, Legal Advisor.

## WITNESSES:

### *Canadian Bar Association:*

Mr. John L. Farris, Q.C., President (Vancouver);  
Mr. H. Purdy, Crawford, Q.C., (Toronto); Chairman, Sub-Committee on Tax Legislation;  
Mr. J. Albert Brulé, Q.C., (Toronto), Member, Sub-Committee on Tax Legislation;  
Mr. Harold Buchwald, Q.C., (Winnipeg), Member, Sub-Committee on Tax Legislation;  
Mr. Edwin C. Harris (Halifax), Member, Sub-Committee on Tax Legislation;  
Mr. Ronald C. Merriam, Q.C., Executive Director, (Ottawa).

At 12:15 p.m. the Committee adjourned.

2:15 p.m.  
(53)

At 2:15 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Carter, Connolly (*Ottawa West*), Gelinas, Haig, Hays, Isnor, Molson and Smith—(11).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel, Mr. C. Albert Poissant, C.A., Tax Consultant and Mr. Alan Irving, Legal Advisor.

## WITNESSES:

### *Simpson Sears Ltd. and Simpsons Limited:*

Mr. E.A. Pickering, Vice-President, Simpson Sears Ltd.;  
Mr. A. K. Hamilton, Corporate Comptroller, Simpson Sears Ltd.

Mr. D. A. McGregor, C. A., Clarkson, Gordon Company.

### *Independent Petroleum Association of Canada:*

Mr. A. Ross, President (President, Western Decalta);

Mr. G. W. Cameron, General Manager.

At 3:30 p.m. the Chairman vacated the Chair and the Honourable Senator Connolly became *Acting Chairman*.

At 3:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, October 21, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**The Chairman:** The first item that the committee has to consider this morning is the brief of the Canadian Bar Association. Those appearing are: Mr. John L. Farris, Q.C., President, Canadian Bar Association; Mr. H. Purdy Crawford, Q.C., Chairman, Sub-Committee on Tax Legislation, Canadian Bar Association—and honourable senators will recall that he was here before us on the Chamber of Commerce submission; Mr. J. Albert Brulé, Q.C., Member, Sub-Committee on Tax Legislation; Mr. Harold Buchwald, Q.C., Member, Sub-Committee on Tax Legislation; Mr. Edwin C. Harris, Member, Sub-Committee on Tax Legislation; and Mr. Ronald C. Merriam, Q.C., Executive Director, Canadian Bar Association.

Honourable senators all know Mr. Farris, whose name is well known in the Senate.

**Mr. John L. Farris, Q.C., President, Canadian Bar Association:** Thank you, Mr. Chairman.

Honourable senators, the Canadian Bar Association very much appreciates the opportunity of being heard by this committee. Our association has been very interested in tax laws and their administration, and our taxation section has been one of the most active in the Canadian Bar organization.

From the time of the Carter Commission we have had a special committee whose purpose has been to study tax reform in depth and to make recommendations. Briefs have been submitted on the Carter Report, on the White Paper, and on the legislation that is now before you.

While this committee has varied over the years, the nucleus has remained the same, and at all times it has included lawyers from coast to coast who are experts in the taxation field.

We continued this special committee in anticipation of this legislation, and it has continued its studies in depth.

With me to present the views of the association are the gentlemen whom the chairman has mentioned. Immediately on my right is Mr. Purdy Crawford of Toronto, Who is chairman of the special committee. Beside him is

Mr. Buchwald, Q.C. of Winnipeg. Next to him is Mr. Brulé of Toronto, and on the far end is Mr. Harris of Halifax. Our executive director, Mr. Merriam, Q.C., is also present.

With your permission, Mr. Chairman, I will turn the matter over to Mr. Crawford.

**Mr. H. Purdy Crawford, Q.C., Chairman, Sub-Committee on Tax Legislation, Canadian Bar Association:** Thank you, Mr. Chairman. Last night, we gave some thought to how we would approach what we regard as some of the more significant issues facing your committee in connection with tax reform. We decided that we would raise those more significant issues by referring briefly to the introduction in our submission and by some of the other members of the delegation dealing with what we regard to be the most significant points. Following that, since our brief is long and technical, we would go back to the committee to deal with it further in whatever way they would like. That is our suggestion.

**The Chairman:** I indicated to you earlier that I have a question that I wish to ask you at some stage, and perhaps you had better be thinking about it now.

Would you give us your view of what the priorities should be in relation to the difficulties or objections to the bill?

**Mr. Crawford:** I think by the time we finish this opening part, on what we regard to be the most significant issues, we will have touched on most of the priority items. Then, if you would like to go back to them, Mr. Chairman, and have us write them and add any others you think are relevant, we will do that.

**The Chairman:** Fine.

**Mr. Crawford:** First of all, I want to refer to page 2 of the introduction. This introduction, although a bit hard-nosed, was worked out in late July here in Ottawa by fifteen lawyers from across Canada. These lawyers spent three days consulting with the Department of Finance officials and working on the approach of our submission. I am going to read a couple of sentences here:

It is barely two short months since the budget speech and the publication of the first draft. The transitional provisions were not available until the beginning of July, the outline of the resource industry regulations and the international income regulations were even later. We have found it impossible in this short space of time to master the proposed legislation to the point where our criticisms can be in any

sense adequate. We do feel confident that for every problem or mistake, we have found in the statute, there are ten we have missed.

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** Mr. Crawford, just on that question of numerality and the missing ten, have you found 50 good sections in the statute which, on the basis of the Lord and Genesis, you could say "Sodom and Gomorrah" and save this bill.

**Mr. Crawford:** My colleague says we will leave the mathematics to the accountant.

I would just like to read on a little further, Mr. Chairman:

In addition, we are sure that some of the possible problems or mistakes hereinafter referred to will, upon further study of the reform legislation, prove not to exist.

I want to emphasize that we think the group of people who did the work are of top-notch calibre. We are sure a good deal of it was done under tremendous pressure, and I do not care how bright and resourceful your people are, the problems we refer to are bound to come up. The second part in the introduction I wanted to touch on is at page 4. It is a general point and I would not put it forward as a priority item, Mr. Chairman, but it is an important item in terms of equity. It is at the top of page 4, where we state:

We have indicated in this Submission, several places where reciprocity of treatment is not afforded to both sides of a transaction, as where a selling price is deemed to be some amount but the purchase price is not deemed so to be. We are sure we have overlooked many places where this will be a problem in the legislation and we suggest that a general section might be included to the effect that such reciprocity will always exist unless explicitly excluded in the statute.

That is the old problem that exists in Section 17 of the present act; and this comes up at least five or six times in our submission. This is a general point but we think it is important. There are two or three places where they have provided for reciprocity to both sides of a transaction. It is difficult to make an argument that the legislature intended reciprocity in the other places.

Finally, honourable senators, we state in the last paragraph:

In view of the complexity of the draft legislation, we are certain that in the course of the next two or three years, many situations will come to light where the technical application of the legislation will be most unfair to taxpayers. We are equally certain that many "loopholes" will become obvious. We assume that it is for the latter reason that the tax collector has retained a broad discretion in cases where the equities clearly dictate a tax should be imposed, even if such a tax is inconsistent with the technical words of the Act. Surely, in fairness, this should be broadened so that the taxpayer has a similar right if he

can convince the courts that to levy a tax would be a manifest inequity.

This is quite a novel suggestion. We put it forward seriously, however, in a day when all of the general provisions, the avoidance provisions—and they are becoming more—and the discretionary provisions are weighted in favour of the Revenue. It is time to start giving some serious thought to a provision that is also of general application weighted in favour of the taxpayer.

**The Chairman:** In ordinary language, you might say that equity is a two-way street.

**Mr. Crawford:** Yes.

**Senator Connolly:** Have you any specific suggestions you would like to point to in this connection, Mr. Crawford?

**Mr. Crawford:** At this point I would like Mr. Buchwald to speak on the administrative problems in this area.

**Senator Connolly:** I do not want to throw you off your general presentation.

**Mr. Crawford:** This is the way we planned on doing it.

**Mr. Harold Buchwald, Q.C., Member, Sub-Committee On Tax Legislation, Canadian Bar Association:** Senator, I believe that the answer to your question will become obvious as we get into the brief.

**Senator Connolly:** That is fine. Thank you.

**Mr. Buchwald:** Mr. Chairman, the comments on the administrative provisions of the statute appear at page 72 of the brief, the last section. The Canadian Bar Association feels a particular obligation to look very carefully at the administrative provisions because, after all, the enforcement and effective operation of the administrative provisions comprise our particular bailiwick.

We were pleased to note that the Minister of Finance remarked in his budget speech that when he got to the administration of the tax reform, many of the traditional civil rights and civil liberties of the taxpayers which had been agitated for over many years by the joint committee of the Canadian Bar Association and the Canadian Institute of Chartered Accountants had been incorporated in the tax reform measures. These, of course, are problems which have been brought to light from time to time by the joint committee of the two associations. Our concern is that while the minister and the Government have met some few of the civil liberty concerns that we have raised, there have only been a few of them. The thrust has not been adequate; it has been—and I am speaking personally and not on behalf of the association—not very much beyond tokenism. Throughout the drafting of the bill, the bill is an enforcement-oriented statute. It leans completely in favour of the revenue in almost all its approaches.

The key item that gives us the most cause for concern is the enshrinement in Bill C-259 of what the Minister of Finance of the day introduced in 1963 as a temporary expedient, the notion of ministerial discretion in the



assessment of two key areas of business activity; those being, surplus distributions and asset distributions, commonly called surplus stripping and dividend stripping.

The present odious section, to us anyway, Section 138A is now a permanent section of Bill C-259.

**Hon. Mr. Phillips:** What is the corresponding clause in the bill? Do you have that reference that handy?

**Mr. Buchwald:** Yes, I do. It is clause 247.

**The Chairman:** That corresponds to what?

**Senator Connolly:** Section 138A.

**Mr. Buchwald:** Section 138A(1).

**The Chairman:** I was wondering if you had gone back to look at the record of this committee and the Senate when that section was being considered. The then Minister of Finance was here, I think in December of that year. He was asked for an explanation, which he said he could not give. But they needed something because of a problem they were dealing with, and he said there would be another budget within four or five months and the matter could be picked up again, but it never was after that time. Even this bill does not propose to pick it up and deal with it.

**Mr. Buchwald:** That is correct. As a matter of fact, in the situation it was alleged to have been required for it appears not to have been legally necessary, because the decision of the Supreme Court of Canada in the *Smythe* case, which proceeded without the use of that section, indicated that the section was never required, that the Revenue, if it felt an improper surplus stripping scheme had been engaged in, already had within the present Income Tax Act sufficient ammunition and machinery to apprehend that kind of thing without having the ministerial discretion section. Now we find it, as we say, becoming part of the permanent law, for ever, in this temporary expedient in Bill C-259.

**Senator Connolly:** I just want to be clear on this one point in respect of the present bill. You say that under the old act section 138A would not have been required under the decisions.

**Mr. Buchwald:** That is right.

**Senator Connolly:** The equivalent of that, you say, is put in as clause 247 of this bill.

**Mr. Buchwald:** Yes.

**Senator Connolly:** Would you say that the scheme of the present bill is such that clause 247 is not required either in the light of these decisions?

**Mr. Buchwald:** Yes.

**Mr. C. Albert Poissant, Tax Consultant to the Committee:** There would certainly be less need with a capital gain, because certain of these transactions would become capital gains.

**Mr. Buchwald:** Precisely.

**Senator Connolly:** In ruling out clause 247, do you rule out only subsection 1, or the entire clause?

**Mr. Buchwald:** Just subsection 1. Subsection 2 deals with the exercise of ministerial discretion to associate corporations for the purpose of denying spin-off corporations the low base under the present act. It is comparable to section 138A(2).

**Senator Connolly:** The third part deals with appeals.

**Mr. Buchwald:** Yes.

**Senator Connolly:** That should remain.

**Hon. Mr. Phillips:** Are you satisfied with the rest of Part XVI, other than clause 247(1)?

**Mr. Buchwald:** Yes, I think so. We would concede that ministerial discretion is probably necessary if it is to be a business purpose test approach for associated companies. It was a problem, and it was met by section 138(2). Once you have subsection 2, with the minister exercising his discretion, I think you have to give the taxpayer a right of appeal so that he can challenge that discretion in the courts, and the courts can say whether it was exercised properly. As the chairman remarked earlier to Mr. Crawford, the imposition must not be a one-way street. The associated companies provision has to prevail because the rest of the act is perpetuating the notion of a low rate in a small business incentive, and the Revenue has to be protected so that only one business can legitimately get the incentive and not a number of spin-off operations.

**Hon. Mr. Phillips:** But you are also satisfied with the retention of Treasury Board discretion of tax avoidance? Or to put it simply, as I said a moment ago, in Part XVI, which deals with tax evasion, there is nothing basically serious to which you object, other than clause 247(1)?

**Mr. Buchwald:** That is correct. I would hope there would be a scheme of legislation that would not require a broad sweeping artificial transaction section, as you find in sections 137 and 138, perpetuated in the counterpart clauses of the bill.

**The Chairman:** It indicates lack of faith in their drafting, does it not?

**Mr. Buchwald:** No, I do not think so. In fairness to the draftsmen, I do not think you can contemplate every business situation that will be promoted by tax planners and tax payers to avoid the intent of the legislation. I think the ground rules should always be clear on the business purpose or what it is that will attract tax, but until you have that there have to be artificial transaction provisions.

**Hon. Mr. Phillips:** Mr. Buchwald, may I put this question to you? Any suggestion from this committee that we eliminate clause 247(1) might be interpreted by the public at large as showing that we condone, directly or indirectly, minimization or avoidance of tax. Can you tell us, on behalf of the Canadian Bar Association officially, and more particularly through its tax committee, that you are satisfied the provisions of the proposed new bill simply



do not require the retention of this section, as a group of responsible lawyers across the country?

**Mr. Buchwald:** This is our unequivocal view, sir.

**The Chairman:** The plus that you add to it is the Supreme Court of Canada decision.

**Senator Connolly:** It is based on the decision in the *Smythe* case.

**Mr. Buchwald:** Yes.

**Senator Connolly:** I do not want to have a long discussion about this, but on the question of appeals from acts of ministerial discretion, one such appeal being given in clause 247(3) of the bill, the prospect of success in an appeal from ministerial discretion is fraught with considerable difficulty, is it not?

**Mr. Buchwald:** The minister's track record to date has been extremely successful, being 95 to 98 per cent.

**Senator Connolly:** In other words, for practical purposes there is no value in an appeal from a discretionary act, other than that it was palpably unreasonable, palpably inequitable. That kind of base perhaps might succeed, but it is a very difficult thing to achieve, is it not?

**Mr. Buchwald:** Yes, it is, but is there not this virtue, that the existence of the right of appeal perhaps acts as a restraining factor on an over-ambitious administration?

**Senator Connolly:** I am very glad you said that. I think that is very wise.

**Mr. Buchwald:** Knowing that their actions may be challenged, and perhaps they have to this point been quite circumspect in the exercise of that discretion.

**Senator Connolly:** Well, they are 95 per cent right.

**Mr. Crawford:** I should comment that the associated corporation provision appeals have not really worked too badly, because of the wording of the section. That is where they are 95 per cent right. Basically there have been no appeals on the dividend stripping discretion, because the minister has such a big stick when he comes to assess, and the risks of appealing are so great that he can force a reasonable settlement, or what he regards as a reasonable settlement.

**Mr. Buchwald:** It has been my experience, and the information I have from discussing this with other tax practitioners—and, if I may say so, Mr. Phillips, including an eminent partner of yours—is that businessmen are reluctant to engage in activities, to go into a venture, when their advisers indicate to them that they may be vulnerable to subsection 1 of section 138A. They will not know this, they will not have a tax ruling on it, until after the fact. So they have avoided that kind of transaction, rather than run the risk of having to face an assessment several years into the future, when they have re-arranged their affairs and have gone on to something else. But it might be interpreted in that way.

**The Chairman:** Mr. Buchwald, you must be familiar with something else that happened by reason of this section 138A. That is that purchasers on the other side of the transaction, if they are alert at all to this provision, and certainly their lawyers would do that, ask for an indemnification, to be indemnified against the possible exercise of this section.

**Senator Connolly:** May I make one further point about section 247(1)? Would you quarrel with the suggestion that was made by the departmental officials, that it is there for an over-abundance of caution? They may agree with you that the authority is in the act, based on the decisions that you have already cited, but the fact that it is there may not hurt. This follows what Mr. Phillips was discussing, but from another angle.

**Mr. Buchwald:** Yes, I agree they would say that. I would also agree with you that they would say—and we have heard them say—that its presence has apprehended, or brought to an end, a course of conduct they were trying to stop. Its very presence is acting like a big stick and has stopped dividend stripping. They would know this.

**Senator Connolly:** On balance, having said that, would you still adhere to the proposition that it should go?

**Mr. Buchwald:** If we are talking about tax reform, about trying to get for Canada a reformed, totally ideal tax system, then this ministerial discretion is not reform, it is "copping out," if I may say so, senator, on the notion of reform. They are admitting that they cannot clean up the statute in such a way that it will be clear and certainly that the administration will flow smoothly. So they have to go back to the big stick method.

I think that what Mr. Poissant said earlier is very appropriate—the introduction of a capital gains tax, and dividend stripping manoeuvres, were designed to create capital gains that would be tax free. A lot of the apprehension surely must go. Surely they are going to get at least 50 cents on the dollar—more than they did before.

Secondly, I think that any time there is ministerial discretion in a statute it ends up in trapping so many things that were never contemplated and it just leans on over-eager Revenue enforcement, not necessarily in the best interests of the taxpayer and thereby not necessarily in the best interests of the country.

**Hon. Mr. Phillips:** Mr. Buchwald, I would like to put a question to you now, but still sticking to section 247(1). Somewhere down the line we want to discuss with the association the desirability of eliminating designated surpluses under the new laws, which was closely connected with that section 138A setup. With the introduction of capital gains tax, I want to put a simple question to you. Would the elimination of designated surpluses, in addition to the introduction of the capital gains tax, further fortify your conclusions that section 247(1) would not be needed?

**Mr. Buchwald:** Yes, I would think so.

**Hon. Mr. Phillips:** Very well, that is all I want to know now. I do not wish to go into it.

**Mr. Poissant:** May I ask a question, Mr. Chairman?

**The Chairman:** Yes.

**Mr. Poissant:** Do you think that we would still need this in a transitional provision?

**Mr. Buchwald:** I would not think so. No, I would not think so.

**Senator Connolly:** I am sorry, I did not hear the question, Mr. Poissant.

**Mr. Poissant:** I am asking this. On January 1, 1972 when the new act comes into force, let us say, if there were still some stripping of surplus that had not been caught, I was wondering whether the department would still need to use section 138A of the old act to enforce its assessment policies. Do you think there would be a need to have it in the transitional provisions? It would be a kind of a phase out, in the transitional provisions, just like the others, but I am not too sure.

**Mr. Buchwald:** No, I would not think it would be required. However, let me put it this way, that we could achieve that compromise if we had to.

**The Chairman:** If you had to phase out.

**Mr. Edwin C. Harris, member, Subcommittee on Tax Legislation, Canadian Bar Association:** May I add one point here. This gets into the corporate tax area. The fact that there is the option now to pay a 15 per cent tax on existing corporate surplus makes the extraction of corporate surplus much simpler and much cheaper than it has been under the present act. Again, I think it makes dividend stripping much less attractive, relative to the alternatives.

**Mr. Poissant:** No doubt that is so. However, you realize, Mr. Harris that my question was not on this surplus income after January 1, 1972, but on this dividend stripping that could have taken effect before the tax reform.

**Mr. Crawford:** There is one point we should put on the record, particularly with reference to the question which Hon. Mr. Phillips asked. It is not just the *Smythe* case that leads us to say that section 247(1) should be taken out of the act and not even put in the transitional provisions either. It is the whole approach of the courts in interpreting the taxing statutes in the last five years. I have really no doubt, if there is a vigorous assessing policy followed by the Department of National Revenue, you would not need section 247(1). You might, through the court cases, throw up an area where there is a problem which can be changed by a specific piece of legislation rather than by a discretionary act.

**Mr. Buchwald:** Mr. Chairman, there are two or three other items which I would like to highlight and leave it at that, because there are so many other things in the bill. We mentioned in our brief, on page 72, that we are concerned with the perpetuation of the double jeopardy

or double penalty method, that is perpetuated in the tax reform. The double penalty appears in section 163 and section 239. We feel that that is not consistent and we do not feel that that is tax reform, we feel that that is over-enforcement.

Talking on ministerial discretion in another area, there is a lot of discretion in a number of other places in the act, and it is perpetuated, we think to the detriment of the taxpayer, in Bill C-259. The minister has discretion as to whether he will register or not register pension plans, applications to be treated as charitable institutions, Canadian sports, authorized sports organizations, and so on.

There is a provision in the new bill, which is not in the present act, for appealing his refusal to register or his decision to deregister once he has granted registration. I do not intend to expand on this, but we do tell you on page 73 what we think the weaknesses are in the proposals outlined, and why we think that the procedure should allow the taxpayer to test the minister's discretion in a court dealing with facts rather than just dealing with law, because of the problems of trying to challenge a minister's exercise of discretion.

Then another thing that gives us a great deal of civil liberties concern is something that the Canadian Bar Association, I am proud to say, has agitated for many years—and on which we thought we had made some yards—and that has to do with investigations and inquiries conducted by the minister into the affairs of the taxpayer that may or may not lead to a prosecution or an assessment of his affairs, and so on. Courts have held that these inquiries are administrative procedures and, as a consequence, the taxpayer has no rights under these inquiries. He cannot refuse to attend. He is not entitled to be represented by counsel. He is not entitled to cross-examine anybody. He is not entitled to a transcript of the proceedings, and so on. To the credit of the minister and of the Government, and to the credit of the officials of the Department of National Revenue, the tax reform bill now tries to meet these requests. They have acknowledged that there is some merit in the requests the Canadian Bar Association has made and they have tried to meet them. We do not think they meet them adequately, and we say that with the utmost respect and appreciation for the gesture that the Government has made in this matter.

The legislation allows the witness to be represented by counsel, but then it goes on to say, however, that if the Department of Revenue feels that this would not be in the best interests of the administration, then the entitlement of counsel to be present and to cross-examine, or what have you, can be eliminated on the volition of the Department of Revenue because the department might feel it would impede the proceedings.

We think that it is fundamental that anybody whose rights are being looked into in this fashion should not be able to have those rights taken away on any pretext—a whim or otherwise, and we mention at page 75 of the brief the key things that bother us.

We note that under section 231 (15) the hearing officer may take away the fundamental right there set out of a



person to be present at any inquiry into his own affairs. We feel most strongly this denial of right under section 231 (15) should only be allowed on application by the minister to a Federal Court judge, where he justifies to the court why it should be necessary to deny this fundamental right to the taxpayer.

In this same area we also urge that consideration be given again to the right of the taxpayer or his counsel to cross-examine at such inquiries and to be entitled to a transcript of the evidence.

This has not been forthcoming, although we have recommended and requested it over the years.

**The Chairman:** Mr. Buchwald, on that point, we did put such provisions into the Estate Tax Act when it originally came in. These were amendments that the Senate added.

**Senator Connolly:** I am not familiar enough with the new bulk amendments we have had, but they do not cover these points, do they?

**Mr. Buchwald:** No.

**The Chairman:** The amendments I was referring to, Senator Connolly, were ones the Senate made to the Estate Tax Act some years ago.

**Senator Connolly:** I realize that, but I was wondering if the bulk amendments to this act covered the points at all, and I gather from Mr. Buchwald that they do not.

**Mr. Buchwald:** The point is that with respect to the taxpayer it ends up as a civil liberties tokenism if the rights that are conferred can be unilaterally withdrawn or denied or do not go far enough. That is the point.

**Hon. Mr. Phillips:** Do you think the repeal of section 231 (15) would do the trick, or are there any other danger points, danger sections or subsections, on this particular subject?

**Mr. Buchwald:** Yes, sir, there are some other danger points, and we have attempted to catalogue them on page 75 of our brief.

**Senator Connolly:** Mr. Buchwald, section 231 (15) provides that a person whose affairs are investigated is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appoints orders otherwise. What do you want to eliminate?

**Mr. Buchwald:** "...unless the hearing officer orders otherwise".

**Senator Connolly:** That is right, and you would also like to have inserted there, "the right to cross-examination and to transcript".

**Mr. Buchwald:** Yes.

**Senator Connolly:** Are there any other insertions you would like to see?

**Mr. Buchwald:** Those are the fundamental rights, I think.

**Senator Connolly:** These are the things which the Canadian Bar Association has made the subject matter of representations to the minister, and you say that he has met them up to a point but has not met them fully enough.

**Mr. Buchwald:** That is right.

**Senator Connolly:** What you propose now is that he go the full way.

**Hon. Mr. Phillips:** If I may make the suggestion through you, Mr. Chairman, I would suggest to the Canadian Bar Association that they let us have as quickly as possible the amendments dealing with this question of dividend stripping, section 247 (1) and this whole question of the liberty of the subject and so on. I would ask them to stick to those two main points and give us their draft amendments as quickly as possible.

**Mr. Buchwald:** We would be happy to provide you with that.

**Mr. Harris:** Our position on section 247 (1) is simply that it should not be there.

**Hon. Mr. Phillips:** That is simple, yes, but I would like to see something in more compact form on the question of inquiries and the liberty of the taxpayer and so on in the form of a real amendment.

**Senator Connolly:** That would be a redrafting of section 231 (15).

**Hon. Mr. Phillips:** Yes, a real technical amendment.

**Mr. Crawford:** Mr. Chairman, we should be able to have that to you in a week or so.

**Hon. Mr. Phillips:** We want to have it before then.

**Mr. Poissant:** Mr. Buchwald, do you remember in the original bill that there was no provision for this section 245 (2), the old section 137 (2)? They had left out the deemed gift. Now it has been amended and that has been added. Considering the fact that there is no deemed gift under the new Bill C-259, would you feel satisfied as lawyers that the old section 113, which was part of Part IV which has now been completely deleted, should be repeated in the new bill or that the matters involved have been covered by other clauses in Bill C-259? It is now 245 (2) which they have added together with items (a) and (b) while (c) was left out. They have added item (c), by amendment last week, by saying that it is deemed to be disposition by way of a gift. But nowhere in Bill C-259 do we have what is deemed to be a gift as we had in the section in the previous statute. In view of the fact that they removed all the gift tax provisions in which was included section 113 dealing with deemed gifts and valuation thereof, do you think that the new Bill C-259 would have sufficient coverage to have here and there these deemed gifts?

**Mr. Buchwald:** The intention is to make sure that no income tax arises on a situation where there is a gift other than a deemed capital gain.



**Mr. Poissant:** I am sorry, I did not hear the answer.

**Mr. Buchwald:** I was just thinking out loud in reacting to your question. The scheme of the legislation is that there is to be no gift tax and no income tax arising under the new régime on the making of a gift other than a capital gain or recapture on the disposition of the property. The concern was that by having subsection 3 of former section 137 you are limiting it and you do not cover gift situations.

**Mr. Poissant:** It did not cover gift situations before, so I think that now we are pleased that this is being inserted.

**Mr. Crawford:** Perhaps it would help if you would remind us of these particular sections because we do not have the act with us.

**Mr. Poissant:** Well, it is section 113 of the present act whereby certain transactions were deemed to be gifts. Now we do not have it in the new one. We may say that something would be considered as being a gift, but they do not say what is deemed to be a gift.

**Mr. Crawford:** I see your point, but I cannot recall for sure what are deemed to be gifts. I would say that obviously it would help the scheme of the legislation if the concept of section 113 were carried forward to clarify that certain things would be treated as gifts with the results that follow and not treated as income.

**Mr. Poissant:** This is what my question is directed at. If there is no provision for deemed gifts, they may treat that as ordinary income for the recipient. But if it were a gift, the treatment would be altogether different.

**Mr. Crawford:** Bearing in mind that from the legal point of view a peppercorn takes you away from the gift, I think your point is well taken.

**Senator Connolly:** I take it the point of Mr. Poissant's question is that if a gift is taken as a deemed gift, then the substance of that gift should not be taken into income.

**The Chairman:** Well, the point he was really making was that in the present act you have a list of what are considered to be deemed gifts. Now they have not carried forward section 113 in that form to give you that list. So what happens if there are gifts now under the new bill that would fit into the old section 113 if section 113 is no longer there?

**Mr. Crawford:** They might be treated as income.

**Senator Connolly:** Where would the section be inserted if it were to be placed in the bill? You have not worked that out, Mr. Poissant?

**Mr. Poissant:** No.

**The Chairman:** Are there any suggestions?

**Mr. Crawford:** In clause 245, subclause 2, subclause 3 or subclause 4.

**Senator Connolly:** Or we could put it in the definition section.

**The Chairman:** As long as we put it somewhere.

**Mr. Crawford:** Well, we want to put it in so that it has the broad sweep, and that it is not limited just to one particular area.

**The Chairman:** You could put it anywhere in the gift area.

**Hon. Mr. Phillips:** I would think that this calls for study and supplementary submissions.

**Mr. Harris:** Just by way of example, Mr. Chairman, in section 69 (1)(b), which is a section dealing with inadequate consideration and is a modification of the present section, it specifically refers to a gift *inter vivos*. There are other places in the act too where this is dealt with.

**Senator Connolly:** It seems to me, Mr. Chairman, in view of the very rough taxing provisions in 245(2) it would highlight the matter if the deemed gift provision were included in 245(2) or somewhere close to it.

**Mr. Harris:** Of course, I do not like this sort of thing being put under the heading of tax evasion.

**Senator Connolly:** I am sorry, I did not look at the headings.

**The Chairman:** Well, I think we have taken this far enough. We understand that there is something that should be done there and we will find where. You referred to 69(1)(b).

**Mr. Harris:** Just as an illustration of the problem.

**Mr. Crawford:** One of the areas that has not been covered very much in terms of submissions, Mr. Chairman, has to do with some of the provisions in the reform legislation with respect to trusts, and Mr. Brulé, who is Chairman of the Wills and Trusts Subsection for Ontario in the Canadian Bar Association is here this morning and he is going to speak to this point.

**Mr. J. Albert Brule, C.C., Member, Sub-Committee on Tax Legislation, Canadian Bar Association:** Mr. Chairman, the section on trusts in the brief submitted to you is itself rather brief compared to the rest of the submissions. It commences at page 63. It has been given a great deal of concern to those particular lawyers dealing with this particular area more than others, generally because it is an area that comes into play quite actively in the practice of law.

I might say at the outset that we believe that a great number of the changes in the new bill are directed at the trust, which I suppose could be classified under the general heading of tax avoidance rather than the normal trust we find from day to day in existence and which has been employed over the years to help an individual provide assets for future generations—children and grandchildren—and also in the area of providing needed assistance for incompetents, invalids and so on.

Some of the provisions we set out here in our brief have been amended, I am happy to say, by the new changes introduced in the House last week.

**The Chairman:** Would you indicate what you mean?

**Mr. Brulé:** Yes, specifically on page 64 in the second paragraph on the definition of the word "income", this has now been corrected under section 108(3).

**The Chairman:** You are satisfied with the amendment?

**Mr. Brulé:** Yes, we are. Then if you would turn over to page 65, the second paragraph concerning the definition of spouse trust—section 104(15)(a) has been amended. So that paragraph we feel has been corrected and we have no further complaint or suggestion to make. The third paragraph on that page which begins subsection (6) of section 104; this has also been corrected by making reference to section 105(2).

**The Chairman:** Mr. Brulé, I am going to ask you a question which you may not want to answer. With respect to these three places in your brief where you have referred to sections having been changed by the amendments which have come forward, what comment would you make as to the nature of those sections in the first place, which makes these amendments necessary? Is it an obvious error, or a lack of appreciation?

**Mr. Brulé:** Perhaps I might deal with them individually. First of all, the word "income" as it has been known in the trust law is substantially different from that contemplated by Bill C-259. There are certain situations that exist from time to time where it may be classified as income for one purpose but it is not income for our purpose. We felt this was a rather obvious error, and that has been corrected. So deemed dividends as we have mentioned are obviously one example.

Let us move on to the second amendment which concerns us regarding what has been referred to as spouse trust. We would lose the context when the spouse died but the trust might not be distributed. So it was necessary to make an amendment referring to the rules which apply when the spouse is alive as to the attribution of income to the children where income was being accumulated, and they were not entitled to it at their early age.

**Senator Connolly:** I am sorry, I did not follow you. Perhaps you would give us an example. It is good for the record, in any event.

**Mr. Brulé:** As an example, you have a trust which pays income to the widow while she is living, and after her death, the income accumulates until the children are a certain age. The act did omit the rules respecting attribution of that income to the infants during that particular period. This has now been corrected.

**Senator Connolly:** Now it will be attributed to the children?

**Mr. Brulé:** Yes, there is provision for that. Then our third reference was to section 105(2) which deals with the necessary expenses for the upkeep of the trust and the

allocation of that trust income to beneficiaries. I am sure this was an oversight and it has been readily changed to make it more equitable.

**The Chairman:** When you use the word "obvious" in connection with these sections, in your brief you indicate that there may be many more.

**Mr. Brulé:** Mr. Chairman, I feel that we have found more perhaps because in the section dealing with wills and trusts at the time this brief was presented as Mr. Crawford has suggested at the outset, it was rather early in the game. Since then we have had several meetings of our group and we also have had meetings with the Department of Finance. They have been most co-operative and they have asked us to continue these meetings with them. There is a great deal more we have to say that is not in this brief which we are prepared to submit almost at any time.

**Hon. Mr. Phillips:** I hope you do not make it too simple and eliminate the practice.

**Mr. Brulé:** No, sir. Now, I go back to my original point which was introduced in the first paragraph on page 63 where we indicate that it is rather complex. We have a concept introduced to us whereby a settlor of a trust could change if certain of the ground rules on contribution of capital to the trust changed by different parties. We have certain rules respecting preferred beneficiaries. We believe, as I have said earlier, that it is part of our later thinking that this could be simplified by classifying the trusts and by doing what is being done in certainly one other jurisdiction, that is submitting the trust at the end of the first year of taxation and allowing the minister to decide where this trust fits in, and tax it accordingly. The so-called legitimate trust for children and grandchildren would not be prejudiced. One of our biggest errors at the present time is that an existing trust may fall into a trap, as indeed many of them have, where they find it is subjected to the 50 per cent tax. We feel this is most unfair. A trust that is in existence on June 18, and to which money has been added since that time will find itself taxed at the 50 per cent rate. There has been necessity, in certain cases, to add money to the trust where it has been for the benefit of an incompetent.

**Senator Connolly:** On what basis would it attract a tax?

**Mr. Brulé:** Under section 122 of the bill, because there is no specific exemption for particular trusts. Any trust that has been in existence as of June 18 and has had new assets added to it is now being taxed at the rate of 50 per cent. We thought that we would have had at least until the end of this year to look at this more closely. We still have gift tax provisions, and no one can indiscriminately add larger amounts to that trust during this period. Other trusts have now been tainted because we do have simple trusts for children and grandchildren, such things as baby bonuses which are simply added to the child's trust and the child can benefit from it in the future. But it then becomes subject to the 50 per cent rate of tax.

**Senator Connolly:** Under section 122 of the bill?



**Mr. Brule:** I am speaking without reference to the particular section. This is where we find our taxation rules.

**Senator Connolly:** Mr. Chairman, this would seem to be a point which we should go into.

**The Chairman:** This is exactly what we are doing, senator.

**Senator Connolly:** I do not mean to hold up the committee unnecessarily.

**Mr. Poissant:** In other words, Mr. Brulé, what you are asking is that in respect of a trust that was formed under a gift program of, let us say, \$2,000 a year, which was a bona fide trust prior to June 18, 1971, they should have the right to continue on that program...

**Mr. Brule:** At least until the end of the year, if not indefinitely.

**Mr. Poissant:** I would go further than that. If they were originally formed for that purpose under the existing law at that time why would you not go so far as to say they should carry on the same, not adding more assets than their privilege in the prior period?

**Mr. Brule:** Mr. Poissant, we have suggested that a trust could be classified and if a trust fell into this category—I have referred to it as a so-called trust for a child, or a protective trust—it would only be taxed on the same basis on which it is now being taxed, at the present rate without exemptions.

**Mr. Poissant:** Would you have that apply for all trusts?

**Mr. Brule:** No, not for all trusts. We do believe that in a classification there are certain trusts, especially the so-called tax avoidance trusts, where they should, in fact, be taxed at the 50 per cent rate.

**Mr. Poissant:** What is the position of a trust that could borrow or had more capital than in previous years? Would that not be a type of tax avoidance?

**Mr. Brule:** That is correct; that is why we feel that it should not be given special treatment. Otherwise it could result in a form of income splitting by allowing the trust to borrow and make profits at a lower rate than an individual. However, that would manifest itself in two ways: First of all, if the trust itself had the right to borrow and the department saw the trust; secondly, if during the action of its yearly transactions, as evidenced by its income tax return, it did in fact borrow, the minister would have the right to move it from one to another classification.

**The Chairman:** It would appear that clause 122(2) aims at that.

**Mr. Brule:** That is correct; I would have no quarrel with that.

**The Chairman:** I can see uses for it.

**Mr. Brule:** We believe that at the outset the legislation was drafted, perhaps, solely thinking of tax avoidance and not return on tax planning.

**The Chairman:** That was admittedly the plan; the design of this bill is to close all gaps that existed. They did not say anything about opening others.

**Mr. Brule:** No, they closed some that we feel should be closed.

**The Chairman:** What would you suggest by way of amendment in order to cure this problem?

**Mr. Brule:** We feel that trusts should be classified and put into regulation. Then, depending on what category each trust found itself in, it would be taxed accordingly. That is spouses' trusts, children's trusts, certain protective trusts.

**The Chairman:** That may be a long range view.

**Mr. Brule:** It is not difficult; as a matter of fact, we feel this is simpler than the provision contained in the bill. We have already discussed it with the Department of Finance.

**The Chairman:** With that introduction by you and the simplicity of it being so apparent to you, we would say that you should draft it and send it to us.

**Mr. Brule:** As a matter of fact, senator, we have it almost done.

**The Chairman:** When will we receive it?

**Mr. Brule:** As soon as I can assemble my committee. We have already submitted this to the Department of Finance and discussed it with them.

**The Chairman:** But they have not dealt with it?

**Mr. Brule:** They have neither dealt with it nor returned it to us.

**The Chairman:** Perhaps we will.

**Mr. Brule:** Thank you.

**Mr. Poissant:** As an alternative in the event the definitions of the various trusts were not accepted, would it be acceptable that at least those bona fide trusts now in existence that have been receiving money over the past years be allowed to continue doing so, and be treated as previously?

**Mr. Brule:** Yes, and it should go one step further. There will certainly be occasions in the future to create trusts, again with respect to the incompetent or invalid who will need monies placed in trust for his care and well-being. It is certainly unfair to have that particular money taxed as income earned by the trust, at the rate of 50 per cent. He could be given the money personally today and personal rates would be paid. The individual being an incompetent, that cannot be done; a trust must be created, which would be taxed at 50 per cent.

**The Chairman:** In your opinion the creation of classes of trust is in essence simple. However it may be a basis



for the department to say this is a new idea and they wish some time to consider it.

Against that possibility we should have an alternative amendment to deal with the problem you put forward.

**Mr. Brule:** We will put both forward.

**Senator Carter:** I am not sure whether this situation would be termed a trust. I am thinking of benevolent funds for the army and navy, which originally were made up of funds accumulated in canteens. Subsequently, veterans' organizations have added to them and I think occasionally there is a Government grant. I assume that these funds are an income. Would you put them into a separate category? Are they taxable under this law?

**Hon. Mr. Phillips:** It is a different clause.

**Mr. Brule:** They do not come under these provisions at all; they are charitable organizations, depending on their operation. I think the department adjudicates whether they are charitable; if they are, there is no income to them.

**Senator Carter:** What would be the position of a single veteran who is in a mental institution and entitled to free treatment and his pension builds up into a sort of trust? He is not in a position to administer his own funds.

**Mr. Brule:** That situation, I believe, is governed by a separate statute. However, the funds were deemed to be deposited in a trust to be used for his benefit, administered by an individual or corporate trustee, the income earned on it would be taxed at 50 per cent.

**Senator Beaubien:** 50 per cent is a new rate for this.

**Mr. Brule:** Correct; previously it was a personal rate for taxing a trust as an individual, with no exemptions.

**Senator Connolly:** Have you any comments to make with regard to the percentage of tax?

**The Chairman:** Senator Connolly, the whole design of this section was based on tax avoidance. The rate prescribed indicates that; it is a penalizing rate. Therefore everything not considered to be taxable income should be removed from this clause.

**Senator Connolly:** Yes, Mr. Chairman; the only specific example given by Mr. Brulé, is the case of an individual who sets up a trust, for instance, for a disabled child and pays the maximum annual amount of gift into it, of \$2,000.

**Mr. Brule:** The maximum tax-exempt amount.

**Senator Connolly:** Precisely. Under the present act the income from that trust is taxable at the beneficiary's rate.

**Mr. Brule:** Yes, if there is a designated beneficiary and the money is paid to or on his behalf.

**Senator Connolly:** Or attributable to him.

**Mr. Brule:** Yes.

**Senator Connolly:** The new scheme proposes not to use the marginal rate of the beneficiary, but a flat 50 per cent rate.

**Mr. Brule:** That is correct.

**Senator Connolly:** And, as the Chairman says, for the purpose, perhaps, of curing a situation which might be tax avoidance.

**Mr. Brule:** It is the higher of the individual or corporate rate; 50 per cent would be the floor rate.

**The Chairman:** This clause does not apply, of course, to every type of trust. Perhaps I should put it this way: Senator Connolly's illustration depends on whether this contribution of \$2,000 per year had started before June 18. If it had started and then was being continued by these \$2,000 contributions, it would be caught under clause 122.

**Mr. Brule:** That is correct.

**The Chairman:** But if the trust were set up as a new item in January, 1972 the \$2,000 contributions each year would not be affected by clause 122.

**Mr. Brule:** You would be caught at the outset, depending on what is happening with regard to the attribution of the income.

**The Chairman:** Supposing this trust that Senator Connolly was talking about was established on January 18, 1972?

**Mr. Brule:** Then we would follow the provisions of Bill 259 on attribution.

**Mr. Buchwald:** Let us take a long-established trust that has been set up to fund a child's education. The deposit of the July 1 asset under the Family Allowances Act would cause that trust to be taxed at the 50 per cent rate for this year.

**The Chairman:** A lot of parents would deposit in some kind of a trust fund even the \$8 or \$10 cheque per month that would come to the child.

**Mr. Brule:** Our major concern has been that there was no period in which you could alert the thousands of trusts that are in existence on what they could or could not do, and many of them are saying "What do we do?" We thought that these provisions could apply until the commencement of the new bill.

**The Chairman:** The amendments that we have talked about and which you are going to forward to us will deal completely with the situation, and we would not need to suspend the application of this section until January 1, 1972?

**Mr. Brulé:** That is correct.

**The Chairman:** In doing that suspension we would be permitting a continuance of tax avoidance.

**Mr. Brule:** I have a few other comments that I should like to make. Without elaborating on them, they are

covered in the brief, the first being on page 63. I do not intend to take you through the exercise. You will find that under a so-called legitimate situation where money is paid out to a beneficiary, we could have double taxation.

Nothing has been done to correct that. To put it simply, where an encroachment is made for a child who needs something, and to make the encroachment something has to be sold for a capital gain, the child in turn makes the asset, he himself makes a capital gain, and there could be double taxation.

**The Chairman:** Is that part of the submission that you made to the minister?

**Mr. Brule:** Yes.

**The Chairman:** And it has not been included in the amendments?

**Mr. Brule:** No, it has not. I wish to comment on that.

**Senator Connolly:** Are you going to submit an amendment to the section in question, to the effect that you think it might create double taxation?

**Mr. Brule:** Yes. In other words, that relief would be given in such a situation so that there would be no double taxation.

**The Chairman:** Do you have a draft of that?

**Mr. Brule:** Yes. I wished also to make reference to the bottom of page 64, subsection 75(1), concerning attribution of capital gains. If money is transferred to a minor and a capital gain results, there is no attribution tax to the donor of the gift. However, if the donor makes such a gift to a spouse or to a trust, there is attribution.

What we really wanted to find out is why in one case and why not in the other. Perhaps we are helping the department in this situation. There could have been an omission. That is what we say in our brief.

**The Chairman:** The principle might be to put the burden on the transferor, if the transferor is an adult and the transferee is a minor.

**Mr. Brule:** A minor can, however, assume a capital gain, perhaps at a better tax rate than the parent.

**The Chairman:** You say there should be an option.

**Mr. Brule:** We are saying in an indirect way that if it is available to a minor, then why not to a trust, especially if the trust is for the minor. In other words, if you give it to the minor, he could make a tax-free gain. If you give it to a trust for his benefit, there is an attribution tax to the donor.

**The Chairman:** Are you suggesting enlarging the tax provisions in the case of a minor?

**Mr. Brule:** Yes. I think I have spoken sufficiently about trusts and the classification regarding protected trusts and child trusts. We will bring something forward for the committee.

**Mr. Poissant:** Somewhere you have mentioned the minority age.

**Mr. Brule:** I am sorry. That has been changed. In other words, because most provinces are reducing the age of majority to 18 years, it was suggested that former reference to attribution for minors under 19 years should be changed to 18 years. That has been corrected.

**Mr. Poissant:** And you are satisfied with the amendment?

**Mr. Brule:** Yes; we suggested it.

**Mr. Poissant:** No. You suggested that the age should be according to the majority age legally by provinces.

**Mr. Brule:** I am sorry. We specifically said in our other brief that we had talked with the department, and we assumed that they followed that.

**The Chairman:** Have they followed the reduction to 18 years in the amendment?

**Mr. Brule:** Yes.

**Mr. Harris:** I propose to deal with business and property income. Mr. Chairman and honourable senators, I want to speak at length on this area. I may perhaps make the general comment that in this area, perhaps more so than in any other, the so-called tax reform is not reform at all. Our chief complaint concerns not so much the changes that have been made, but those that have not been made. In the business and property income area, apart from a few amendments, the provision have been carried forward essentially unchanged from the old act.

The proposal in the Carter Report for the streamlining and simplification of the provisions dealing with the measurement of business income has been completely ignored by Bill 259.

**The Chairman:** To what section does your comment apply, that there is no essential change in the provisions contained in the old act dealing with business and property income?

**Mr. Harris:** They are scattered.

**The Chairman:** Are they listed in your brief?

**Mr. Harris:** Not as such. I am referring in particular to section 12 of the bill regarding amounts to be included from income of business and property, and section 20, which is the deduction side.

There are a number of other sections, but it would take too long to list them all. There are sections concerned particularly with the measurement, the timing, and the recognition of income. There are other sections concerned with so-called reserves. The old section 85B has now been split up between sections 12 and 20. It seems to me that the Carter Report was very valid in its suggestion that this could be considerably simplified. Many of these provisions came in ad hoc by amendment over several years. The changes that have been made are particularly in the area of goodwill and other nothings.



Our objection to the treatment of these items is twofold. First of all, we are concerned with the transitional provisions under which a gradually increasing proportion of the sale price of these rights and assets on hand at the commencement of the new system become taxable when they are sold afterwards. The argument we made at the time the proposal in the White Paper came out was that this represented an arbitrary and, to some extent, a retroactive taxation of goodwill and similar assets. Granted, the bill, with its transitional provision, will now tax only half rather than the entire asset, but the retroactive aspect remains.

**Senator Connolly:** Mr. Harris, before you go any further I want to make an admission and then ask you to clarify it. In the discussions on the White Paper, and now on the new bill, we have talked a great deal about "nothings", and I have yet to know what people mean by "nothings". They say, "goodwill and nothings". What are "nothings", or is it because they are nothings they cannot be defined?

**Mr. Harris:** That has been the difficulty. Many of these so-called nothings could have been recognized as proper business expenses if the courts had, in their interpretation of the act...

**Senator Connolly:** They are nothings in the sense of assets?

**Mr. Harris:** They are nothings in the sense of non-deductibles. In other words, these are business-related expenses which the courts have treated as being capital expenditures and therefore are not currently deductible as a business expense under the act. At the same time, they do not qualify for depreciation because they do not fit under one of the capital gains cost allowance classes.

**Senator Connolly:** Well, you are doing something for history, so could you give us some examples?

**Mr. Harris:** There is a long list of them, senator. An example might be the amount paid to acquire certain intangible rights of which goodwill is only an example. You might pay for a list of customers or you might pay to acquire a contract.

**Mr. Buchwald:** Is not the obvious one, senator, incorporation costs? When you incorporate a company it costs you \$500 for legal fees and departmental fees and this expense is not deductible.

**Senator Connolly:** That is a nothing. Put it the other way, "that ain't hay."

**The Chairman:** To give it its right description, Senator Connolly, just call it a non-deductible expense!

**Mr. Harris:** Never deductible; neither currently nor in the future by depreciation.

**The Chairman:** Because they classify them, as the courts have, as capital items.

**Mr. Harris:** Yes, and they do not fit under the depreciation class.

There have been a great many complaints about this over the years and the new bill states in essence, "We are not going to give you full deductibility, but we will give you half deductibility". In other words, "if any of these so-called nothings turn into saleable assets, we will tax you on half of the proceeds".

If you accept the department's philosophy with respect to half taxation, we would suggest that the easiest thing to do would be to classify these nothings as another class of depreciable property, rather than giving them a separate status under the act. This would considerably simplify the treatment of goodwill and other nothings, and you could arrive at essentially the same results as the bill does without creating a separate category of property which is what has been done.

**The Chairman:** And without reducing tax revenue?

**Mr. Harris:** Yes, and without reducing the tax revenue.

**Senator Connolly:** When these nothings are sold, if you can say that, then there would be recapture.

**Mr. Harris:** There would be both recapture and, if the sale price were high enough, capital gains. This is the same as happens with respect to depreciable property under the act.

**Senator Connolly:** Are you suggesting that the rules respecting depreciable property be applied to them?

**Mr. Harris:** Yes.

**The Chairman:** And in that area, there should be an enlargement. Is this area specifically covered in your brief?

**Mr. Harris:** Yes, it is, Mr. Chairman.

**The Chairman:** At what page?

**Mr. Harris:** It is at page 34.

**The Chairman:** Have you a draft of the amendment?

**Mr. Harris:** No.

**The Chairman:** This item in your submission was discussed with the department, was it?

**Mr. Harris:** This is our brief that went in to the Minister of Finance.

**The Chairman:** In this form?

**Mr. Harris:** Yes.

**The Chairman:** And you did not present the department with any particular form of amendment?

**Mr. Harris:** No. We did not have time to draft amendments when we submitted this brief.

**Senator Connolly:** Would you have time to do it for us?

**Mr. Buchwald:** It is a big amendment. The concept of eligible capital property, which is your new goodwill concept, permeates the bill.



**Mr. Harris:** There may be 15 or 20 places where amendments may be required.

**The Chairman:** Can you do it in an omnibus way with one item?

**Mr. Buchwald:** You would have to delete provisions and make appropriate changes and cross references in other parts of the bill in order to do it.

**Senator Connolly:** Even if you did not get them all, would it not be helpful to have some, and then let the department worry about the rest?

**The Chairman:** If we feel strongly enough about it, the alternative would be to suggest that a study be carried out.

**Mr. Harris:** I rather suspect, Mr. Chairman—and this is just a guess on my part—that in the course of the testing and drafting of the legislation the department probably has some draft with respect to this approach to the tax reform in their file. I am not sure; that is just a guess.

**The Chairman:** The feeling, as stated in our original report on the White Paper, was that they had better do some studies.

**Mr. Harris:** The other recommendations we have in this area, Mr. Chairman, are rather technical and, unless the committee has specific questions, I do not think I should take the time of the committee on them.

**Senator Connolly:** Are they the subject matter of specific amendments which you are proposing?

**Mr. Harris:** There are some, yes. For example, a company-owned car might be taxed in the hands of several individuals at the same time so that there would be an overlapping of taxation. I do not think this is covered in the recent amendments. I have not had a chance to look at them.

**The Chairman:** What I am looking at, Mr. Harris, is at page 35 where you are talking about section 131(4) relating to the receipt by holders of mutual fund shares deemed dividends. After you explain the effect of this particular provision, you say:

We assume this was not intended and could be corrected by adding a paragraph (g) to section 15(1) to exclude payments to which subsection 131(4) applies.

**Mr. Harris:** Yes. I have not had a chance to look through all of the amendments, Mr. Chairman, but this was not done in the amendments that were presented last week. I think it would be quite a simple amendment to add.

**The Chairman:** Are you able to assess the importance of the effect on the holder of mutual fund shares if this exception was not made?

**Mr. Harris:** It seems to us that this was a fairly unintended result in that the holder of mutual fund shares might be taxed on what is considered to be a benefit as a

result of the redemption of mutual fund shares. We do not feel this was intended at all. It would be, in effect, double taxation.

**The Chairman:** If that is the concept, if we had a lead in with that concept, do you think the statement at page 35 of your brief is clear enough on the effect, and why we say it was not intended, or could not have been intended, as a basis for suggesting an amendment?

**Mr. Crawford:** If I might interrupt, I think this deficiency would be overcome by an amendment to clause 15(1)(d) in the amendments tabled.

**Mr. Harris:** Yes, I think it has been overcome now I look at it.

**The Chairman:** That is one less thing, then.

**Senator Connolly:** I was going to ask for an example of it, but if it is fixed up I do not want the example.

**The Chairman:** No, that is taken care of. By the way, in the area to which you are addressing yourself, have you analyzed what points you have developed have been taken care of by the amendments?

**Mr. Harris:** No. Unfortunately I did not see the amendments until late last night, but I do not believe most of the points we have made have been dealt with.

**Mr. Crawford:** When did you get the amendments?

**Mr. Harris:** Yesterday.

**The Chairman:** The minister undertook that we would get them the moment they were tabled, but it even took us a couple of days to get them. I think the breakdown was in the printing. I do not mean breakdown in the literal sense, but that is where the lag came.

**Mr. Crawford:** It is probably nobody's fault, but we have not had an opportunity to analyze our submission in the light of all the amendments.

**The Chairman:** I was wondering whether on this score Mr. Harris is satisfied that we accept the statement that the amendments that were tabled by the minister on Wednesday do not affect the points you have raised in the brief under heading.

**Mr. Harris:** Not entirely, Mr. Chairman. For example, in clause 18, which is the thin capitalization provisions on interest paid to non-residents, there has been a helpful amendment that I see, where the only interest that would be disallowed is interest that is paid to non-residents, which is a point in our brief. That has been dealt with. We can submit a supplementary memorandum in the light of this.

**The Chairman:** We are not trying to pile ourselves up with paper.

**Mr. Crawford:** I suspect that you or your advisers have probably done that already.

**The Chairman:** I am trying to share the load, that is all. Asking you to do it means this is one area that you explore. Mr. Poissant has to cover all areas and at the same time work with us on the preparation of a report. In fact, I can tell you that we are working on an interim report right now. We are trying to keep up to date. At the end of the day we may very well be talking about what you have said this morning.

**Mr. Crawford:** I think we could undertake to give you an analysis of our submissions that have been accepted in whole or in part by the amendments tabled to date.

**The Chairman:** Mr. Harris, were there any other comments?

**Mr. Harris:** No, Mr. Chairman, there are no other points I wish to raise.

**The Chairman:** Mr. Crawford, as the master of ceremonies here, are there any other areas you want to take us into?

**Mr. Crawford:** Yes, I would like Mr. Buchwald to say something about capital gains, and Mr. Harris to say something about corporations.

**Mr. Buchwald:** The whole character of the tax reform bill, it seems, stems from the introduction of capital gains into the system, and that is why you end up, it seems to me, with this kind of a regime or scheme of taxation, a scheme that relies primarily on sources of income. The capital gains portion is the largest part of our brief, and appears at pages 5 to 20 inclusive. We list there a number of administrative matters that give us some cause for concern. Some of them are fairly technical. We have tried to point out, I hope as lucidly as we were able, our consensus conclusions as to the problems that could arise with the legislation as presently drafted. We have to say that we think the approach is an overly complex one. I am sure you have heard that before, Mr. Chairman.

**The Chairman:** Yes.

**Mr. Buchwald:** Turning to page 6, we have to say we are very concerned with the notion of deemed capital gains. People should know that it is one thing to pay tax on a profit made, or a disposition of an asset when you have a profit in hand, or you have moneys worth, or a receivable that is then negotiable or discountable at a bank, so that you have the funds with which to pay the tax. It is quite another thing to have a deemed disposition where you are notionally taken to have disposed of the assets, realized a gain and have tax to pay on that technical realization when you do not have the cash in hand. This occurs under the bill in two serious areas—death and leaving Canada. The deemed realization on death is the answer to elimination of estate taxes, although Senator Haig will be happy to hear that the premier of our province wants to bring back estate taxes, and is going to fill the gap. He announced that in Winnipeg on Monday, so Manitoba will have estate taxes and capital gains deemed realizations on death.

The other areas we have been hearing most about from our clients, almost universally across the country, from what we were told at our annual meeting in Banff and what we have been told since, concerns people who are planning to retire and leave Canada, to change their residence for a warmer climate or what have you, as well as itinerant executives who have come here from elsewhere and will be returning to their countries of origin. They are quite concerned about the deemed disposition or deemed capital gains situation when they change residence.

**The Chairman:** On the question of these itinerant executives, do you think there should be an exclusion of everything except gains that they may have made while they were here?

**Mr. Buchwald:** That is exactly what we say in this submission. We are concerned about a couple of inequities that will occur in this situation, with people who have come to this country to work in good faith and then get trapped by a system that is designed to do something else. In determining their rate, all of their income for the year of disposition will be taken into consideration. For purposes of apprehending a capital gain on departure, they will be deemed to be residents of Canada. So all income will be taxed and they run the risk of being double taxed in their country of relocation in the same year.

**The Chairman:** Is there not a real danger, in their being deemed to continue their residence here, that they might be caught up in all other legislation that deals with residents—that is, if the federal authority says they are residents?

**Mr. Buchwald:** Assessments for the purposes of this act, for the purposes of levying the tax.

**The Chairman:** But you do not know what a provincial statute might say.

**Mr. Buchwald:** That is correct. This is an area that is difficult, I believe. You could run into an additional situation, Mr. Chairman, that is, that the taxing of capital gains on departure, deemed taxing, is an accrual form of tax. If the country to which the person changing his residence is going, taxes him on a cash basis, is he going to be caught twice and at two different times—once on the actual disposition and once on the deemed disposition here in Canada? We highlight and pinpoint all of these things.

**The Chairman:** On the tax credit you would pay less.

**Senator Connolly:** If you have a treaty.

**Mr. Buchwald:** If you have the right treaties and if they are appropriate. What is the situation if the treaty with the United Kingdom is one way and the treaty with the United States is a different way? The other party to the treaty has different considerations. This is of some considerable concern to us.

**Hon. Mr. Phillips:** Mr. Buchwald, we have dealt with that subject in the committee here and, under the senators' direction, with staff. The exemptions that are being



considered by way of suggestion are these: itinerant executives, to which you referred, who leave legitimately because of employment in another country; those prompted by ill health or necessitated by ill health, who are obliged to leave; and thirdly, a sort of blanket provision, that in other cases there is a right of application to the minister, where it is felt that the minister would be justified in granting the exemption. Can you think of any other headings?

It is not likely that the exit tax on deemed-to-be capital gains will be eliminated completely, nor does this committee want to support tax avoidance by people, or even tax deferral in cases where there is no legitimacy for leaving the country, having made a living here or even having benefited by the use of natural resources and building up significant capital. The thinking of some of us is that instead of asking for complete elimination—and it is not likely to be obtained—we would be better off asking for exemptions. Can you think of any exemptions other than executive itinerants, sick people, and applications to the minister?

**Mr. Buchwald:** I think I can add one to the list, if I can be so presumptuous.

**Hon. Mr. Phillips:** I want you to be, not presumptuous—you are never that—but to tell us.

**Mr. Buchwald:** Let me say this, Mr. Phillips. The Bar would, I think, 110 per cent endorse everything you said. There is no suggesting in anything we put forward that a person leaving Canada should not pay their capital gains commitment, and this is the only way to do it.

There will be problems, and I am concerned that they should be equitably resolved. I would respectfully submit that you could add to that list, with some profit, the elimination of the...

**Hon. Mr. Phillips:** Deemed to be?

**Mr. Buchwald:** ...the accrual versus cash situation, and the elimination of the taxation of all of the non-resident income for the purpose of taxing the capital gain.

In other words, the scheme of the legislation says that for this purpose the departing resident will be deemed to be a Canadian resident, which then means that his income from all sources, including the capital gains, will be taxed in that year.

**The Chairman:** And including his income from abroad?

**Mr. Buchwald:** Yes. That might be fair. I do not believe it is. Perhaps someone can make a case to bring in all of his income for purposes of arriving at a rate of deemed capital gains tax without taxing that other income. After all, the objective is only to tax the capital gains, earned in Canada, on departure; and to tax them then because you may not be able to reach them many years later when he ultimately actually disposes of them in some far-off location.

**The Chairman:** Yes, Mr. Buchwald, but right there, if a man is going to depart from this country, say in September of a year, then he is faced with this situation, that he

has to account for his capital gains and, secondly, he has to make an income tax return; so he is going to be taxed on anything that qualifies as income in the year of leaving.

**Senator Lang:** Are there any averaging provisions applicable?

**Mr. Poissant:** On "ceasing to be". I guess not. The forward averaging does not apply.

**Hon. Mr. Phillips:** That is what I was thinking about.

**Mr. Crawford:** Mr. Chairman, there is this provision where you elect to defer the tax. If you defer, when you do realize the capital gain, you are deemed to be a resident at that time for purposes of the act. It was an oversight, and they really meant that it was intended only for purposes of setting the rate for capital gains tax. We were surprised that this oversight was not cleared up in the amendment.

**Hon. Mr. Phillips:** How would you deal with that now? The man is leaving and he does not come under any of the three headings I have mentioned. How would you tax him on the deemed capital gains?

**Mr. Poissant:** This is in the case of an election, that is, in the case of a man who elects to be taxed afterwards.

**The Chairman:** In order to get that, he has to put up security.

**Hon. Mr. Phillips:** Leave out the election. Let us say he is to be taxed.

**Mr. Crawford:** I am not sure I would add anything to the list. Mr. Phillips. I suppose the third item in your list is really a discretionary matter, in the application to the minister, where the minister thinks it is equitable.

**Hon. Mr. Phillips:** Yes.

**Senator Connolly:** The discussion so far has dealt with "itinerant executives". There may be people who do not belong to the executive class, who come here, benefit the economy because we use their skills and knowhow, and then go back to their own country, whether it be Europe, the United States or somewhere else. I would hope that people like that, with special skills that are brought here, would be entitled to the same exemptions as we are thinking of in connection with executives.

**Hon. Mr. Phillips:** Senator Connolly, it is a misnomer. I apologize for the use of the phrase "itinerant executives". I think we mean persons who move their place of employment. It may be an ordinary unskilled labourer, that he should have the same privilege if he is leaving the country. I speak of persons who leave the country legitimately for the purpose of taking employment elsewhere.

**Mr. Buchwald:** I think Senator Connolly's point is the one we are trying to get at, that you should not suffer a penalty for coming to work in Canada by having been



fortuitous enough to have been deemed to have made a capital gain.

**The Chairman:** This might become a privilege tax.

**Hon. Mr. Phillips:** Just coming to the point, those are the only three that we can think of at this stage. Unless you give us any more, because you are the body that would be competent to give them to us, we just have not come up with any more.

**The Chairman:** Mr. Crawford thinks that we have a good recital. Is that right?

**Mr. Crawford:** Yes.

**Mr. Poissant:** Mr. Buchwald, to take care of the non-resident who has elected to be taxed on disposal or when he has a capital gain in future years, would you be agreeable that the section could be amended to read that the income for this non-resident would be only his capital gain? We would be satisfied with that. We would be satisfied with the normal exemption even, I would say.

**Mr. Buchwald:** Yes.

**Mr. Poissant:** The normal deductions would be allowed, if he wanted to be a resident, but his income for the purpose of this capital gain would be taxed as if it were his only source of income for that year.

**Mr. Buchwald:** Yes.

**Mr. Harris:** Is it only half of the capital gain or is it all of it?

**Mr. Poissant:** It is the same treatment as if he were a resident. He is deemed to be a resident anyway. The only thing is that we have to make sure that the income on which he is going to be taxed would be only the capital gain.

**Mr. Harris:** The department might feel that that is an inappropriately low marginal rate of tax. The person might otherwise be very wealthy.

**Mr. Crawford:** Well, the other income was not earned in Canada.

**The Chairman:** You cannot make him a resident for the purposes of income tax after he has left the country physically and is attracting income tax wherever he re-establishes himself.

**Mr. Crawford:** As an alternative, if you carried the \$2,500 exemption through to the election of the taxpayer, you might come up with an arbitrary percentage rather than trying to calculate it.

**Hon. Mr. Phillips:** We try to be more scientific than that.

**Mr. Poissant:** You are saying that the \$5,000 will be deducted in his gain in a year of realization. You are suggesting that, Mr. Crawford, am I right? By that you mean to say that if he has a gain of \$10,000, the first \$5,000, even after he has left the country, will still not be

taxable in that year. Then the rest would be taxable at half of that rate, as in the existing formula.

**Mr. Crawford:** Yes.

**Senator Hays:** Mr. Chairman, what would the situation be in the case of a resident moving from the United States into Canada? What would the American situation on capital gains be?

**Mr. Poissant:** There is no tax. There is no deemed realization when you leave the United States.

**Senator Hays:** If he sells his home, there is no tax?

**Mr. Poissant:** If he were to realize the gain then, yes, but there is no accrual gain at the time of leaving the United States, except if he were to sell his house on that day, in which case he would be taxed on the capital gain, of course.

**Senator Connolly:** What we are talking about here is deemed gains, and that would not be a deemed gain.

**The Chairman:** Senator Hays was asking what would happen in the reverse situation when the U.S. person changed his residence and came to Canada.

**Mr. Poissant:** As a matter of fact, if he retained his American citizenship, Mr. Chairman, he would be taxed twice. He could be taxed again.

**The Chairman:** In a limited way, yes. If he were to retain his American citizenship and came here to live with the expectation of some day going back to the United States, then he should certainly keep in touch with the American Department of Internal Revenue and file annual returns. In any event, he would be taxed only on certain parts of his income.

**Senator Lang:** For purposes of rates, should that departing person not be able to average backwards? In other words, if he has realized a capital gain on departure, shouldn't the rate applied to his total income, that is capital and normal income, be on an average rate?

**The Chairman:** You mean at his option?

**Senator Lang:** Yes.

**The Chairman:** He might not want to be compelled to do that.

**Mr. Poissant:** He would automatically be under the blocking average, because this is done automatically for five years. He will get that.

**Senator Beaubien:** Mr. Chairman, suppose there is a valuation date some time before the end of the year and then a gentleman at the beginning of next year sells everything he has at prices that are about what they were on valuation day and he then leaves the country. He has no tax to pay at all, has he?

**The Chairman:** He would not have incurred any capital gain.

**Senator Beaubien:** Then there would be no tax. He could take his money out, in other words.

**The Chairman:** Assuming that the prices would not have changed between valuation day and the time he left.

**Senator Beaubien:** That is what I mean. Ordinarily speaking, if there is no change, anybody leaving the country next year would pay no tax.

**Mr. Buchwald:** Mr. Chairman, there are just a couple of points on capital gains and then I will come to roll-overs.

At the bottom of page 10 of our brief we make the point that as a basic concept we object to capital gains being taxable where capital losses with respect to the same property are not deductible, even from gains from other like property. Accordingly, it is our view that if the capital loss on the disposition of personal-use property—other than listed personal property—is to be non-deductible, then the capital gains on such property should also not be taxable. We think that point should be underscored.

Another important point we have heard raised has to do with valuations. If the system is going to oblige people to have authoritative valuations prepared, we believe they should get the cost of those valuations as part of the cost of the asset above which any gain would be taxed. That point is mentioned in our brief.

Let me simply draw your attention to page 14 of the brief, Mr. Chairman. That deals with the apparent confusion with reference to section 53 (1) of the bill. If I may, I should just like to leave with you the illustration that is in the brief. Then on page 16 we raise our concerns about the proposal in the transitional provisions that there could be two valuation days designated. We hope that will not be necessary, because, obviously, if you have two days, you could have one day for the value of shares of a company and a second day for the value of the assets of that company at different times.

**Senator Isnor:** What is wrong with that?

**Mr. Buchwald:** It gives you an untrue value, senator, on your shares, if your assets have one value for gain purposes and then the underlying shares have a different value.

**The Chairman:** In other words, if the marketplace gives an inflated value.

**Mr. Buchwald:** Yes.

**Mr. Poissant:** Is there a conflict there, though, Mr. Buchwald? The first valuation you are referring to, really, would be only to the listed shares, and would not the listed shares be the market value of all the underlying assets?

**Mr. Buchwald:** No. I think they would be what they are trading at, which is not necessarily a break-up value.

**Mr. Poissant:** But are there not provisions for special cases where with a block of shares a different value might be taken than the value listed on that day. I know you need to have the valuation for the capital gains for the company or its equivalent, but the value of the

shares, in my mind, will be the value and the sole value for the purpose of the shareholders. That is the only value you need really, because you are talking of two different entities; you are talking of the capital gain incurred by the company in the first place, and secondly the capital gain incurred by the shareholders. They are two different persons. So if they have two different dates, it makes no difference to my mind.

**Mr. Crawford:** That may be right, but there is a problem, moreover, if the valuation date is too far away from the start of the new system.

**Mr. Poissant:** Well, we do not worry too much about that; it will probably be December 31. I see there is a need for the distinction, but the capital gain is realized by two different persons, and therefore I do not see why there should be two dates.

**Mr. Buchwald:** Well, as long as you do not have inconsistency, that is fine. If they are in fact two different persons and if they have in fact two different aspirations—one is a speculator on a piece of paper and the other is an entrepreneur who is realizing on the turnover of capital assets. That is on the one hand the investing shareholder and on the other hand the managing operator of the business. That is all right as long as the aspirations of the two remain separate, but it is when they are the same you may have your contradictions. That is why the Bar raised this point.

**The Chairman:** Well, we will have a look at it.

**Mr. Buchwald:** Then very briefly, Mr. Chairman, we come to the question of roll-overs which are dealt with on page 68 of the brief. What is a roll-over but a deferred taxing of a capital gain to a more propitious time to pay that tax because the asset is really being replaced with another like asset for the same purpose? So if you do not tax it at this time, tax it at the end of the line when the ultimate disposition takes place. That theoretically is the theory of the roll-over. One of our main criticisms in our initial reaction to the bill is that it does not provide enough statutory sanctioned roll-overs, and we propose at the end of the first paragraph on page 68 what we think should be done. We say:

But some effort should be made to provide for roll-overs where the facts show that inequities would otherwise exist. It may be impossible to draft satisfactory rules before January 1972. As an interim solution, we would recommend that the Minister be given a discretion to approve non-recognition of gains where there is a continuity of economic interest or where the only change is a change in the form of property holding.

Then, Mr. Chairman, we go on to say quite sincerely and quite respectfully—because it may seem to be rather presumptuous on our part—that:

Perhaps a joint committee, including members of the Department of Finance, the Canadian Bar Association and the Canadian Institute of Chartered Accounts, should be struck to develop acceptable



statutory standards for other situations than those presently covered.

These we could not begin to catalogue when we were preparing this brief. Now we think we can draw upon the wide experience of a variety of different business situations being brought to our attention and to the attention of accountants day by day to catalogue this matter and we most respectfully commend it to you.

The next couple of pages of the brief deal with specific areas of concern in the roll-over situation that we ask you and we ask the Minister of Finance to take a look at.

**Mr. Crawford:** I have just one additional point on the roll-overs. Some people have said that the point is not too serious early on because your values will not have built up. There is however the problem that the roll-overs with respect to capita cost recapture are being removed from the act. In fact for a corporation with a fiscal year ending after December 31, or early in the new system, they have already been removed provided that the tax law becomes effective on January 1. That does cause an immediate problem.

**Hon. Mr. Phillips:** Are you considering that that should also be covered on an interim basis with ministerial discretion?

**Mr. Crawford:** Yes. The roll-over provisions for the most part in the bill now that actually do exist provide for roll-overs with respect to capital cost recapture as well as with respect to capital gains.

**Hon. Mr. Phillips:** The way I see this, Mr. Chairman—because we are dealing with a very important item and time is pressing us—is that you are directing yourself to capital gains, and that you are reconciled to deemed capital gain on death, but we have covered the subject matter on leaving Canada. On roll-overs you have a specific example at the bottom of page 10 and at the top of page 11 which speaks for itself. And then you are more or less in despair for the present and Mr. Crawford says that we may not have an immediate problem other than in relation to recapture so let us give the Minister discretion for the present.

**Mr. Buchwald:** On an interim basis.

**Hon. Mr. Phillips:** Yes, on an interim basis. Those are the highlights of what you are saying on capital gains.

**Mr. Crawford:** Mr. Harris is going to speak about corporations.

**Hon. Mr. Phillips:** Mr. Chairman, may I, with your approval, ask Mr. Harris that when he deals with corporation shareholders he deal with two items as major priorities that we are considering in this committee? The first is the question of consolidations which are referred to at the bottom of page 22 and on page 23 of your brief. Now I do not want to take you away from anything else you want to say, but I want to get the high spots. Then,

secondly, I should like you to deal with the item at the bottom of page 21 where you say:

Basically, it is hoped to clear out the 1971 undistributed income on hand and the 1971 capital surplus...

etcetera.

Under the heading of surpluses, has your committee given any consideration to the desirability of eliminating designated surpluses from the new bill and assimilating them or causing them to form part of undistributed earned income? And if you have not done so, are either you or your colleagues ready to express an opinion thereon? Then on the question of consolidations, are you still of the same opinion as reflected in page 22 of your brief?

**Mr. Harris:** I shall deal with the second question first, if I may. It seems to me that again you cannot have a real tax reform unless you get by the artificial boundaries that separate one corporation from another, and that because you are starting a new business in particular, although not combining the situations, you are suffering losses and there should be some way in which other corporations associated with the corporations suffering the loss can absorb that loss currently. We realize that there are some technical problems which the department would face in trying to allow consolidation, and this is a matter on which we referred to the United Kingdom subvention proposal. This is not given in great detail, but there are some suggestions.

**Hon. Mr. Phillips:** All right. Now would you go back to deal with the question of surplus referred to on page 21?

**Mr. Harris:** Yes, surplus on page 21. Let me deal with the designated surplus issue. The designated surplus issue, with which you are familiar, arose as an early approach to blocking dividend distributing, the conversion of what would have been taxable income of the capital gain. In the department's view, that danger still exists. We commenced our discussion on this point when he were talking about section 138A. The department is still of the opinion that the opportunity of converting what would be full rate taxed income into half rate taxed income is still going to be attractive enough and people are going to sell shares of corporations rather than collect the dividends in order to reduce the burden of tax on what is really undistributed income.

**Hon. Mr. Phillips:** May I interrupt you, sir? If you believe that the department is wrong and you press for the elimination of section 247(1), as Mr. Buchwald has dealt with, tax evasion, do you not logically come to the conclusion that you should be in favour of the elimination of designated surplus?

**Senator Benidickson:** Mr. Phillips, you say the department is wrong. What do you mean by that?

**Hon. Mr. Phillips:** You were not here earlier, Senator Benidickson, but the recommendation of the Canadian Bar Association that section 138, one of the subsections, which is now in section 247(1) need not be in the new act because of the introduction of the capital gains tax.



**Senator Benidickson:** My point is, is the department wrong?

**Hon. Mr. Phillips:** This section is not needed—perhaps that is a better expression. I do apologize. The department is never wrong; the section is not needed.

**Mr. Harris:** Mr. Phillips, I do not think that it necessarily follows that because section 247(1) is not needed, therefore designated surplus is not needed. Indeed, without section 247(1), perhaps we desperately need the designated surplus provision to maintain the integrity of our tax system. I am not saying that all the designated surplus provisions that are in the act are ideal; but I feel that the concept is probably needed if we should eliminate section 247(1).

**The Chairman:** Mr. Harris, if you leave the designated surplus provisions in, the way in which the new act deals with the whole question of capital gains and income tax, would be burden of carrying this section in the act be great on the taxpayer in situations other than where there is tax avoidance?

**Mr. Harris:** I would hope not, senator. We have had the concept of designated surplus in the tax system and we have learned to live with it. We do not always like it. But it is not as pervasive and not nearly as distorting to what might otherwise be a normal business transaction as is section 138A.

**Mr. Crawford:** What will happen, however, Mr. Harris, is that we are now moving forward into a new system and as time goes on new surpluses will build up, as it would seem they have, along with the assistance of the courts which effectively block any possibility of giving the new system surplus out other than at the effective rates for public corporations. You are going to have surplus built up over many years; and again pressures will come and they will be seeking new ways to get that surplus out at 15 per cent.

**Mr. Harris:** I do not say that we are entirely happy with the concepts. We would like an opportunity to go into it more fully.

**Hon. Mr. Phillips:** Could I press you a bit further? Is there some support among members of the Canadian Bar Association that designated surplus be eliminated—let us say, individual support?

**The Chairman:** Mr. Harris has indicated they would like some time to think about it.

**Mr. Harris:** I think we would appreciate some time.

**Mr. Crawford:** I might add to that point, as you know the Bar and the Institute have a joint committee; and it is our intention that as soon as this reform legislation becomes enacted this committee will become active and at that point it will be able to look at some of the problems in the legislation in more depth with the Department of Finance and the Department of National Revenue officials.

**Hon. Mr. Phillips:** I apologize for having interrupted.

**Mr. Harris:** That is quite all right. It leads me to the third point which I feel is quite urgent, that is the question of paying 15 per cent tax on existing undistributed income, thereby freeing the remainder, plus any capital surplus, for tax-free distribution after the beginning of 1972. This is a current problem. The intent is most commendable. It would at least permit the clearing up of existing surplus except for the pitfall of Part III, the tax under section 184. If there is a miscalculation of the undistributed income on hand, there is a penalty tax of 100 per cent.

**The Chairman:** You do not need to worry very much about that because, to the extent that we are able to influence the course of events, we find it difficult to justify that kind of penalty. There are, or may be, difficulties in determining exactly the amount of undistributed income. But if you should miss out by one cent, you have a 100 per cent penalty.

**Mr. Harris:** On the whole distribution.

**Mr. Crawford:** It is hard to imagine corporations of any size that do not face potential reassessment problems.

**Mr. Harris:** Prior to 1972.

**The Chairman:** That is right.

**Hon. Mr. Phillips:** I was wondering whether the Bar would support me in this, that instead of putting the blame on the taxpayer we put the blame on the accountants who compute the surplus. Perhaps that would solve the problem.

**Mr. Buchwald:** It is already on the accountants.

**The Chairman:** It is already on them, I am sure.

**Mr. Harris:** This is a serious problem because the philosophy of the act, I feel, is to encourage corporations, and particularly private corporations, to clear up old surplus. But if they have this axe hanging over their head, it will defeat this purpose. I can see the difficulty in amending the section. What will happen is that these amounts will be paid out to the shareholders, many of whom are totally innocent, and they are going to be told that they are dividends out of the tax-paid undistributed surplus for 1971 as capital surplus, and they will be told how to treat it for tax purposes—as capital distribution. Subsequently it is determined that they should not be treated as capital distribution at all. Where does the department get the money? Does it go after the shareholder or the corporation? We have a policy decision to go after the corporation, but the tax penalty to the corporation is intolerable.

**The Chairman:** What would you think of a tolerance level, if the particular error is in excess of 25 per cent?

**Mr. Harris:** No, I would not think that the percentage of error should be the criteria, Mr. Chairman. I would suggest that the rate of penalty should be reduced.

**Mr. Poissant:** Why should it be reduced when the problem is in assessing the amounts? I prefer the chair-

man's suggestion, and there is a principle like this in the Income Tax Act regarding instalments. If the percentage of your calculated income of the present year is within the percentage of what would be the final income at the end of the year, if you are within a certain percentage you would have felt that you made a good estimate of your income for that year. There is a precedent here. Why do we not accept this? If the calculation is within 20 per cent of the estimate it is all right; if it is in excess of that it is a gross error.

**Mr. Harris:** With respect, I do not think the principle applies. Consider the case of a corporation which has been in existence only two years and has made modest profits. It has only \$10,000 of what all would agree is undistributed income on hand at the end of its 1971 year. During that period it sold a very substantial piece of real estate on which it made a gain, because of a windfall, of \$200,000. It has taken the attitude that it is a capital gain and four years later the department decides that it is taxable income. This completely overwhelms the undistributed income on hand. As a result of your suggested percentage criterion, they are ruined.

Their position should not be any worse than that of a large corporation with \$1 million of undistributed income on hand engaging in this questionable transaction. I do not know on what basis a small corporation should be penalized more severely than a large one.

**The Chairman:** I do not think reducing the penalty is the cure; the argument for a reduction of the penalty is the degree of error.

**Mr. Crawford:** The percentage may be helpful but it is not the only solution. The problem of the calculation of the 1971 income remains.

**The Chairman:** You are faced now with whether this remains in its present form in the bill. You do not have time to study and examine in depth all the methods by which the problem should be met. Certainly a tolerance method by which there would be no penalty if the limit were complied with would be an easier and quicker way of drafting. Let the future take care of all the niceties of methods that should be used.

**Mr. Crawford:** The difficulty is that the future takes care of niceties sometimes by never changing them.

**The Chairman:** That is a well-known characteristic of taxing legislation.

**Mr. Harris:** The ideal would be to force the department to make its assessment quickly as to the amount of the actual undistributed income on hand, so that all parties are agreed on undistributed surplus before the tax is paid.

**The Chairman:** That is wishful thinking with regard to the period of time we are discussing.

**Mr. Harris:** One other point might be worth specifically mentioning. We are, of course, again in a huge amount of technical detail as to the definition of the private corporation and its right to distribute one-half of its capital

gains tax-free to its shareholders under clause 83. This is a right that only the private corporation has. Therefore it can be a very valuable right. The definition of "private corporation" causes us some concern.

**The Chairman:** Is it not broad enough?

**Mr. Harris:** It may be discriminatory. For example, at the top of page 25 of our brief, beginning at the second line, we state:

It appears that a Canadian subsidiary of a foreign public corporation could take advantage of section 83(2) while the Canadian subsidiary of a Canadian public corporation could not. In addition, the option is not available to public corporations which means that if Ford allows the public of Canada to participate in its Canadian operations it is penalized in capital dividend treatment as compared to G.M. which has a wholly-owned Canadian subsidiary, which is accorded the status of a private corporation.

In our view, this seems to be discriminatory.

**Senator Isnor:** Are there any private organizations such as that?

**Mr. Harris:** General Motors of Canada does not, as I understand it, allow public investment in its corporation. Investment can only be made in the parent corporation; therefore General Motors of Canada would qualify as a private corporation under this definition and could distribute its capital gains.

**Mr. Buchwald:** And Eaton's.

**Mr. Harris:** Yes; although we are considering a foreign corporation and Ford of Canada, by virtue of bringing in foreign investors, cannot do that.

**The Chairman:** We have noted it. Is there anything else?

**Mr. Poissant:** May I ask Mr. Harris another question now that we are endeavouring to solve the problem of the under-elected amount? Let us say we elected to pay on \$100,000, and finally it is determined that it should have been \$150,000. Instead of having to pay 100 per cent on the \$50,000, why do we not allow a rate of 15 per cent and perhaps a somewhat greater rate than normal of interest?

**Mr. Harris:** If the corporation in your example had elected properly, in other words computed the surplus properly, they would have paid tax on only \$100,000 instead of \$150,000. The distribution to a shareholder that is treated as a distribution of capital should have been treated as a taxable dividend in the hands of the shareholder: the shareholder is receiving a benefit on his tax. That is the concern. The real question probably should be: What additional tax would the shareholder have paid if this amount were distributed as a taxable dividend?

**Mr. Poissant:** No, it was to be considered as undistributed income on hand, which normally could come out at 15 per cent. Let us apply 15 per cent to it, plus a rate of interest because it should have been paid in year one



and it is only caught by the department in year five. In that case should not the actual tax on the difference, plus a rate of interest of perhaps 10 or 15 per cent on the 15 per cent, be paid?

**Mr. Harris:** I think that is well worth considering.

**The Chairman:** We have noted it and will give it careful consideration.

**Mr. Crawford,** have you exhausted the panel? We are still waiting, if you have anything more to add?

**Mr. Crawford:** Mr. Buchwald will speak to the small business.

**Mr. Buchwald:** Mr. Chairman, this point is spoken to at pages 31 to 33 of the submission. We feel that the observation must be reiterated that the percentage appears to us to have been very, very grudgingly given and very carefully curtailed. Our main objection is that it is very complex for the average small businessman; it would create far more serious accounting problems.

**The Chairman:** We have already had that comment, Mr. Buchwald, as to the complexity that seems to be necessary in order to grant a benefit. Certainly, it is complex, but I think you can find your way through it. Is there something there that should not be there?

**Mr. Buchwald:** The first thing that we observed is that the benefit is really available only to incorporated companies and not to other forms of small business activities, partnerships, proprietorships, and so on. We think that is unfortunate.

We also think there could have been more generosity in allowing things like capital losses on assets used in the operation of a business, from disposition of assets used in the operation of a business, as opposed to portfolio assets or investment assets, allowing capital losses to be deducted to perpetuate small business incentives.

**The Chairman:** Portfolio losses are not deductible.

**Mr. Buchwald:** No. Losses from capital assets used in the operation of a small business that suffers a capital loss or moves to other premises cannot be used to reduce this accumulative deduction account.

**The Chairman:** Would not that depend on the source of the capital originally? We have had the opposite picture presented to us by credit unions, et cetera. They feel that since they must transfer a percentage of their earnings to a reserve by provincial and federal statute, they want the position that when you come to calculate the \$400,000, even though the source of this reserve stemmed originally from earnings, it should not be an item for the build-up of the \$400,000.

**Mr. Buchwald:** But they have a special situation.

**The Chairman:** What you are presenting to us is something in reverse of that.

**Mr. Buchwald:** I am thinking of a small business that is having difficulties, and its banker or adviser suggests that the business should be transferred to rented prem-

ises and the plant moved. The company disposes of its plant and equipment and suffers a loss.

**Mr. Poissant:** But they would get a terminal loss there.

**Mr. Buchwald:** Not necessarily.

**Mr. Poissant:** Oh yes. That becomes a deductible item. The only item that they would not get is loss on the land, which is not a depreciable asset. There is no such thing as capital loss on depreciable property. It is a terminal loss which is deductible from your income.

**Mr. Buchwald:** Is your transfer loss deductible from your business income?

**Mr. Poissant:** Yes. That would be a terminal loss deductible, and it would create an operating loss, if any, for that year, which is carried forward by the regular route.

**Mr. Buchwald:** The final point that we are concerned about is the refundable tax on ineligible investments, which can present cash-flow problems.

The attitude is that if you make an ineligible investment you should pay this tax. If you convert that ineligible investment into an eligible investment or distribute it, it appears that you might have to wait up to four years or longer to get a refund. If that was not the intent of the legislation, it should be clarified or it will present some cash-flow problems. It is an unnecessary hardship connected with the operation of a small business.

**Hon. Mr. Phillips:** Did you express in your brief to the minister your concern about small business relief not being granted to individuals and partnerships?

**Mr. Buchwald:** Yes, on page 31, in the middle paragraph.

**Hon. Mr. Phillips:** That is all I wanted to know.

**The Chairman:** Are there any further questions?

**Mr. Crawford:** There are other things that I would like to mention, but this could go on endlessly. We have not touched on international income, primarily because our submission on the White Paper dealt with the substantive issues involved.

**The Chairman:** We have had two excellent submissions, one from Massey-Ferguson and one from Alcan, which in my estimation, appear to cover the entire subject, from people who have actual knowledge and experience. From hearing them speak so knowledgeably, we feel that we obtained complete understanding of the subject. At least, we think we have. We have already been talking about our approach to it. Therefore, if there is anything that you wish to submit on international income, we shall be glad to hear it.

**Mr. Crawford:** We have recommendations in our submission. They are technical, and we will write you about the points that have been picked up in our amendments. We feel rather pleased that the minister has indicated



that some reconsideration is taking place with respect to foreign-source income.

You ask for priorities. Everybody has his own list of priorities, and I will give you mine. If you did it properly, you would have to measure them in terms of their impact. I would start with roll-overs and corporate re-organizations. Secondly, we have the international.

**The Chairman:** The only difference so far between your list and mine is that I would have the international first.

**Mr. Crawford:** Thirdly, I have the existing surplus problem. It is easily cured, but it is a serious problem. Mr. Harris has spoken about the excessive election problem. Fourthly, I have the tax discretion, the evasion right. Fifthly, I think the eligible capital property should be moved back to a capital cost basis.

**The Chairman:** I would say, without admitting anything, that three out of the five are on our list.

**Mr. Crawford:** I would have put roll-over and corporate re-organizations in consolidations or subvention payments in with them.

**Mr. Poissant:** The rule will be fair market value for any transaction between companies. Is there anything in your brief where a company would sell to its parent or sister company and incur a loss? Have you anything to say in that regard?

**Mr. Buchwald:** I believe we deal with it in our brief. I recall reading it last night. I hope there is a suggestion there. I believe it is also covered in our general introduction on the reciprocity problem, but it is also dealt with specifically in the brief.

**Mr. Poissant:** Thank you.

**Senator Gelinas:** Mr. Chairman, may I ask a short question? The answer should be short.

**The Chairman:** Senator Gelinas has a short question which he says should merit a short answer.

**Senator Gelinas:** In view of the complexities of the proposed legislation, has the association given any thought to recommending the establishment of a temporary tax review board where the taxpayer could have recourse if he felt he was unfairly assessed?

**The Chairman:** Really, an advisory board as to how they should proceed; not a board to determine their liability?

**Senator Gelinas:** An advisory board or tax review board to which the taxpayer could have recourse.

**Mr. Buchwald:** In the terms that you put the question, senator, the answer is "no". If you are talking about a tax review board, the legislation does contemplate such a board.

**Senator Gelinas:** A temporary tax review board.

**Mr. Buchwald:** There is a tax review board in the appeal system now.

**Senator Gelinas:** Yes, but I am speaking of a temporary tax review board specifically to look after questions and problems that would arise with this complex legislation.

**Mr. Buchwald:** Until this legislation can be tried, amended and worked out it will result in manifest inequity situations where persons are taxed when they feel they should not be taxed, and that is covered in our submission. We do not suggest that it should be done by a tax review board; we suggest, in effect, that the court should have the right to do it. We really have not thought in terms of an ombudsman.

**The Chairman:** Are there any other questions?  
Thank you for your assistance, gentlemen.

**Mr. Farris:** Thank you, Mr. Chairman.

**The Chairman:** Honourable senators, we have two other submissions on our list. The second delegation, the Independent Petroleum Association of Canada, has been delayed in landing at the airport, so it will not be available until 2.15 p.m.

The submission by Simpsons-Sears is quite a short one; it is a simple point. Mr. Pickering is appearing on behalf of Simpsons-Sears.

Mr. Pickering, how long do you think your presentation will take? The point, as I know it, is quite a simple one.

**Mr. Pickering:** I have a written statement, Mr. Chairman, which would perhaps take seven or eight minutes to review. As you say, it boils down to one question. It would probably take 20 or 25 minutes.

**The Chairman:** On that basis, Mr. Pickering, I think it should be left until this afternoon.  
Is it agreed that we resume at 2 o'clock?

**Senator Beaubien:** Once we have our quorum, we can start.

**The Chairman:** Then we will adjourn until 2 p.m.  
The committee adjourned.

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Upon resuming at 2 p.m.

**The Chairman:** Honourable senators, the first submission we have this afternoon is from Simpsons-Sears Limited. We have here: Mr. E. A. Pickering, the Vice-President, Simpsons-Sears Limited; and Mr. A. K. Hamilton, the Corporate Comptroller.

This submission concerns a deferred profit sharing plan and the effect Bill C-259 has on it. The other day we had Allstate here, whose problem was a profit sharing plan, where various elements in the plan were being taxed currently in each year. This is a deferred profit sharing plan, which involves some element of deferred tax.

Mr. Pickering, would you briefly tell us your problem?

**Mr. E. A. Pickering, Vice-President, Simpsons-Sears Limited:** Thank you, Mr. Chairman. After this morning's

very learned presentation and examination, I should point out at the outset that I am neither a lawyer nor a tax expert nor an accountant. I am a plain, simple layman, whose only reason for being here is that, like Mr. Hamilton, I have been actively involved in profit sharing in our company and in association with profit sharing industries for some 33 years. I have seen a number of tax treatments of profit sharing come and go.

If it is agreeable to you, Mr. Chairman, I think the simplest way of putting the whole picture before you, and in the end perhaps the most helpful in terms of brevity, would be to review the first few pages of this memorandum.

Since 1961 deferred profit sharing has operated under section 79C. Tax on the company's contribution, earnings on investments and on the capital gains in a member's account is paid by him at the time of withdrawal, usually at the time he retires or leaves the employ of the company, under the averaging provisions of section 36. There thus has in effect been a kind of capital gains tax on deferred profit sharing for some years. The amount of tax paid by deferred profit sharing members in our plan withdrawing balances under section 36 has been substantial, as you will see in a moment when we look at column 1 of the exhibit. In our own plan alone we have since 1962 withheld and transmitted \$1,180,000 to National Revenue. With the disappearance of section 36, the Tax Reform Bill proposes to tax deferred profit sharing in either of two ways.

If the employee elects to use the lump sum which he receives on retirement to purchase an annuity, he will pay on the annuity income spread over the years in which it is received. Because income is usually lower after an employee retires, the amount of tax paid on the annuity income purchased by the withdrawal would, in the great majority of cases in our plan, be nominal, and indeed in a substantial portion of them it would be nil. This is indicated in column 2, and perhaps we might now look at the exhibit, which is the third-last sheet in the papers in front of you.

This is a group of some 10 or 12 actual cases in the membership of our fund. Employee A has been a member of the fund for 24 years. Her earnings in the last year she was employed were \$5,125, so you see this is a lower paid employee. The market value of the profit sharing she took out when she retired was \$20,981, part of which was tax-free, the taxable portion being \$14,841. Column 1 shows the tax that has been paid by each of these typical example cases, or would be paid under section 36 as it now stands.

**The Chairman:** Of the present act?

**Mr. Pickering:** Of the present act. In column 2 we show what the tax would be if under the proposed tax reform bill the employee elected the option of buying an annuity and took the benefit, not as a lump sum, but as an annuity over 10 years.

As you can see, in the first four cases, with people on earnings of \$7,000 and under there would be no tax. This is an estimate, prepared by Mr. Hamilton and our tax people, and reviewed with those in the Department of

Finance, of the amount of tax that will be payable by the employee over and above other income. In the first four cases there would be no tax if the employee bought the annuity. In the fifth there would be only \$280, as against \$2,800 under section 36. When you get up to about \$10,000 the payment would be \$2,000 as against \$3,200.

Suppose the employee elects to take the benefit in the form of a lump sum. The lump sum is the historic pattern in deferred profit sharing. If the employee says "I don't want an annuity; I want a lump sum", the entire amount, except his own contribution on which he has already paid tax, is taxed as ordinary income subject to the general averaging provisions. The amount of that tax is shown in column 3, and I think you will agree there is an inordinate tax penalty here. Indeed, we are almost certain that in practice the benefit would be taken by our employees, in all but the rare exceptional case, in the form of an annuity.

**Senator Isnor:** You say he has already paid the tax on his own portion?

**Mr. Pickering:** Yes.

**Senator Isnor:** Does that apply to approved schemes?

**Mr. Pickering:** Yes.

**Mr. A. K. Hamilton, Corporate Comptroller, Simpsons-Sears Limited:** The employee's deposit is not deductible from income.

**Mr. Pickering:** Unlike a pension plan, where the employee puts money in and what he puts in he pays no tax on, it is deductible from income. In the case of a profit-sharing plan, that privilege does not exist; the employee has to pay the tax on it, and then he puts into the fund.

**Senator Isnor:** I just wanted to be clear on that point.

**Mr. Pickering:** We say here that the crux of the whole matter is that the availability of a lump sum on retirement is really the prime feature of deferred profit sharing. If you take that away by law or by effect, you destroy the fundamental dynamic motivating force of deferred profit sharing. In our case it has had a very long and honourable history. The taking of a lump sum on retirement has been the practice in the plans of Simpsons and Simpsons-Sears for over 50 years, and over 99 per cent of the employees who have retired in our two companies have elected to take a lump sum rather than an annuity.

**Senator Beaubien:** Do you say 99 per cent?

**Mr. Hamilton:** Yes.

**Mr. Pickering:** I make this next statement on my own responsibility as an officer of the company, and out of my own personal knowledge of what has happened in our company and in Simpsons. The lump sum has helped thousands of employees plan and finance their retirement. There is usually some annuity income, social



security, we have a supplementary pension plan. The lump sum is something that enables the employee to pay off the mortgage on the house, to set up a contingency reserve; some have bought a little business; most people want to have a farm or a cottage, and many people have acquired a summer cottage and winterized it so that they have a place to live in when they retire. In no case in our experience in the two companies has the lump sum ever been prodigally spent or the employee become needy. Now, if the tax law in effect makes it impossible for the employee to benefit from the lump sum provision, it removes the basic reason for having a deferred profit-sharing plan at all. If retirement security, because of the inordinate penalty on the lump sum, must take the form of an annuity, it will be simpler and more favourable to operate a pension plan, particularly since the payout under the pension format gives the employee the major advantage of deducting his own contribution from the taxable income during the years of his employment.

This next part is frightfully important to an appreciation of how deeply distressed and concerned we are, along with our employees, at the implications of the bill. In many deferred profit-sharing plans there is an additional feature. The trustees allocate to members of the fund shares of the company in accordance with their participation and in accordance with the growth of their accounts. This makes the employee a shareholder of the company; and more than that, it makes him a working partner in the enterprise in a way he has never been before. A little under one million shares of Simpsons-Sears stock is actually assigned and allocated to members of our profit-sharing fund.

**The Chairman:** To the employees?

**Mr. Pickering:** Yes, this is about 6 per cent of the outstanding shares, and 38 per cent of all the assets of our two funds are invested in the common stock of the parent company.

**Senator Connolly:** How long has this been going on, Mr. Pickering?

**Mr. Pickering:** The allocation of shares?

**Senator Connolly:** Yes.

**Mr. Pickering:** This started when we got deferment in 1962, for reasons which I could go into. It was impossible to do it before this because our people could not afford to pay the tax on the accumulation. In our plan, no one earning more than \$10,000 can take out additional profit-sharing during their period of service. This same principle applies to people earning less than this amount. So someone on low income can get a very big accumulation under our fund. The largest withdrawal ever made was \$55,000 by a girl who never earned more than \$100 a week. We had to get out of this tax arrangement because these people could not find the money to pay the tax year by year; so we asked for a deferment and we got it under section 36.

Now when employees retire they can take the shares with them, and a great majority of them elect to do so. They do this, first of all, because they know the compa-

ny, they have worked for it for years, and they have identified with it while they were working and want to remain identified with it. They want to share in what they think will be the continuing growth of the firm. Furthermore, the shares are a hedge against inflation, or at least we think so. And for these reasons they elect to take the lump sum in the form of shares. There is no point in going through the entire procedure of doing this. If the employee cannot in fact take possession of these shares, he must take the equivalent in cash in order to buy an annuity to get this favourable tax treatment. The thing we have been stressing, and which we stressed with the department, is that it would be a tragedy, and we feel an unnecessary tragedy, if the introduction of tax reform in Canada should have the unnecessary effect of destroying the deferred profit-sharing plan. We feel that our problem, and to some extent, the problem of other deferred plans, could be solved if the Government would apply to deferred profit sharing the basic principle of its own tax reform bill. We have proposed to the minister that the amount taken by the employee when he retires, which is represented by the company's contribution of the earnings in the fund, be treated as ordinary income added to other income in the year in which the employee retires and taxed as income subject to the general averaging provisions. We recommend that the realized capital gain from that withdrawal be included in income at 50 per cent rather than 100 per cent.

**Hon. Mr. Phillips:** Are you talking about realized capital gains in the accretion in value of shares or the dollar increase over and above the contributions that were made? I am not clear on what you mean by capital gains at the time of the deferred profit-sharing plan coming into effect.

**Mr. Hamilton:** The two sources of funds going into a deferred profit-sharing plan are the customers' contribution and the company's contribution. These funds are invested. As I have said earlier, in our case about 40 per cent is invested in the shares of the company and they are allocated and assigned to the members in accordance with their participation in the plan. Then there are earnings from the investment. What we are saying is that the company's contribution and the earnings on the investment should be taxed as income.

**Hon. Mr. Phillips:** When the person withdraws?

**Mr. Hamilton:** When the person withdraws.

**Hon. Mr. Phillips:** Are you suggesting a situation where you are dealing only with securities that have increased in value over and above their cost?

**The Chairman:** Not so far as he has gone.

**Mr. Hamilton:** Perhaps I could qualify this. The member's account is divided into two sections, in effect. One section is represented by cash and general investment in the fund, that is, investment other than company shares. Those investments are revalued each year from time to time; and a portion of the appreciation in the capital value of those investments is credited to the member's



account, and when he withdraws the shares of these general investments they are revalued at the time of his withdrawal. And he gets his share of the appreciation of capital gain on those investments in cash.

**Hon. Mr. Phillips:** In dollars.

**Mr. Hamilton:** So, in effect, that is realized gain to him.

**The Chairman:** It is realized gain at a time when there is no such thing as capital gains tax.

**Mr. Hamilton:** Yes, that is right. It has been taxed in the past, even though it was a capital gain.

**The Chairman:** That was part of your agreement when section 36 was brought in.

**Mr. Hamilton:** Yes, it was part of the price we paid for the deferment.

**The Chairman:** Yes, there will be tax at the marginal income rate on the company's contribution, and you get the benefit of the averaging under section 36. You would also include in income the realized gain that has accumulated in the trust fund.

**Mr. Hamilton:** They may not have been realized by the trust because the trust has not sold its securities. But they are actually realized in cash by the member when he withdraws because he is paid in cash for his share.

**The Chairman:** Each year some part of that would be allocated to each member and that portion would be subject to deferred tax payment, income tax payment.

**Mr. Hamilton:** Yes, that is correct. In addition to that, each year the fund purchases a certain number of company shares, most of which have been purchased from the treasury, at the market value at the time. Then at the end of each year, based on a formula, the shares acquired by the fund during the year are allocated to the members. These are the shares that the member can withdraw in kind rather than in cash.

**Hon. Mr. Phillips:** So you want a roll-over on these shares?

**Mr. Pickering:** That is it exactly.

**Mr. Hamilton:** We are asking for a roll-over on that part. Under the present law those shares are valued at market value when he withdraws. But he pays tax on the whole capital gain included in that, but under section 36.

**The Chairman:** And he pays it at the marginal rate governed by what the averaging process produces.

**Mr. Hamilton:** That is right. However, I think that now we have a whole new ball game; we have a capital gains tax which we never had before, so we do not really see any reason why this unrealized capital gain, which is in the value of the shares which he takes out or withdraws, cannot be treated as a capital gain and taxed when realized.

**The Chairman:** Well, let us take it by stages, Mr. Hamilton. We know now the various elements in the

fund and Bill C-259 would start to operate on January 1, and you have different elements in there. There has been accumulated up to that time the company's contribution and tax has been deferred on that. Now you draw a line there. What are you suggesting with respect to the company contributions up to the beginning of the new law, and how are you suggesting that it should be treated?

**Mr. Hamilton:** Well, Bill C-259 provides that, at the election of the employee, amounts that he could have withdrawn which were cumulative as of January 1, 1972 can still be taxed, in effect, under section 36.

**The Chairman:** But my question was not concerned with what the bill does. The bill would preserve that deferred tax as being a liability of the employee. Is that not right?

**Mr. Hamilton:** Yes.

**The Chairman:** So what I am asking you is this: What do you propose in order to get away from that? The employer's contribution in the fund has gone in there over the years.

**Mr. Hamilton:** Well, with respect to the accumulation to December 31, 1971, I think the bill is satisfactory.

**The Chairman:** But then with the incidence of tax the amount may be very substantial. Are you going to assume that every employee withdraws from the plan?

**Mr. Hamilton:** That is the fact now under the present act.

**Mr. Poissant:** Yes, because of section 36. What you were saying was that you get the relieving provision here. But now you are saying that in the absence of an equivalent to section 36 your employee will be penalized, and you would like a formula which will in fact take into account what he would have been taxed previous to section 36.

**Mr. Hamilton:** We are talking about future accumulations after December 31.

**The Chairman:** Let us not jump ahead. I am still staying with the first law, and I want you to tell us about when you come to January 1, 1972. We know what the bill does in relation to the accumulation of employers' contributions it preserves the taxation of them.

**Mr. Hamilton:** Partially only.

**The Chairman:** Partially only, yes. But in relation to those you get the benefit of averaging under section 36.

**Mr. Hamilton:** No, the bill provides that an employee who withdraws from a deferred plan up to the end of 1973 can withdraw the full amount, in effect, under section 36 of the present act. If he withdraws subsequent to December 31, 1973—and this is section 40 of the transitional provisions—he can still make an election to be taxed, in effect, under section 36, but the amount on which he can elect is restricted to the amount that he could have withdrawn had he in effect withdrawn on January 1, 1972.

**The Chairman:** They are dividing the accumulation in two and they are saying that any part of that accumulation that he might have taken out if he had retired on December 31, 1971 is an amount that he can pay tax on and get the benefit of averaging under section 36.

**Mr. Hamilton:** In other words, they are not making the bill retroactive in that respect.

**The Chairman:** No. And you are prepared to accept that.

**Mr. Hamilton:** That is something we can accept. However, the bill goes further, and in section 88 of the transitional provisions it says that if the employee makes any election under section 40, then general averaging and forward income averaging does not apply to any other income of that year. So, in effect, if the employee does not withdraw until 1980, he can elect on his accumulations to December 31, 1971 to have section 36 apply. But then he is denied any averaging on his subsequent accumulations from January 1, 1972 until 1980, when in fact he withdraws, and he will be taxed on that portion as ordinary income when he withdraws.

**The Chairman:** That will not be annually; it will be when he withdraws?

**Mr. Hamilton:** Yes. So that this, in effect, could result in such substantial tax on subsequent accumulations under the new act as to make it impossible for him to elect under section 36. Section 38(2) denies general averaging and forward income averaging if any election is made under section 40. So what I am saying is that the denial of section 38(2) really denies to the employee who withdraws, say, in 1980 the application of section 36 to his accumulations prior to the introduction of the bill, and in that way it is retroactive.

**Mr. Pickering:** Mr. Chairman, could I suggest that, leaving aside the transitional provisions, what we are interested in as to the future treatment of withdrawals is that the company's contributions and the earnings of the fund would be treated as ordinary income? Any realized capital gains withdrawn would be included in income at 50 per cent rather than at 100 per cent, and that the unrealized capital gains on securities withdrawn or taken in kind would be rolled over and taxed as capital gains at the time the gains are realized. Along with this we would recommend that the option remain of taking out an annuity, so that the employee would have the choice of taking the benefit as a pension or as a lump sum. We believe that this proposal is generally consistent with the application of the capital gains tax in other situations. Capital gains of trusts in general are taxed in the hands of a beneficiary as capital gains when realized by the trust. Any gain on trust assets transferred in kind to the beneficiary of an ordinary trust is deferred until the beneficiary realizes that gain.

What we are asking is that the rules applicable to trusts in general be applied in the case of deferred profit-sharing plans.

**The Chairman:** Could you pause there for a moment, Mr. Pickering?

**Mr. Pickering:** Yes.

**The Chairman:** That is really the point of difference. You are ready to accept the treatment proposed in the bill in relation to the portion of the accumulated contributions by the employer as at December 31, 1971. You are prepared to accept that amount on the basis that the employee had withdrawn on that day, and you are prepared to accept what the bill says; that is, that you get the benefit of the averaging under section 36 and you pay income tax.

**Mr. Pickering:** I am glad that I said at the outset that I am not a tax lawyer, because I am not sure. We are certainly prepared to accept the future treatment.

**Mr. Hamilton:** I believe what the chairman says is correct. We would be prepared to accept it, with the qualification that the limitation in section 38(2) of the transitional rules is, we feel, unfair in that it denies section 36 retroactively, in effect, to an employee who withdraws at any time after December 31.

**The Chairman:** Let us put it this way: You have the accumulation of the employee's contributions and so you draw a line at December 31, 1971, and that is one accumulation; you arrive at a total amount as though the employee had retired and withdrawn on that date. The bill deals with a way of taxing that and it does give you the benefit of section 36 and the averaging provisions.

**Mr. Hamilton:** Correct.

**The Chairman:** But the employee has not actually withdrawn and the employee's contributions continue to come in. There may be a balance left in the accumulation of the employee's contributions in the calculation that you make at that date, but he does not retire until 1980. Under the new bill that is an entirely new ball game, is it not? The whole accumulation is shared in that accumulation, and whatever balance, if any, that is left after you do your arithmetic for December 31, 1971, and for the accumulation right down to the date he actually withdraws, is subject to income tax at the marginal rate, and you do not get the benefit of section 36 of the present act. Is that right?

**Mr. Hamilton:** Yes, including capital gains at 100 per cent.

**The Chairman:** Yes.

**Mr. Hamilton:** Realized or unrealized.

**The Chairman:** Yes, and included in it would be capital gains that the fund may have made during that period, and it would be taxed at income rates.

**Mr. Hamilton:** Yes.

**Senator Connolly:** When does the tax on the first accumulation become exigible under the new bill? Does it become exigible on January 1, 1972?

**The Chairman:** That is right.

**Mr. Hamilton:** No, only when the employee withdraws.



**The Chairman:** I think your question has been misunderstood.

**Mr. Hamilton:** When is it payable?

**The Chairman:** Yes.

**Mr. Hamilton:** When the employee actually retires.

**Senator Connolly:** In other words, in the year of his retirement he is going to have a very complicated return. He is going to have to figure his taxable income from the fund to the January 1, 1972 with the provisions of the act as the act now exists. He is going to have to make a calculation of tax owing.

**Mr. Hamilton:** That is not quite correct. Section 36 disappears from the bill. The taxing section levies a tax in a similar way to section 36, but it is no longer section 36. For example, if he retired in 1980 the three years average would be the years 1977, 1978, and 1979.

**Hon. Mr. Phillips:** We are here to find out what relief you want, as opposed to an analysis of the new bill. What relief do you want? Do I understand that when an employee receives his share of the deferred profit-sharing plan, to the extent that the portion received consists of shares of the company that employed him, he would not be taxed but he gets the benefit of a roll-over until he sells the shares?

**Mr. Pickering:** Right.

**Hon. Mr. Phillips:** Is that not the basic point you are asking?

**Mr. Pickering:** Yes, and one other point.

**Hon. Mr. Phillips:** Suppose he were to receive shares in companies other than those of your company? Are you asking for the roll-over on those shares as well?

**Mr. Pickering:** Yes.

**Hon. Mr. Phillips:** So what you are saying is that to the extent that he receives securities of companies, the capital gains tax is deferred until he realizes on those shares. Is that it?

**The Chairman:** Yes, and it would follow the ordinary rules in relation to the assessment of capital gains.

**Mr. Hamilton:** And that they be taxed at the rate of 50 per cent.

**The Chairman:** That is the capital gains rate.

**Hon. Mr. Phillips:** That would follow.

**Mr. Pickering:** If the capital gain is realized, he will add that to his income.

**Hon. Mr. Phillips:** He will pay that at the time of realization.

**Mr. Pickering:** Yes, and if the capital gain is not realized then it will be rolled over.

**Hon. Mr. Phillips:** I know that. At what cost does he get those shares from the point of view of the roll-over?

**Mr. Pickering:** In our proposal to the department we proposed that it be at the cost at which it was acquired by the trust which, hopefully, will be lower than the cost on Vday and, therefore, that would create a larger capital gains eventually, but we felt this was the fair and proper way of putting this proposal forward.

**The Chairman:** That only leaves the other situation, and I am not sure that Mr. Hamilton has given us an assessment of it.

**Mr. Poissant:** Mr. Chairman, may I clarify something?

**The Chairman:** Yes.

**Mr. Poissant:** We should divide the problems into two areas. You are satisfied with the situation prior to 1971, are you?

**Mr. Hamilton:** Yes.

**Mr. Poissant:** Your problem is from 1972 on respecting the portion of capital gains that would be accredited to that separate pool you were telling us about?

**Hon. Mr. Phillips:** No. As I understand it, Mr. Chairman, as at the end of 1971, if it includes securities then those securities should be subject to roll-over.

**Mr. Poissant:** In 1971 they can elect on this so they are not too worried about it. The taxpayer has the right to deem that amount out of the fund.

Am I right?

**Mr. Hamilton:** Yes.

**Mr. Poissant:** And you are satisfied with that treatment?

**Mr. Hamilton:** Yes.

**Mr. Poissant:** What you are interested in is the accumulation after that period, and you say you do not have the equivalent to section 36, or the transitional provisions for that, and because of section 38(2) you would not be able to have the averaging provisions apply.

Let us say the roll-over has solved part of the problem and let us say there would not be a roll-over and there would be a capital gain in 1980 for that portion accrued from 1971 on. Are you telling us there will be no averaging provision available for that taxpayer for that period?

**Mr. Hamilton:** If the employee has elected in respect of the accumulation to December 31, 1971.

**Mr. Poissant:** He does not get a second averaging provision for the years 1972-80?

**Mr. Hamilton:** Right.

**The Chairman:** Which averaging are you talking about?

**Mr. Poissant:** The forward averaging.



**Mr. Pickering:** He certainly does not get that.

**The Chairman:** In other words, to identify it, he does not get the benefit of averaging under the bill.

**Mr. Poissant:** Once he gets it, when the system starts he no longer has the right. In other words, I am just suggesting at this time that perhaps he should be permitted to make an election again, figure out the tax and maybe deduct the previous accumulation as of December, 1971. Would that be agreeable? That is, if there is no roll-over again. The roll-over would reduce the impact of taxation drastically. Is that right on the roll-over?

**Mr. Hamilton:** Oh yes.

**Mr. Poissant:** It will reduce it drastically, so we do not have to worry so much about that, if there is a roll-over.

**Mr. Hamilton:** If there is a roll-over, we are not concerned.

**Mr. Poissant:** Assume he does not get a roll-over, and in 1980 he withdraws from the plan; he has made an election as of 1971, but then there were other accumulations for, let us say, 10 years. Because he has already made an election, he is forbidden to make another one at the end of 1980. Is that right?

**Mr. Hamilton:** He does not in fact make any election until 1980, when he withdraws.

**Mr. Poissant:** But he would not be able to make one, because the act says that if you have made one previously you cannot make one again. Is that what you say?

**Mr. Pickering:** It is the transitional features that make the problem complex. Perhaps we could go back to the table of comparisons.

**Hon. Mr. Phillips:** We have another applicant here, and time is getting to be of the essence. I really would like to crystallize it, or shall I say "coagulate" it, in some form, because we must give time to others and I am watching the clock.

**The Chairman:** Can you just tell us what it is you want?

**Hon. Mr. Phillips:** I understand the roll-over provision in respect of securities, and you have indicated at what price you want to cost it. You have stated that it is the only thing you wish. We have been told there is something more you want; you want some form of averaging provision as well.

**Mr. Hamilton:** No.

**Hon. Mr. Phillips:** You do not?

**Mr. Hamilton:** We do not.

**Hon. Mr. Phillips:** Do you want anything other than roll-over in respect of securities that the employee receives at the cost you have indicated? Is there anything more that you wish?

**The Chairman:** There must be.

**Mr. Poissant:** There is the reference to that 50 per cent.

**Hon. Mr. Phillips:** I would rather the witnesses answered.

**Mr. Pickering:** What we are asking for is that the realized capital gains in the amount withdrawn be taxed as a capital gain; that the unrealized capital gain in the amount withdrawn be rolled-over and taxed eventually as a capital gain; and that anything else be put into income at the time of withdrawal and taxed under the general averaging provisions.

**Hon. Mr. Phillips:** I do not seem to get beyond a request of the roll-over in respect of securities acquired by the employee at the time of withdrawal. Is there any other request?

**Mr. Pickering:** As the bill stands, the realized capital gain which would be transmitted to the employee at the time he withdraws would be put into income at 100 per cent. We are asking that it be treated as a capital gain and put into income at 50 per cent. There are the two major things.

**Hon. Mr. Phillips:** Then there is more than one.

**Mr. Pickering:** Yes, right.

**Hon. Mr. Phillips:** Where do we find that, on what page?

**Mr. Pickering:** Perhaps you would look at page 4, the first full paragraph:

We have proposed that the part of the withdrawal represented by the company's contribution and earnings of the fund be treated as ordinary income and taxed subject to the general averaging provisions; that the realized capital gains be included in income at 50 per cent rather than 100 per cent; and that the unrealized capital gains on securities withdrawn and taken in kind be rolled-over and taxed as capital gains at the time the gains are realized.

**Hon. Mr. Phillips:** Would there ever be a question that the realized capital gains be included in income at more than 50 per cent?

**Mr. Pickering:** Yes, the present bill says 100 per cent.

**The Chairman:** The bill says 100 per cent.

**Hon. Mr. Phillips:** So that is the crucial point.

**Mr. Pickering:** It is making the tax under Bill C-259 prohibitive, as these tables show.

**Hon. Mr. Phillips:** So the two points you wish are found in that paragraph on page 4?

**Mr. Pickering:** Right.

**Hon. Mr. Phillips:** As far as I am concerned, that is it.

**The Chairman:** There is one additional point. They want to preserve the right to be able to take the annuity course if the employee wants it.

**Hon. Mr. Phillips:** That is assumed.

**Mr. Pickering:** I would add one other thing...

**Hon. Mr. Phillips:** May I, at the risk of being repetitious, say that the key to the point, that I certainly did not get, and which perhaps some honourable senators did not get, is that the realized capital gain at the time the employee gets it is now to be taxed at the full rate rather than at the capital gains rate.

**Mr. Pickering:** That is right.

**Hon. Mr. Phillips:** Now we have it.

**Mr. Pickering:** I think there is a subsidiary matter, in which Mr. Hamilton has been involved, and that is that the so-called transitional provisions do not solve the problem in its entirety. It is rather a technical matter and I personally do not want to get into that, but we have attached to these papers a statement of what the problem is. It is on the last page, which is not numbered.

**The Chairman:** Mr. Pickering, what I would like to know is this. When you talk about general averaging provisions on page 4, what general averaging provisions are you talking about? Are you talking about the ones dealt with in section 36?

**Mr. Hamilton:** No.

**The Chairman:** Or the ones that are available under this bill?

**Mr. Pickering:** Under this bill.

**Mr. Hamilton:** Under this bill yes. What in effect we are saying is that it does not seem fair that in order to maintain section 36 for accumulations prior to the introduction of this bill the employee has to give up his right to general averaging under the new bill for all future accumulations.

**The Chairman:** You mean he is being made a second-class citizen?

**Mr. Hamilton:** Yes.

**Hon. Mr. Phillips:** So we have three points now.

**Mr. Hamilton:** He gives it up not only in respect of future accumulations under profit sharing, but all other income that he may have on the early withdrawal.

**The Chairman:** I think we have an understanding of it now, and of what you want. We have the material here. I do not think we need any additional reasons in support of what you are asking. We understand the why and the wherefore.

**Mr. Poissant:** Mr. Chairman, would you permit me a question?

**The Chairman:** Go ahead.

**Mr. Poissant:** You said the roll-over should be transferred at the cost that it was transferred to the trust.

**Mr. Pickering:** Yes, that is right.

**Mr. Poissant:** What will happen? The share will be valued at V day. Should not they be transferred either at the cost to the trust or the fair market value on V day? You will take the benefit of the appreciation as of V day.

**Mr. Pickering:** If we had proposed that it be valued at market value on V day, presumably that would be higher than cost, and therefore eventually the capital gain would be less. We felt that valuing them at cost was a reasonable...

**The Chairman:** Do not be generous. This is a right which you have. Do not be generous and give away a right which you enjoy under the bill. That is the purpose of the valuation day, you can select either your cost or the value on that day.

**Mr. Pickering:** I think we would be very happy...

**Hon. Mr. Phillips:** Whichever is higher.

**The Chairman:** Do we have the point you are making?

**Senator Isnor:** I am not clear on that point, Mr. Chairman. Mr. Pickering, you pay by the week?

**Mr. Hamilton:** I am sorry, every two weeks.

**Senator Isnor:** Every two weeks. Was this pension plan approved by any particular body?

**Mr. Hamilton:** It is accepted, or rather, it is registered as a deferred plan.

**Senator Isnor:** As a deferred plan. Do you charge up your shares to the pension plan? Do you charge up in your salary total on each pay day the amount paid up?

**Mr. Hamilton:** We make a deduction each pay day from the employee.

**Senator Isnor:** I asked if you charged up the full amount each pay day.

**Mr. Hamilton:** To expenses do you mean?

**Senator Isnor:** To expenses.

**Mr. Hamilton:** Yes, we do.

**Senator Isnor:** Then you are getting credit from the Government on your income tax return for an amount larger than what you...

**The Chairman:** No.

**Senator Isnor:** Just a minute.

**The Chairman:** You can wrestle with the answer afterwards. I have a number of different answers.

**Mr. Hamilton:** I think what you are saying is that the company is getting a greater deduction than the amount of money the employee receives.

**Senator Isnor:** I just want to make sure.

**Mr. Hamilton:** The employee is not permitted to deduct this from his income. So while the company is claiming this as an expense, the employee is paying tax on it.



**Mr. Poissant:** So the average tax is not less.

**The Chairman:** No.

**Senator Isnor:** You do charge up the full amount of that man's salary?

**Mr. Hamilton:** Yes.

**Senator Isnor:** And notwithstanding that, you want a rebate at the end of the year for pension purposes?

**The Chairman:** No.

**Senator Isnor:** Who is saying no?

**The Chairman:** I said no. If this is a private conversation between the two of you across the table, Senator Isnor...

**Senator Isnor:** I want the witness to answer the question. He has an approved pension plan and charges up the full salary of the employee over the year.

**Mr. Hamilton:** It is not a pension plan.

**Senator Isnor:** It is not a pension plan?

**Mr. Pickering:** No, it is a deferred profit sharing plan.

**Mr. Hamilton:** I think that the distinction, senator, is in the registered pension plan where the employee gets a deduction from taxable income of his contribution to the plan as he comes into the plan. He does not pay tax on it. Under the profit-sharing plan he does not get the deduction. He pays tax each year as he goes along.

**The Chairman:** Under this deferred profit-sharing plan, the employee has to pay his own marginal rate of tax on what he contributes. That is the difference. With respect to contributions to a pension plan he gets a deduction up to a certain limit for the amount that he pays in each year. This is one of the restrictions on obtaining a qualification for this type of plan. They pay a tax on their own contribution.

**Mr. Hamilton:** I wonder if this would be helpful. While the company makes a deduction from the employee, nevertheless, it pays out the gross amount of the salary. It pays so much to the employee; and the amount which is deducted it pays to the credit of the employee in the plan.

**Senator Connolly:** That is vested in the trustee of the plan.

**The Chairman:** That is right.

**Mr. Hamilton:** So the company is paying out as an expense everything it is being allowed. And the employee is either receiving all of it in cash, or getting credit for the part which he does not receive.

**The Chairman:** Are there any other questions, Senator Isnor? As soon as you are through we want to hear the next group—but not until you are through.

**Senator Isnor:** Then you are seeking benefits two ways, are you; first, by charging up the full amount of the salary, and later on...

**The Chairman:** I do not know what you are talking about. What is this reference to charging up the full amount of the salary?

**Mr. Hamilton:** I do not know either. It is an expense to the company.

**The Chairman:** The company pays the salary of the workmen. The company makes a contribution to the plan. The employees in the plan pay at the ordinary income tax rate on the company's contribution.

**Senator Hays:** Which contribution they receive.

**The Chairman:** Yes, and because they receive it, they pay income tax on it like any other income they receive. Is there anything more, Senator Isnor?

**Senator Isnor:** No.

**The Chairman:** Thank you very much, sir.

**The Chairman:** We come now to our last hearing for today. These gentlemen were delayed in landing by the fog this morning. I can tell them that during the morning there was no fog here, but, we had a very good discussion. We have before us the Independent Petroleum Association of Canada, represented by Mr. A. Ross, President of Western Decalta, and Mr. G. W. Cameron, the General Manager of the Independent Petroleum Association of Canada.

I should tell you that when we conclude this hearing today we will adjourn until Wednesday, October 27, at 9.30 in the morning. At the present time we have four appointments on that day; and on Thursday, October 28, we have an additional four appointments. So we have a lot of work to do.

Who is going to make the opening statement?

**Mr. A. Ross, President, Independent Petroleum Association of Canada:** I will make the opening statement.

**The Chairman:** At some point a little later on the chairman has other obligations that he must deal with, and is going to vacate the Chair in favour of Senator Connolly, who has been kind enough to agree to take over. I hope the committee will accept that.

**Hon. Senators:** Agreed.

**The Chairman:** Go ahead, Mr. Ross.

**Mr. Ross:** Gentlemen, we wish to thank you very much for continuing this hearing this afternoon and for allowing us to appear before you. There may have been no fog on the ground, but I can assure you there was fog up in the air because we were up there for about two and a half hours waiting to land.

At this time I would like to introduce Mr. D. A. McGregor, a partner with Clarkson, Gordon & Company in Calgary.

In so far as our submission is concerned, the general remarks are pretty straightforward. We will deal at this point with probably the most important section regarding depletion. Our Association feels now, as it felt when we



appeared before the house committee on a prior date that gross depletion is much more acceptable to the industry and to the investing community. We recognize that neither your committee nor the house went along with our recommendation. However, we would like to suggest this to you. On the other hand, in the event that we are going to end up with earned depletion as proposed in the new bill we would like to see the base of the earned depletion broadened. We believe that all land cost should earn depletion.

**The Chairman:** On what page is that set out in your brief?

**Mr. Ross:** On page 2.

**Hon. Mr. Phillips:** It is in the third paragraph.

**Mr. Ross:** Failing the acceptance of the "gross depletion" concept, our association recommends that all "Canadian exploration and development expenses" as defined in section 66(15)(b) of Bill C-259 should be included in determining the earned depletion base. To avoid any abuse in the sale of properties between companies, it is suggested that the income from such sales by each taxpayer should be credited to "Canadian exploration and development expenses" and thus the total earned depletion base is unchanged. We also recommend that tangible equipment such as wellhead equipment and tubular goods for productive wells, battery equipment, processing plant costs and other equipment necessary to recover hydrocarbons be included in the earned depletion base. This is similar to what has been allowed to the mining industry.

**The Chairman:** Do you mean in the bill?

**Mr. Ross:** In the bill, yes. We also believe that it is inequitable that depletion on future production income from producing properties at January 1, 1972, should have to be earned without recognition of the expenditures made in the exploration for and development of such properties prior to November 7, 1969. We recommend that the effective date for eligible expenditures be retroactive to January 1, 1949, after reduction for the amount of any depletion allowed since that date.

**Hon. Mr. Phillips:** Why do you go back to 1949? Is that under the new act? Is there any significance to January 1st, 1949?

**Mr. Ross:** That was when there was change in the Income Tax Act and it is really a period which was picked as being easily distinguished.

**The Chairman:** That is the beginning date of the present act.

**Senator Connolly:** Would you say again, Mr. Ross, what it is you want in that respect. I have read this too, but I would like you to talk to it.

**Mr. Ross:** Do you want me to go back over the first part?

**Senator Connolly:** I think it is quite clear that you want additional property of various kinds included in the base for determining depletion.

**Mr. Ross:** Yes.

**Senator Connolly:** Now, what about the second point?

**Mr. Ross:** What we are saying in the second part is that expenditures which have been made in the past for exploration and development back to 1949 we believe should earn depletion as forwarded expenditures would earn depletion less the depletion that has been taken to date.

**The Chairman:** Well, Mr. Ross, what you are really saying is that you total up the total amount of money you spent on exploration and development since January 1, 1949, and on the other hand you total up the depletion allowances you have taken during that whole period, and if the difference is a plus—in other words, that you have spent more than you have written off—that you should be able to carry that forward.

**Mr. Ross:** That is it exactly. It is very similar to the recommendation by the House of Commons in this regard.

**Senator Hays:** How is it treated now?

**Mr. Ross:** At the moment we get what is called in the bill "automatic depletion" so consequently we do not have an earned depletion right now.

**Senator Connolly:** Well, in the unearned depletion which you are entitled to now and which is 33½ per cent...

**Mr. Ross:** Well, it is called automatic depletion.

**Senator Connolly:** Well, I call it unearned depletion as against the earned depletion concept of the White Paper and the bill. But are you entitled to go back to 1949?

**Mr. Ross:** Under the bill?

**Senator Connolly:** No, under the act, the existing law.

**Mr. Ross:** Well, under the present act your expenditures do not have any effect in calculating depletion. The depletion is 33½ per cent of the amount of production income left after you have deducted expenses. Very few companies are getting depletion right now.

**Hon. Mr. Phillips:** Because of the earned depletion concept?

**Senator Connolly:** It is the difference in the concept that makes this different.

**Mr. Ross:** It is an entirely different concept.

**The Chairman:** But there is a question as to why you should carry the difference in concept away back.

**Mr. Ross:** Well, I should think the reason for carrying the difference in concept away back is that on the converse side the expenditures were made on the basis of having an automatic depletion at 33½ per cent, and if

you are going to change the basis on which the expenditures were made, then we suggest that this is a reasonable way to do it.

**The Chairman:** You do have a run-in period under which you can operate under the present law?

**Mr. Ross:** Yes, until 1976. But that will only cover part of the production from the property, but at the time those expenditures were made we expected to have a 33½ per cent carry forward.

**The Chairman:** I assume that in that period somehow if you had any money to write off any expenses, you had earnings.

**Mr. Ross:** Well, you have earnings, but not according to the definition of earnings after eligible expenditures.

**The Chairman:** Did you enjoy a tax holiday? Was it profitable?

**Mr. Ross:** In most cases you would have to say in terms of profit that it was not profitable. Our company, for example, is spending more per year than we are earning. We have reserves somewhere down the line and we are going to end up making a profit, but at this point we are not in a profit position.

**The Chairman:** Your write-offs preserve your earnings and give you the cash flow but they are not called profits.

**Mr. Ross:** No, it is not called profit.

**Hon. Mr. Phillips:** Going back to page 2 where you speak about recommendations concerning tangible equipment such as wellhead equipment, et cetera, being included for your base, are you speaking of the extension of the category in respect of these types of items purchased after January 1st, 1972 or are you again going back to 1949?

**Mr. Ross:** Going back as well.

**Hon. Mr. Phillips:** So it is an extension of the base and retroactivity. Is that right?

**The Chairman:** But how can we do that? How can we enlarge the base?

**Mr. Ross:** Just the land acquisition costs, not the depreciables.

**Hon. Mr. Phillips:** Am I right in saying that you want the extension of the base back to 1949 only in respect of land acquisition costs?

**Mr. Ross:** And drilling and exploration costs.

**Hon. Mr. Phillips:** But with respect to section 72 onwards under the new bill you want the extension of the base, because of the earned depletion concept, to include the new items you referred to?

**Mr. Ross:** Yes.

**Mr. Poissant:** Referring to page 2, what is your interpretation of "gross depletion"?

**Mr. Ross:** Gross depletion is a fixed percentage of the gross revenue after royalties and before any other operating costs, as they have in the United States.

**Mr. Poissant:** This is something we do not have now.

**Mr. Ross:** No.

**Mr. Poissant:** And you are recommending something equivalent to that in the United States?

**Mr. Ross:** Yes. And the industry on balance has recommended this for 15 years.

**Mr. Poissant:** In the same paragraph you say again "To avoid any abuse in the sale of properties between companies it is suggested that the income from such sales... should be credited to 'Canadian exploration and development expenses'." Do you mean to say that if there was a capital gain it should be all the gain?

**Mr. D. A. McGregor, Independent Petroleum Association of Canada:** In this respect we are talking about earned depletion and we are asking that land acquisition costs be included. Now if you did not include your sales as a credit against your pool of expenditures, abuses could arise by companies selling properties back and forth.

**The Chairman:** I think the White Paper mentioned that.

Is there any other point that you want to direct our attention to in particular, Mr. Ross?

**Mr. Ross:** Not in-so-far as depletion is concerned. I think we have covered that. Then going over to Canadian ownership, and this is called the principal business testing type of thing, what we would like to see is that all Canadians, individuals as well as corporations, should be allowed to deduct drilling and exploration costs against other income. We believe that this could have a material effect in increasing the amount of capital available in Canada by Canadians for expenditures in the oil and gas business. Your committee recommended that this be on the basis of 30 per cent on a declining balance. The House of Commons recommended it be on 20 per cent on a declining balance. We feel very strongly that we would like to see it at 100 per cent. We think that this is a very tangible way of increasing Canadian ownership.

**Hon. Mr. Phillips:** What does the act do?

**Mr. Ross:** The current act is strictly tied down to principal business companies, which are mining companies, drilling companies, exploration companies, and so on.

**Mr. McGregor:** Except to the extent that a non-qualifying corporation might have oil and gas.

**The Chairman:** They could write off expenses of the type you are talking about. Very well. What is the next point?

**Mr. Ross:** The next part is on foreign drilling expenses. The current bill has made provision for the ability to expense against the Canadian income 10 per cent on a



declining balance of expenditures made overseas. We feel that this should be broadened and should go to 100 per cent as well. We feel that if Canada wants to be a factor in world oil she has to recognize the facts of life. The facts of life are that the American companies can all do this, and as a result they have built multi-national corporations and now own most of the free world oil. We think this is extremely important and that Canada can end up with some sizeable companies as well. We recognize that on the one hand we are saying that we want to raise capital for the Canadian industry, while on the other hand we are saying that we want to spend some of the capital overseas. That is quite correct.

**The Chairman:** What is the advantage to Canada and to the tax revenues of Canada in your being permitted to spend some of your Canadian earnings on overseas development?

**Mr. Ross:** We think, in terms of the advantage to Canada overall, one is going overseas to look for small oil fields. They are going over there to look for major oil fields. You have seen that many Canadian companies, even despite this lack of being able to do it, are over making applications in the North Sea, Norway, and so on. They are looking for major oil pools. We think that it is in our interest to get ourselves diversified around the world and to participate in some of the major oil pools in the world. This means that the Canadian company that is successful in finding a major amount of oil overseas has to reflect in the size of the company and the opportunities available to Canadians, and so on. So we think it is important that way.

**The Chairman:** It gives you a chance to battle your competitors abroad.

**Mr. Ross:** Exactly.

**The Chairman:** And it may be that you can keep more of the field here for yourself.

**Mr. Ross:** Well, it does other things, too. In this type of business you have to be worried about your shares price, because you have always got to be raising money. If you have interest in an attractive overseas area this will have an effect, because it will mean that you can raise more money either in this country or in the United States, and a lot of that money will be used in Canada. Certainly, that is one means of helping the Canadian companies materially.

**Senator Connolly:** I suppose too that overseas earnings ultimately, if they are high enough, all accrue to the benefit of the Canadian economy.

**Mr. Ross:** Right. We suggest here that overseas earnings be taxed as part of the Canadian income of the company.

**Senator Connolly:** You also suggest that the expenditures overseas be either a deduction from the profits, 100 per cent of the profits earned by the subsidiary, or, at the option of the company, be made available as a Canadian deduction.

**Mr. Ross:** Exactly. The American government did this quite some time ago, and as a result they ended up, as I said a moment ago, owning most of the oil of the free world. This has been extremely beneficial to the United States economy. There is no question about that. So far as we are concerned, the American government took a chance in allowing their companies to go over and in allowing them to have this deduction, but it has come back home very materially to them.

We think that exactly the same thing would happen in terms of Canadian companies. After all, there is no Canadian company that is going to go overseas to look for 25 barrels of oil a day, or that type of thing. They are going over there to look for major oil fields. We are satisfied that some of them will strike those oil fields. This is similar to the approach with regard to allowing Canadian individuals and companies to have drilling and exploration expenses in this country. We believe that if a company goes over there to look for oil it does not go there to lose money. Other people we have talked to down here have suggested, "Well, how much money is the Government going to lose?" I say nobody is going to go in there to lose money. They are going to go in there to make money, and we are satisfied that they are sensible people and that over a period of time they will be making an asset. Naturally you are gambling into the future, but that is what everybody does in the oil business.

**Senator Hays:** What other countries follow the same practice as the United States follows in this regard?

**Mr. Ross:** Senator Hays, I am really not too well aware of the taxation of other countries. The Americans are certainly the major example of it. I believe that the French have a certain amount of latitude in this direction.

**Senator Connolly:** What about the British?

**Mr. Ross:** No.

**Senator Connolly:** Through the years, when they had the Empire, did they not do it then?

**Mr. Ross:** The British have ended up fundamentally with one major oil company, which is BP, and a minority interest in Shell. The Americans have five major oil companies, plus a considerable number of other very sizeable companies. For example, a company such as Ashland is as big as Imperial Oil. They have many companies of that size. If you look at the world reserve of oil and gas you will see that the United States owns most of it. This results largely from the fact that they encouraged their nationals to go overseas. Admittedly, part of that encouragement, very frankly, was that the Americans became concerned in 1920, or so, that they were going to run out of oil. Therefore, they encouraged their people to go overseas.

**The Chairman:** Gentlemen, I am sorry, but I must excuse myself now. I will ask Senator Connolly to take the Chair while you deal with the subjects of stock options and tax-free re-organization. You may be sure that I have read your brief in its entirety.



**Mr. Ross:** Thank you very much, Mr. Chairman.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Would you please continue, Mr. Ross?

**Mr. Ross:** Yes, senator. The next section of our brief deals with stock options. We anticipated earlier, before this bill came out, that stock options would be subject to capital gains tax. It would appear that stock options will be subject to the ordinary income rates after 1973, and we feel very strongly that stock options have been and are a very effective means of motivating technical people. Also in terms of an independent company, they are one of the few means by which you can attract extremely capable people to the company because an independent company, by the nature of its size, is much more risky than a larger company, and we have found this to be extremely effective in attracting people.

We recommend that stock options be subject to tax at capital gains rates at such time as the gain is realized. The reason for that is because there are many inter-listed stocks and you exercise a stock option which is considered to be a buying of stock in terms of the S.E.C., and you cannot trade in the stock for six months. As a result, we have had situations in the last few years where people have exercised stock options at one price and could not sell for six months...

**The Acting Chairman:** Because of the S.E.C. regulations?

**Mr. Ross:** Yes.

**The Acting Chairman:** Have we got a similar regulation in Canada?

**Mr. Ross:** No, we have not, but there are many inter-listed companies and, of course, with the amount of money we are talking about in this industry, unfortunately, you have to go to the American market quite often, so the only way you can sell securities there is through the S.E.C., and you are stuck with the regulation. As I say, there have been illustrations where people have exercised a stock option and they are taxable on it in Canada at that price, and six months later the price has dropped well below the option price, and so they end up owing the bank, owing the Canadian Government, and having securities which are less than the amount of the bank loan. We believe that can be cured by our suggestion here.

**The Acting Chairman:** Could you spell out your suggestion again, please?

**Mr. Ross:** Yes. Our suggestion is that the stock option—and we are only talking about proper ones that are 95 per cent of the market value of the shares on the date the option is granted—be subject to capital gains taxation at the time that the gain is actually realized. This means at the time the stock is sold and not at the time that the option is exercised, as currently is the case.

**Mr. McGregor:** This is really no different from what is happening now in a good many companies which are giving employees interest-free loans to purchase capital stock of a company, payable, perhaps, ten years down the road. Under the new bill, using that type of plan, that employee is only going to be subject to a capital gains tax on realization.

**The Acting Chairman:** In other words, the loan is used to buy stock today, and the loan is repaid, let us say, three years hence, and presumably the loan would be repaid out of whatever return the sale of the stock might produce.

**Mr. McGregor:** Most of them, senator, are going on ten years interest-free loans. That is really, in effect, the same as this proposal. I think you will see more of that.

**Mr. Ross:** If they do not change this I think you will see more of it.

**The Acting Chairman:** In other words, this is a loophole in the bill.

**Mr. Alan Irving, Legal Adviser to the Committee:** That has always existed. We have had stock options being taxed as income in the bill for some time.

**Mr. Ross:** Stock options as income?

**Mr. Irving:** When you exercise your option.

**Mr. Ross:** No.

**Mr. Irving:** Under section 85A.

**Mr. McGregor:** Yes, you are correct. The difference between the option price and the price that it was exercised at has been treated as income, and anything above that has been tax free.

**Mr. Irving:** Right.

**Mr. Ross:** But the way that is treated as income is very different than the way which is proposed under this bill. It is an averaged income over three years which is quite different.

**Mr. Poissant:** You do not have the averaging provisions under the new bill, but you will have forward averaging.

**Mr. McGregor:** We do not really consider that as a benefit.

**Mr. Poissant:** Going back to what we touched on before, it will continue to be treated as income.

**Mr. Ross:** Yes, but the difference is it was treated as income at the average income rate.

**Mr. Poissant:** Yes, you are right, and the only averaging provisions you are left with are the locking averaging or the forwarding averaging, and it is of no value to you.

**Mr. Ross:** The net effect really is that if the top part of your bracket is 50 per cent, under the current tax you are probably paying, let us say, 22 to 25 per cent or something in that order. Under this proposal you would be paying 50 per cent because it is the marginal end that

is going on. As Mr. McGregor suggested, there are loopholes like convertibles, debentures that you do not pay interest on, and so forth. Those things are all just getting around this and, of course, they mess up the capitalization of the company and they are difficult to do because the directors get themselves into a great sweat about paying out a few debentures here and there, or lending money to officers or individuals.

In our company, for example, we have stock options right from the chairman of the board right down to some of our third line accounting people, and there is just no question that we find they are extremely effective. It increases the amount of work these people do and their attitude is unbelievable. They used to go home at 4 o'clock and now they are there until 6 or 7 o'clock on weekends. Frankly, I do not believe Canada can take away this type of incentive.

Going to the next one, honourable senators, we have tax-free reorganizations; I would rather not deal with that at all, if you do not mind.

**Mr. McGregor:** Under section 17 of the current bill, it was possible to donate oil and gas properties to a wholly-owned subsidiary without tax incidents. This allowed companies which operated in different jurisdictions to bring their businesses together, and carry on in order to effect savings. The new bill takes that privilege of donation away from the companies and really sets up a barrier against any reorganization.

**Mr. Ross:** Has this been abused?

**Mr. McGregor:** No, not a bit. It has been used by American companies to form Canadian subsidiaries in order to get leases in the Northwest Territories and the Yukon. The only way they could obtain their properties there was to form a Canadian subsidiary and donate the property to it. It certainly has not been abused.

**Senator Isnor:** Are you making a brief on behalf of American companies or Canadian companies?

**Mr. McGregor:** I am simply saying it was used by American companies to become Canadianized. It has also been used by Canadian companies which might have half a dozen subsidiaries in order to get all of their properties into one operating company.

**The Acting Chairman:** This is a roll-over which could take place, as I understand it, between a Canadian parent company and a Canadian subsidiary or between an American parent company and a Canadian subsidiary, or vice versa.

**Mr. McGregor:** Yes, it is really a tax-free roll-over. It is the same principle as in the liquidation of a subsidiary.

**The Acting Chairman:** You used the words "tax-free reorganization"; the key to it is where there is a business reason.

**Mr. Ross:** It also states that you must get advance rulings which boils down to the fact that the tax department is going to look at it, and make sure it is a business reason.

**The Acting Chairman:** Will they give you a ruling on this in advance?

**Mr. McGregor:** They have been giving rulings on this very thing in advance, providing one did have a good business reason—and they are pretty tough about the business reasons, too.

**The Acting Chairman:** Advance rulings are not very easy to come by in other areas. In this area it has been satisfactory?

**Mr. McGregor:** Yes. The present bill will really stop any form of reorganization, because it taxes the roll-over.

**The Acting Chairman:** At what rate?

**Mr. McGregor:** As ordinary income.

**Mr. Poissant:** Mr. Ross, which subsection of section 17 were you referring to?

**Mr. Ross:** Section 17(7).

**Mr. Poissant:** That relates only to depreciable property, does it not?

**Mr. McGregor:** It may be subsection (5). I did not bring a copy.

**Mr. Ross:** Could we look it up for you and advise you of it?

**Mr. Poissant:** Yes.

**Senator Benidickson:** Mr. Chairman, for the record, may I admit that I have not been a constant participant at this committee, due to events that will culminate today.

This morning the chairman indicated that I had come late to this morning's meeting. I wish to indicate that I had been active on bilingualism by submitting myself from 8 o'clock on, before our meeting, to a little tutoring for two hours.

I am not acquainted with the gentleman who just spoke. Is he an adviser to this committee?

**The Acting Chairman:** Yes, he is a member of the staff.

**Senator Benidickson:** That is fine, and his bilingualism is of course perfect, but I did not understand.

**The Acting Chairman:** Mr. Mitchell is a member of Mr. Poissant's firm.

**Mr. Poissant:** Were you referring to me?

**The Acting Chairman:** Mr. Poissant is our chief adviser on the technical side.

**Senator Benidickson:** I explained why I was a little out of date and I recognized, perhaps, Mr. Poissant's skill, but I did want to point out that in *Hansard* we often raise a question, starting with "we".

**Mr. Poissant:** I apologize.

**Senator Benidickson:** I ask that in future in committee, the committee insist that only senators may use "we".

**Mr. Poissant:** It is well taken.

**Senator Benidickson:** I admire your bilingualism, Mr. Poissant, and regret mine, which I am trying to improve. That is why I was late this morning. But if you are our advocate, or our inquisitor...

**The Acting Chairman:** Our adviser.

**Senator Benidickson:** Oui. I want to make the suggestion that for the future you perhaps say: "The committee might want to know this."—not "we".

**Mr. Poissant:** Thank you very much, Senator.

**Senator Benidickson:** The committee could end up in a minority position, and you do not ask questions starting "we" or "nous".

**Senator Smith:** They might want to vote, at some future stage.

**The Acting Chairman:** We might need a vote right now. Mr. Ross, are there any other questions or is there anything else you want to deal with at this stage. With respect to this last point, you will write in about it. We thank you very much. You have been very helpful to us, and we appreciate your coming here.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

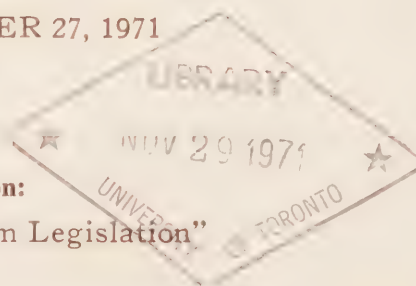
# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 44

WEDNESDAY, OCTOBER 27, 1971

Eighth Proceedings on:  
"Summary of 1971 Tax Reform Legislation"



(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird •	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Wednesday, October 27, 1971.

(54)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further examine:

"Summary of 1971 Tax Reform Legislation".

*Present:* The Honourable Senators Hayden, (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Flynn, Gélinas, Isnor, Macnaughton, Molson, Smith, Walker and Welch—(16).

*Present, but not of the Committee:* The Honourable Senator Laird—(1).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *Noranda Mines Limited:*

Mr. Alfred Powis, President;

Mr. D. H. Ford, Director of Taxation.

### *Bethlehem Copper Corporation Ltd.:*

Mr. B. J. Reynolds, Director and Legal Advisor;

Mr. K. E. Steeves, Vice-President, Finance and Treasury.

### *The Canadian Gas Association:*

Mr. G. E. Miller, C.A., Comptroller and Assistant Treasurer, Union Gas Company of Canada Ltd.;

Mr. R. F. Sim, Assistant Secretary, TransCanada Pipeline Limited;

Mr. E.W.H. Tremaine, Treasurer and Assistant Secretary, The Consumers' Gas Company.

At 12:25 p.m. the Committee adjourned.

2:15 p.m.

(55)

At 2:15 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Gélinas, Isnor, Macnaughton, Molson, Smith, Sullivan, Walker and Willis—(16).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *ad hoc Committee of Voluntary Agencies:*

Mr. Donald Pierce, McClintock, Devry and Pierce;

Mr. Menno Dirks, Canadian Bible College;

Mr. Ian J. Stanley, World Vision of Canada.

At 3:25 p.m. the Committee adjourned until Thursday, October 28, 1971 at 9:30 a.m.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, October 27, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order.

We have four appearances this morning: Noranda Mines Limited; Bethlehem Copper Corporation Ltd.; The Canadian Gas Association; and the ad hoc Committee of Supporting Voluntary Agencies. Noranda Mines Limited will be heard first, and the appearances on behalf of Noranda Mines Limited are: Mr. Alfred Powis, President; and Mr. D. H. Ford, Director of Taxation.

The usual practice, gentlemen, is that you make an opening statement, and then any questions honourable senators have will follow; after which you may develop any further matters you wish.

**Mr. Alfred Powis, President, Noranda Mines Limited:** Thank you, Mr. Chairman.

I might say at the outset, honourable senators, that we have submitted a brief which is really brief, which is unusual for us. I would like to apologize to honourable senators for a couple of spelling and typographical errors in the brief; which we prepared rather hurriedly with the thought that we would be appearing last week.

It was not our intention in this brief to revive the various arguments in favour of the existing incentives for the mining industry. The Government has apparently made a decision and, for the time being at least, it appears we will have to live with that decision.

Our submission focuses on two areas which are of particular concern to Noranda, where we believe that the intentions of the Government have been perverted by the proposed regulations in connection with Bill C-259.

In August, 1970, in response to many objections raised against the original proposals as they affected the mining industry, the Minister of Finance wrote to his provincial counterparts proposing, among other things, that the expenditures eligible to earn depletion would be expanded to include the cost of new facilities located in Canada to process mineral ores to the prime metal stage, and certain expenditures in connection with a major expansion of an existing Canadian mine.

Based on our understanding of this announcement, Noranda decided to proceed with a \$120 million expansion of copper production in the Province of Quebec. Our prob-

lem with the proposed regulations really falls into two areas: the first is that we had understood that in connection with the announcement by the Minister of Finance in August, 1970, expenditures for new facilities to process ore to the prime metal stage in Canada would be eligible to earn depletion.

**Senator Connolly:** Would you just repeat that? You are going rather quickly.

**Mr. Powis:** I beg your pardon, sir. We had been led to believe by the letter from the Minister of Finance to his provincial counterparts, which he wrote in August, 1970, that expenditures for new facilities to process ore to the prime metal stage in Canada would be eligible to earn the depletion.

**Senator Connolly:** Facilities to process ore to the prime metal stage?

**Mr. Powis:** Yes; in other words, smelters and refiners. I might say that \$30 million of this \$120 million program involved expenditures of that nature. We now understand from officials of the Department of Finance that in order for such processing facilities to earn depletion, they must be new from the ground up and that facilities built to process ores on a custom basis—that is, for other mines—will not be eligible to earn depletion. In our case some \$30 million of this \$120 million program falls into that category.

**The Chairman:** Custom smelting?

**Mr. Powis:** Yes, custom smelting and refining, sir.

The second problem which we have is in connection with the establishment expenses which are an integral part of the expansion of our Gaspé mine.

**Senator Connolly:** Are you going to expand on the first point later?

**Mr. Powis:** I will if you wish, sir.

**Senator Connolly:** Shall we do it now, Mr. Chairman?

**The Chairman:** Is that convenient, Mr. Powis?

**Mr. Powis:** Yes.

**Senator Walker:** This letter left no question about it, did it? You felt you could rely on the letter you have referred to?

**Mr. Powis:** There was no question in our minds at all. As I say, we relied on this. As a matter of fact, shortly after these new regulations were put out we were contacted by Mr. Bourassa from Quebec who said, "Now we have the regulations which are specifically designed for cases of your type. This new proposal in terms of tax reform is

specifically designed for projects of your sort, and I hope you will now be able to get off the ground," which, of course, we did. We are completely committed to this project; it is well under way.

**Senator Connolly:** Is there a regulation in effect now, at least in draft form, which seems to be at variance with the terms of the letter of August, 1970?

**Mr. Powis:** No, sir, we have not seen a draft.

**Senator Connolly:** You have not seen one?

**Mr. Powis:** The regulations, as I understand it, do not form part of the bill at all. The regulations are something that will be promulgated by the minister following the enactment of the bill.

**The Chairman:** But the regulations must have their basis in the bill.

**Mr. Powis:** Yes.

**Senator Connolly:** Where did you get your information that the regulations are at variance with the letter and with the bill? Does the bill conform to the letter?

**Mr. Powis:** You have to take the bill plus the regulations in order for it to conform with the letter.

**Senator Connolly:** But you have not got the regulations. Is there anything in the bill that touches on the point that is made in the letter of August, 1970?

**Mr. Powis:** I would have to rely on Mr. Ford for this.

**Mr. D. H. Ford, Director of Taxation, Noranda Mines Limited:** The bill merely provides for deduction for depletion as allowed by regulation. That is the present situation. Then you must turn to the regulations for the determination of these allowances.

**Senator Beaubien:** But you have not got the regulations.

**Mr. Ford:** What we have is a news release of July 6.

**Senator Connolly:** This year?

**Mr. Ford:** Yes.

**Senator Molson:** By whom?

**Mr. Ford:** By the Department of Finance. It says in the first paragraph:

Finance Minister E. J. Benson today released a paper outlining proposed regulations to apply to mining and petroleum.

This is all we have, and I understand this is all we are likely to have.

**The Chairman:** This was a press release?

**Mr. Ford:** A news release.

**Senator Connolly:** Would you read that again more slowly?

**Mr. Ford:** The first paragraph of the covering letter to the news release says:

Finance Minister E. J. Benson today released a paper outlining proposed regulations to apply to mining and petroleum.

**Senator Connolly:** Have you those proposed regulations?

**Mr. Ford:** Yes, it is part of the news release.

**Senator Connolly:** What do they say?

**Senator Walker:** That is the part that is relevant.

**Mr. Ford:** It is what Mr. Powis has been saying. It is a four-page document.

**Senator Connolly:** Perhaps you would give us the salient points.

**Senator Beaubien:** That is what Mr. Powis has given.

**Senator Connolly:** But we did not realize they were tied in so closely, and I want to make sure we get the record straight.

**Mr. Ford:** With respect to earned depletion as it applies to the kind of expenditure Mr. Powis has referred to, it says:

Eligible expenditures, include the following: . . .

(c) Expenditures on new buildings and machinery, to the extent that they are to be used to process ore from Canadian mineral resources beyond the stage to which they were previously processed in Canada, up to but not beyond the prime metal stage or its equivalent.

On the face of it, that would cover a large part of Noranda's proposal, but we understand the interpretation given to that—

**Senator Connolly:** This is the point that is not in the regulations that you are now giving us?

**Mr. Ford:** Yes, sir.

**Senator Connolly:** You got this subsequent material from the Department of Finance?

**Mr. Ford:** Not material; this was an interpretation.

**Senator Connolly:** You got this interpretation from the Department of Finance?

**Mr. Ford:** Yes, sir.

**Senator Connolly:** Now would you tell us what it is? I just want to make the record crystal clear, if we can.

**Mr. Ford:** Expenditures on custom smelting refineries are entitled to earned depletion.

**Senator Connolly:** It seems to me Mr. Powis had another point as well. He covered custom refining, but he covered another point, did he not?

**Senator Molson:** Building.

**Mr. Powis:** The other point, the metal point, that I wanted to cover has to do with mining development.

**Senator Connolly:** But did you not also say that additions to existing facilities would not be included, that it had to be from the ground up?



**Senator Walker:** That would be new buildings.

**Senator Connolly:** Completely new.

**Mr. Powis:** Completely new from the ground up, that is correct. This again is an interpretation we were given by officials of the Department of Finance. I could argue, for example, our smelter expansion is in a sense new from the ground up, that it involves new building, new equipment and so on.

**Senator Connolly:** Certainly new expenditure.

**Mr. Powis:** Certainly new expenditure in any case, and a very substantial one.

**Senator Connolly:** And it is the kind of expenditure that seemed to be covered by the letter of August, 1970, upon which you relied.

**Mr. Powis:** Yes, sir.

**Senator Connolly:** That is the point.

**Mr. Powis:** That is correct.

**Senator Connolly:** I think that might be a little clearer to us, Mr. Chairman.

**The Chairman:** Except that there are a number of problems. First, you have regulations, and they have been read. Then on top of that you have at a later date interpretations. The interpretations are not in writing, and the interpretations have been made by somebody in the Department of Finance. Whether he knows much, a lot or a little about mining, I do not know. The question is: What is the position of those interpretations? I think you would have to force the issue in order to get some commitment. I think we have to look at it on the basis that administratively, on the basis of those interpretations, it is proposed to apply the regulations in that form, and yet when you analyze what is said, "expenditures on new buildings and machinery" is easily understandable.

... to the extent they are to be used to process ore from Canadian mineral resources beyond the stage to which they were previously processed in Canada, up to but not beyond the prime metal stage or its equivalent.

What is the position with respect to the processing on which you have spent this amount of money, the processing facilities? They start with the raw ore?

**Mr. Powis:** Actually, they start normally with a concentrate, which is upgraded raw ore. They go then through a smelter, which produces metal that is roughly 99½ per cent pure. They then go through a refinery which purifies the smelted copper and extracts other valuable metals, such as silver and gold, from the smelted copper ore.

**The Chairman:** What was the stage of the processing of ore from Canadian mineral resources at the time they issued these regulations?

**Mr. Powis:** It varied. In the case of copper, a very high percentage of the copper produced in eastern Canada had been smelted and refined in Canada. In western Canada this is not so. Here again the difficulty is, taking the literal

interpretation of that wording, if a new mine came into production and new production is created that had not previously been processed in Canada, you cannot process it beyond the stage to which it had been previously processed. The wording is somewhat confusing.

**The Chairman:** What was the stage in Canada in the processing of ore from Canadian mineral resources at the time they issued these regulations? Anywhere in Canada by anybody in Canada.

**Mr. Powis:** It is hard to generalize, but every important metal produced in Canada is now processed to the prime metal stage. However, the problem is that new mines are being developed. There has not been sufficient smelting refining capacity in Canada to handle the production of those new mines, and this is specifically what our expansion of Noranda Quebec and the expansion of Montreal East is designed to do; it is designed to treat the concentrate being produced by certain new mines in this country.

**The Chairman:** Let us pause for a moment to analyze that. In these allowances, they are going to authorize expenditures on new buildings and machinery. Surely we could eliminate right away that this means what it says; that is, it means expenditures in relation to the construction of new buildings and the installation of new machinery. If you have existing processing facilities, you might very well question whether you are going to replace them; but what you are contemplating in your development is new buildings, new machinery, in relation to new mineral production.

**Mr. Powis:** Yes, sir.

**The Chairman:** And if this wording does not cover it, someone is making an awful distortion, it appears to me.

**Mr. Ford:** The question is whether the expansion of an existing building is a new building.

**Senator Connolly:** This is a refinement, and a very important one.

**Mr. Ford:** It is one we are faced with.

**Senator Connolly:** That is the one you are faced with because you had an existing facility to which you are adding?

**Mr. Powis:** These are not regulations.

**Senator Connolly:** Would you answer that question? Did you have an existing facility to which you have added?

**Mr. Ford:** Yes.

**Senator Connolly:** You have expanded your facilities. It would seem, in the light of the letter of August, 1970, which you have given to us, that that addition, that expansion, should qualify as well.

**Mr. Ford:** According to our expectation, it would.

**Senator Connolly:** It was on that basis that you went ahead.

**The Chairman:** It is new building, new equipment.

**Senator Connolly:** Certainly.

**The Chairman:** I seem to recall that when this statement was originally made, in August, we wrote something in a prologue to deal with that announcement, because we thought these were the things that should happen. There was a press release at that time. Have you copies of it?

**Senator Benidickson:** A lot of people were refusing to go ahead with expansion in the mining industry, because of the uncertainty created by the White Paper.

**The Chairman:** It seems to me that what that release talked about was the expanding of the facilities that were in place. This was the whole burden of the release, and this was the signal for the industry to go ahead.

**Senator Benidickson:** Because they were mixed up. It seemed that they were just clouded in bewilderment about the White Paper.

**The Chairman:** Yes. Have you the press release?

**Mr. Powis:** No. It is a letter, actually.

**Mr. Ford:** It is the penultimate paragraph in the minister's brief.

**The Chairman:** Yes. Mr. Powis has handed me this. I have seen this before. It is a letter in the form of a news release from the Department of Finance, dated August 26, 1970. It says:

Finance Minister E. J. Benson today sent provincial finance ministers and treasurers the attached letter which deals with taxation of the Canadian mining industry and proposed changes to the White Paper on tax reform.

After reciting the major proposals in the White Paper which would affect the incentives that were being granted to the mining industry, it goes on to say:

We are now prepared to propose three further important changes affecting taxation of the mining industry.

The first two changes would widen the definition of expenditures which would qualify for the "earned" depletion allowance. Several provincial governments have impressed us with their point that further incentives should be given to encourage the processing of Canadian ores in Canada. We would like to discuss with you a proposal to include in the base for earned depletion the costs of new facilities located in Canada to process mineral ores to the prime metal stage or its equivalent.

It does not say from what. It does say, "to the prime metal stage or its equivalent." Then it goes on to say:

Secondly, we are also considering including in the expenditures that earn depletion those for mine buildings, and machinery and equipment acquired in connection with a major expansion of an existing Canadian mine. This extension would put the major expansion of an existing mine on a roughly comparable tax footing with the opening of a new mine. The more efficient alternative could be chosen on its own merits, not on its tax consequences.

The third change is not pertinent to this question. Those are two changes. That language does seem to be explicit and it does appear to deal with it in a similar fashion, whether it is an expansion, an extension of an existing mine or a new mine.

**Senator Beaubien:** Quite clearly.

**The Chairman:** Yes.

**Senator Molson:** Perhaps the only course open to us is to get someone from the department and ask them this question point blank.

**The Chairman:** That is right.

**Senator Molson:** The wording sounds explicit. The interpretation of that is not. It is contradictory.

**The Chairman:** I wonder who gave the interpretation, Mr. Powis.

**Mr. Ford:** It was in a meeting of the tax policy committee with the Department of Finance.

**The Chairman:** With whom?

**Mr. Ford:** It is the tax policy group.

**The Chairman:** A tax policy committee? I mean, did they all speak with one voice or was there a spokesman?

**Senator Molson:** They were speaking in different tongues!

**Senator Walker:** It was the voice of Esau but the hand of Jacob. Senator Phillips will appreciate that.

**The Chairman:** Yes.

**Mr. Ford:** It was a round-table discussion, and it seemed to me that it was a group.

**The Chairman:** Well, who addressed them?

**Senator Benidickson:** I think we could find that out, other than on the record.

**The Chairman:** We can find it out, but we would like to know whom to call before us.

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** Mr. Chairman there is a reference to this in the prologue, on pages 2 and 5.

**The Chairman:** Yes.

**Senator Connolly:** Before we continue, I should like to get one point clarified in my own mind. I take it that the letter of August, 1970, which the chairman has just read, covers not only the expansion of an existing mine but also facilities, either new or added to previously existing facilities to give new capacity. Is that right?

**Mr. Powis:** That was certainly our interpretation.

**Senator Connolly:** It seemed to me to be clear from the letter. The letter seemed to imply that.

**The Chairman:** Have we the letter?



**Mr. Ford:** Mr. Chairman, it seems to me that the intention of the Government clearly was to encourage the construction of additional processing facilities in Canada and to prevent the export of the raw concentrates.

**Senator Connolly:** That is it.

**The Chairman:** Honourable senators, may I recall to you what we said in our report? We had copies of the minister's release. You will find that we enumerate certain things that had occurred since the White Paper came forth. One of the items is given in the prologue on page 2 of our report of September, 1970:

(4) The proposals made by the Minister of Finance on August 26, 1970, in a letter to the provincial Finance Ministers and Treasurers dealing with the taxation of the Canadian mining industry and the changes to the White Paper applicable to such industry.

In discussing it, we referred on page 5 to the paragraph which I have just read, and then we say, by way of continuing the discussion:

The Minister proposes to widen the definition of eligible expenditures on which depletion may be earned, by including in eligible expenditures, expenditures made for replacement of mining machinery and mine buildings acquired in connection with expansion of an existing mine. This proposal, it is suggested, would put an *existing* mine on a comparable tax basis with the incentives available to a *new* mine in the White Paper. A further change is to lower the rate of federal tax on the industry from 40 per cent to 25 percent of taxable income. These changes proposed by the Minister represent a basic change in the incentives put forward in the White Paper. The industry in its submissions strenuously contended for such changes demonstrating that without them, existing mines would be subject to heavy additional tax with less retained earnings for development and with less opportunity to earn depletion by reason of the restrictive definition of eligible expenditures on which earned depletion was to be calculated.

Then we go on to say:

A complete assessment of the extent and benefit of these changes cannot be made until the details of the new definition of eligible expenditures are settled and there is published the extent to which the incentives for new mines will be made fully available to existing mines. The changes proposed by the Minister represent a long step forward to meet the claims of the industry and to acknowledge the inadequacies of the White Paper proposals on these points. They also point up the less generous treatment inherent in the White Paper proposals which the White Paper originally stated was entirely sufficient and should make for a smooth transition for the industry from the old rules to the new rules. These changes are in line with recommendations of this Committee but the Committee wishes to stress that they do not deal fully with the needs of the industry in the way of special rules. Those mines that cannot earn depletion even with the enlarged definition of eligible expenditures are not helped.

That is a summary we made, proceeding on the basis of the minister's release, and it is a public document. It has been available for a long time. I should think the committee would be very much interested to know just how, in the light of that, the suggested interpretations could possibly be put forward. If the committee wishes, I will press the question I put to Mr. Ford as to who were the members; otherwise we will just ask somebody from the department to attend. We could have the deputy minister in the first instance, I would suggest, and if we do not get far enough with him, then I would suggest having the minister.

**Hon. Senators:** Agreed.

**The Chairman:** We do not need any further development on that point.

**Mr. Powis:** You have raised a second point of concern to us, sir. I refer to the letter of August, 1970, which purported to put the expansion of the existing mine on the same basis as the development of the new mine. As we understand these proposed regulations, this is not so. The proposal is that the expenditures eligible to earn depletion on the expansion of an existing mine will not allow development expenditures to be so included after a mine comes into production. Now, this is the expansion of an existing mine. In the case of our Gaspé mine, \$10 million of total expenditure is involved in pre-production stripping.

**The Chairman:** You mean developing more ore?

**Mr. Powis:** Developing more ore body, yes, so that it can be mined at a higher rate.

**The Chairman:** Well, that is development, isn't it?

**Mr. Powis:** That is right.

**The Chairman:** And it is new development.

**Mr. Powis:** But it is not allowed as an expenditure eligible to earn depletion.

**Senator Connolly:** When you say it is not allowed, do you mean, rather, that the interpretation that you have been given by officials would appear to exclude it?

**Mr. Powis:** No, sir. This is in the press release explaining the proposed regulations. This is not an interpretation; it is the regulation.

**Mr. Ford:** May I read to you the words, sir?

**Senator Connolly:** Please, and would you identify the document.

**Mr. Ford:** Again it is the news release of July 6, 1971, containing the outline of the proposed regulations. In the section dealing with earned depletion, the press release reads:

Eligible expenditures include the following:

(a) Canadian exploration and development expenses in the mining and petroleum industries, except for:

(iii) Canadian exploration and development expenses in the vicinity of a mine after it came into production



**Senator Molson:** What is the "vicinity"?

**Mr. Ford:** That is a very good question, sir. We have asked that question several times.

**The Chairman:** One reference to vicinity would be "in the neighbourhood."

**Senator Beaubien:** "Adjacent to."

**Senator Flynn:** Where does it stop, though?

**Mr. Ford:** We understand that they often have trouble putting distances in there, for example one mile, three miles or ten miles, because different mines have different areas.

**Senator Benidickson:** We had the same problem when we were considering the definition of a new mine.

**Mr. Ford:** Exactly.

**Senator Connolly:** Well, what character of expenditure did you incur which seems to be excluded by that section of the News Release?

**Mr. Ford:** \$10 million of expenditures on developing the open pit of the Gaspé Copper Mine in order to increase the productive capacity upwards from about 6,000 tons a day.

**Senator Connolly:** What was the character of that work?

**Mr. Ford:** Stripping overburden.

**Mr. Powis:** Stripping overburden, waste rock, which is necessary to enlarge the pit so that we can get a higher grade of production from it.

This sort of expenditure in the case of a new mine is, of course, eligible to earn depletion. In the case of a mine expansion it is not, according to the proposed regulations.

**Senator Beaubien:** Mr. Powis, do you see any reason for that? Why would it be allowed in one case and not in the other?

**Mr. Powis:** The reason given, is that in the course of a normal mining operation you always have to do this stripping in any case. You have to strip away a certain amount of the waste rock in order to get at the ore as the pit expands. I understand the reason given for not including these pre-production expenses in connection with an enlarged pit is that it will be difficult for the department to establish what stripping is required in terms of the existing operation and what stripping you are doing in terms of enlarging the operation.

**The Chairman:** Well, does not any stripping you do enlarge the pit?

**Mr. Powis:** Yes, but we are talking here about the expansion of an existing operation. We are operating that pit now at the rate of 6,000 tons a day, say. In the course of that we are doing a certain amount of stripping just to keep ore developed ahead of the mining operation.

**Senator Beaubien:** Excuse me, Mr. Powis, but on this expansion that you have made, if it were not allowed for

depletion, you would just charge it off to operating expenses.

**Mr. Powis:** Yes.

**Senator Beaubien:** I do not see, tax-wise, what the big difference is.

**Mr. Powis:** The big difference, tax-wise, is that, for example, if we expand an existing concentrator in connection with mining expansion we can write that off on a capital allowance basis against operations as well, but it also earns depletion. But just as important as the expansion of the concentrator is the great deal of additional stripping that is required in order to permit production on a vastly enlarged basis, and this is not allowed as an eligible expenditure to earn depletion. Therefore, it puts the expansion of the existing mine in a very much different position from the development of a new mine, contrary to what the minister said in his letter of August 26, 1970.

**Senator Macnaughton:** Mr. Powis, your case is summarized on page 4 of your brief.

**Mr. Powis:** That is right.

**The Chairman:** Honourable senators, for convenience in reading and for reference afterwards to this committee, I would suggest to the committee that the letter of August 26, 1970, together with the News Release of July 6, 1971, be incorporated in our proceedings today. Further, I would suggest that they be incorporated as part of the proceedings rather than as an appendix.

**Hon. Senators:** Agreed.

*Texts of documents follow:*

#### DEPARTMENT OF FINANCE

#### NEWS RELEASE

For release 7:00 p.m. EDT, August 26, 1970

Ottawa, August 26, 1970  
70-104

Finance Minister E. J. Benson today sent provincial finance ministers and treasurers the attached letter which deals with taxation of the Canadian mining industry and proposed changes to the White Paper on tax reform.

As you know, the First Ministers intend to discuss tax reform at their meeting in Ottawa September 14-16. Provincial Ministers of Finance may also want to discuss the matter when we meet on September 17.

We have received the views of most provincial governments on the White Paper on tax reform and we will be prepared to discuss them. We will want to seek clarification of some of the provincial proposals that have been put forward.

You will appreciate that by mid-September the federal government will not have received the reports of the parliamentary committees on tax reform. Until we have received the reports and until we have an opportunity to hear any views provincial governments desire to express

on them, we will not be in a position to make final decisions on the legislative program.

The further steps required to implement reform suggest that we cannot now expect the new system to begin until January 1, 1972. As I told the House of Commons committee on August 5, it will take several months to draft amendments to the Income Tax Act, and after the bill is introduced next spring both the House of Commons and Senate will require time for a full debate. I also pointed out that provincial legislatures will need time to amend their tax legislation before 1972.

During our September meeting we would like to raise one particular matter which a number of provincial governments regard as urgent. This concerns the tax treatment of the mining industry. Uncertainty on this subject may be causing the postponement of important projects, particularly in some of the slow-growth regions where the federal and provincial governments are attempting to spur economic activity through other programs.

You will recall the major proposals in the White Paper that would affect the incentives granted to the mining industry:

The present three-year' tax exemption for new mines would be replaced by an entitlement to deduct certain costs from taxable income as quickly as profits from the new mine permit. These costs would include amounts for mine buildings, machinery and equipment acquired for the purpose of gaining or producing income from the new mine. (The existing system already permits a fast write-off for exploration and development expenditures.)

The percentage depletion allowance, which are at present automatically available to mining corporations, would after a transitional period be available only if sufficient amounts are spent for certain purposes. These purposes would include exploration in Canada, development of a new mine in Canada, and expenditures for those capital assets mentioned above as being eligible for accelerated write-off.

We are now prepared to propose three further important changes affecting taxation of the mining industry.

The first two changes would widen the definition of expenditures which would qualify for the "earned" depletion allowance. Several provincial governments have impressed us with their point that further incentives should be given to encourage the processing of Canadian ores in Canada. We would like to discuss with you a proposal to include in the base for earned depletion the costs of new facilities located in Canada to process mineral ores to the prime metal stage or its equivalent.

Secondly, we are also considering including in the expenditures that earn depletion those for mine buildings, and machinery and equipment acquired in connection with a major expansion of an existing Canadian mine. This extension would put the major expansion of an existing mine on a roughly comparable tax footing with the opening of a new mine. The more efficient alternative could be chosen on its own merits, not on its tax consequences.

The third change involves the maximum rates of tax on the industry. It has been argued that when the provincial mining taxes (up to 15 per cent in some provinces) are taken into account, the maximum tax rate on the taxable income from producing mines could under the system proposed in the White Paper be significantly higher than the rate on the taxable income of corporations in most other industries. It is contended that in some sectors of the industry—e.g., iron, potash, salt, and the tar sands—there would, under normal conditions, be insufficient earned depletion to bring the effective tax rate down to the rate that applied to other industries. The following simple example refers to the maximum taxes payable under the existing and White Paper systems by a mining company (in those provinces having a corporate income tax of 12 per cent) on \$100 on taxable income from a producing mine. It illustrates a potential increase from a rate of 44.5 per cent (with the present automatic depletion allowance) to a rate of 59.2 per cent (assuming the corporation earns no depletion at all).

	Present System	White Paper Proposals
Taxable mining profits	<u>\$100</u>	<u>\$100</u>
Provincial mining taxes		
at 15%	\$ 15	\$ 15
Corporation income taxes:		
Federal, at 40% of		
$\frac{2}{3}$ of \$85	22.70	
at 40% of \$85		34
Provincial, at 12% of		
$\frac{2}{3}$ of \$85	6.80	
at 12% of \$85		10.20
	<u>\$ 44.50</u>	<u>\$ 59.20</u>

We are prepared to recommend to Parliament a change that would give provincial governments the opportunity to bring the taxation of mining profits into line with taxation of profits in other industries, and if the provinces wish, to exercise discretion in the application of their mining taxes. We would recommend that once the transitional period of automatic depletion ends, the federal abatement in respect of taxable production profits from a mine be increased to 25 percentage points from the present 10 percentage points and that the deduction for provincial mining taxes be ended. In other words, we would recommend that the effective rate of federal tax be reduced to 25 per cent from 40 per cent, but that this tax (and the corporate tax of those provinces that have entered into collection agreements with the federal government) be applied against the taxable mining profits of the company before deducting provincial mining taxes. This would mean an automatic increase in revenues for these provinces because the provincial corporate tax would then be applied against taxable income that had not been reduced by a deduction for provincial mining taxes.

The increased federal abatement would open up a number of alternatives to provincial governments.



They could increase their rates of corporation tax by the full amount of the federal reduction, and thereby increase provincial revenues.

They could leave their rates unchanged and permit the reduction to flow to the benefit of the industry if they consider this is necessary to encourage mineral development.

In that event, the potential maximum rate on the mining company that earns no depletion at all would be reduced to 52 per cent as follows:

	Revised System
Taxable mining profits	\$100
Provincial mining taxes at 15%	15
Corporation income taxes:	
Federal, at 25% of \$100	25
Provincial at 12% of \$100	12
	<u>\$52</u>

Finally, the provinces could combine these approaches by passing part or all of the benefit along to some sectors of the industry, while increasing their revenues to absorb the benefit with respect to those sectors which would or should earn significant amounts of depletion under the White Paper proposals.

The reduction in the federal rate would require an amendment to the integration proposals, because full integration could not be extended to closely-held mining corporations if the federal government retains only 25 points of tax. We believe that the most natural amendment would be to treat all Canadian mining corporations as widely-held corporations—that is, to give their Canadian shareholders credit for 25 percentage points of the corporation taxes paid by the corporation on the profits from which the dividends were paid. Many mining corporations would already receive this treatment under the White Paper proposals.

We believe that these proposals for broadening the base of the earned depletion allowance and increasing the federal abatement, taken together with the substantial incentives already proposed in the White Paper, will enable the federal and provincial governments to co-operate in maintaining an efficient stimulus to development of the Canadian mining industry in the future.

Because these are revisions to the White Paper proposals, I am making this letter public.

Yours sincerely,

E. J. Benson,  
Minister of Finance.

## DEPARTMENT OF FINANCE

### NEWS RELEASE

For immediate release

Ottawa, July 6, 1971  
71-80

Finance Minister E. J. Benson today released a paper outlining proposed regulations to apply to mining and petroleum.

The paper is released to permit taxpayers to plan their affairs during the period until the reform legislation is passed and the regulations are subsequently prescribed.

It deals with the classification of accelerated capital cost allowance, earned depletion, 15 percentage point abatement for provincial taxes, provincial mining taxes and shareholders' depletion.

### MINING AND PETROLEUM REGULATIONS

The tax reform measures for the mining and petroleum industries include important changes which will be implemented by amendment of the Income Tax Regulations rather than by changes in the income tax itself. The main features of the proposed amendments to the regulations are set out below for the information of interested parties.

#### *Accelerated Capital Cost Allowance*

The accelerated capital cost allowance which takes the place of the three-year exemption of the income of new mines will be available in respect of specified depreciable assets related to a new mine or a major expansion of an existing mine.

For a new mine, the accelerated allowance will apply to the following types of new depreciable assets which were acquired before the mine came into production and for the purpose of gaining or producing income from the mine, including income from the processing of mineral ores up to the prime metal stage or its equivalent:

- (1) a building (except an office building that is not situated on the mine property);
- (2) mining machinery and equipment;
- (3) electrical plant that would otherwise be included in class 10 of Schedule B by virtue of subsection 1102(9) of the Income Tax Regulations;
- (4) houses, schools, hospitals, sidewalks, roads, sewers, sewage disposal plants, airports, docks and similar property (other than a railroad not situated on the mine property) acquired to establish community and transportation facilities necessary for the operation of the mine.

Depreciable property of the type listed above in (1), (2) and (3) will also qualify for the accelerated capital cost allowance where it is acquired in the course of the major expansion of an existing mine and before the commencement of production at the higher level of capacity. For this purpose a major expansion will be considered to have taken place if the productive capacity of the mine mill is increased by at least 25 per cent.



Expenditures incurred after November 7, 1969 on the above types of depreciable assets, and related to a new mine which came into production after that date or to a major expansion of an existing mine which took place after that date, will qualify for the accelerated allowance. The costs of the qualifying assets will be included in a special class for each mine, rather than in their usual classes. In respect of such a special class the taxpayer may claim the full amount of the undepreciated capital cost up to the amount of income from the mine, and in any event may claim at least 30 per cent of the undepreciated balance. Where the expenditures were incurred prior to the 1972 taxation year. If the taxpayer elects to claim exemption of the income of a new mine that is earned prior to 1974, he cannot also claim accelerated capital cost allowance on expenditures relating to that mine unless he reduces the depreciable cost by the amount of the exempt income.

#### *Earned Depletion*

As stated in the budget speech, eligible expenditures incurred after November 7, 1969 will earn depletion at the rate of \$1 of depletion for every \$3 of eligible expenditure. Eligible expenditures include the following:

(a) Canadian exploration and development expenses in the mining and petroleum industries, except for:

- (i) the acquisition cost of Canadian resource properties,
- (ii) such costs in respect of related community and transportation facilities of the type referred to in (4) above as may otherwise be included therein,
- (iii) Canadian exploration and development expenses in the vicinity of a mine after it came into production, and
- (iv) interest deemed to be included therein by virtue of paragraph 21(2)(b) of the amended Act.

(b) Depreciable mine assets listed under items (1), (2), and (3) above as being eligible for accelerated capital cost allowance in connection with a new mine or a major expansion of an existing mine.

(c) Expenditures on new buildings and machinery, to the extent they are to be used to process ore from Canadian mineral resources beyond the stage to which they were previously processed in Canada, up to but not beyond the prime metal stage or its equivalent.

Depletion earned in the above manner will become deductible in 1977 and subsequent taxation years at a maximum annual rate equal to 33-1/3 per cent of

(A) production profits for the taxation year as defined in paragraph 1201(2)(a) of the present Regulations, plus royalties from Canadian resources not operated by the taxpayer,

minus

(B) deductions as provided by subsections 1201(4) and 1201(4a) of the present regulations.

This general maximum rate of claiming earned depletion will also apply to Canadian coal and gold production, and to royalty income received from Canadian resources by non-operators.

Where there has been a statutory amalgamation of mining or petroleum corporations, or where one mining or petroleum corporation has taken over all or substantially all of the resource property of another such corporation, earned depletion of a predecessor corporation which has not been absorbed against its production income may be assumed by the continuing corporation to be claimed against production income from the properties which were taken over.

#### *Abatement of 15 Percentage Points*

Subsection 124(2) of the amended Act provides a 15 per cent point abatement from federal corporate tax in respect of "taxable production profits" from mineral resources (within the meaning assigned "mineral resources" by section 248 of the amended Act) in a province (including the Northwest Territories or the Yukon Territory), commencing in 1977. For purposes of this abatement, taxable production profits will be defined in the regulations to be the amount on which the present 33-1/3 per cent automatic depletion is claimed under subsection 1201(2) of the regulations, less the amount of any earned depletion allowance related to those profits.

#### *Provincial Mining Taxes*

Regulations 701 which at present prescribes the deduction for provincial mining taxes will be amended so that it no longer permits a deduction from income for provincial mining taxes which are based on or related to income from mineral resources eligible for the 15 per cent point abatement.

#### *Shareholders' Depletion*

Part XIII of the regulations, which at present permits a depletion allowance to shareholders in respect of dividends received from mining and petroleum corporations, will be repealed in respect of dividends received after 1971.

**The Chairman:** Is there anything more that you wish to stress on this point, Mr. Powis?

**Mr. Powis:** No, sir. Just to summarize: We embarked on this program involving the expenditure of \$120 million with the understanding and expectation that all those expenditures would qualify to earn depletion. We are now in the position where it appears that one-third of those expenditures will not earn depletion.

**The Chairman:** Just on that point, you have given us the copy of the News Release by the Department of Finance at that time and I wondered if the parties who were going to be affected by that had made any public statement in connection with what was proposed in the News release.

**Mr. Powis:** Well, sir, I can refer to the press release that we issued when we announced the expansion of our operations.

**The Chairman:** When was that?

**Mr. Powis:** That was in February of this year, sir. What we said in the conclusion of that press release reads as follows:

The full cooperation of the Governments of Quebec and Canada in making these projects possible is gratefully acknowledged. In particular, we could not have proceeded with our expansion programs in the absence of the changes made last August to the Proposals on Tax Reform.

**The Chairman:** Was that before or after you had appeared before this tax policy committee in the Department of Finance?

**Mr. Powis:** It was before, sir. It was only after the minister had presented his budget and Bill C-259 was presented, and after we had seen these various press releases that we became concerned. That was six or seven months later.

**The Chairman:** Is there any reason why we cannot have the statement that you made to the public?

**Mr. Powis:** It is in the brief, on page 2, sir.

**Hon. Mr. Phillips:** But we are not printing the brief.

**Senator Connolly:** Mr. Chairman, on that same point could I ask Mr. Powis this question: The letter of August, 1970 was addressed to the provincial authorities in all provinces. Has there been any discussion with them about the interpretation to which you refer? Have they made any statements about this interpretation, either publicly or privately?

**Mr. Powis:** No, sir. There have been discussions with Premier Bourassa of the Province of Quebec who, of course, was very interested in seeing this project, along with other projects, go forward. We have indicated to him that what we needed in order to get this project off the ground were exactly the changes that the minister announced in his letter of August, 1970. Of course, shortly thereafter we received a telephone call from the Premier saying, "Now that you have what you need, I hope you will go ahead with this project," which project we did proceed with. This, sir, is a copy.

**The Chairman:** Perhaps we should give some thought to inviting the Premier of the Province of Quebec to be with us.

**Senator Molson:** Do not tell me that he had anything to do with the tax reform!

**The Chairman:** I would not ask him about that.

**Senator Connolly:** Does Mr. Powis know the views of the Premier regarding the interpretation, or has he been informed of the interpretation?

**Mr. Powis:** Only in very general terms, sir. He has been informed that we are concerned about the potential interpretation. I should emphasize here that we are dealing in a fairly uncertain area, at least in so far as the metallurgical facilities are concerned, because this is what we believe and understand will be the interpretation of the regulation by the officials of the Department of Finance. To some extent, we are shooting at a moving target.

**The Chairman:** No, except that you want to establish this position.

**Mr. Powis:** We would like these regulations to spell out clearly the type of facilities.

**Senator Connolly:** I think you can go further than that. It seems to me that after talking with the officials in the department you have been led to believe that the interpretation is not going to be satisfactory.

**Mr. Powis:** That is correct, sir.

**Hon. Mr. Phillips:** Would you like to record your appreciation of the Bible which says: "Put not your trust in princes."?

**Senator Walker:** Our recent visitor, Mr. Kosygin, thinks that way also.

**The Chairman:** May I suggest that there be added to our printed record the press release by Noranda of March 5 this year?

**Hon. Senators:** Agreed.

*(Text of Press Release follows):*

## NORANDA PRESS RELEASE

For release 3 p.m., March 5

TORONTO, March 5, 1971: The Noranda Group of Companies will undertake a \$123 million program to expand its production of copper in the province of Quebec, Alfred Powis, President and Chief Executive Officer of Noranda Mines Limited announced today. Details of the mining, concentrating, smelting and refining projects were announced simultaneously by Premier Robert Bourassa in Quebec City.

Gaspe Copper Mines Limited, 99 per cent owned by Noranda Mines Limited, will triple its mining and concentrating capacity to 34,000 tons of sulphide ore per day and will install facilities for the leaching of low grade oxide ores at the rate of 5,000 tons per day. "Because lower grade material from the Copper Mountain mine will be treated," said Mr. Powis, "this expansion will more than double mine production of copper in concentrates from the present level of 36,000 tons per year. Total cost of the combined mining and concentrating project is estimated to be \$85 million, including interest during construction and working capital."

Mr. Powis said that Gaspe Copper Mines will also increase smelting capacity by 27,000 tons of copper per year through construction of a roaster. In addition, a plant will be built to produce sulphuric acid from a portion of smelter gases. Capacity of the acid plant will be 132,000 tons per year, half of which will be consumed in the leaching operation and the remainder of which will be sold if markets can be found. Capital cost of this smelter expansion is estimated at \$13 million.

Noranda Mines will expand capacity of its smelter in the Noranda area through construction of a commercial-sized prototype of the Noranda Continuous Smelting Process reactor. "This new process for the smelting of copper was



invented by the Noranda Research Centre in 1964 and," said Mr. Powis, "has been under test in a 100-ton per day pilot plant since 1968. A major feature of the new process is that all the sulphur in the concentrate can be recovered as sulphuric acid from the smelter gases. Construction of the reactor will demonstrate the commercial attractiveness of the new process and will add 55,000 tons of copper to capacity." The capital cost is estimated at \$19 million.

At the two smelters, the programs include facilities to reduce substantially the emission of dust into the atmosphere. At each location the emission of sulphur dioxide will not be increased and will actually be reduced at Gaspe Copper Mines, provided that markets for sulphuric acid can be developed.

Canadian Copper Refiners, wholly owned by Noranda, will expand its plant at Montreal East by 58,000 tons of copper per year. Capital cost is estimated at \$6 million. Current production capacity of CCR of 350,000 tons of refined copper per year make it one of the world's largest.

Taken together, these projects represent the largest single development program in the Company's history.

The Department of Regional Economic Expansion of the federal government has offered \$4.7 million in grants against the \$38 million cost of the smelting and refining projects.

"Construction at all three locations is expected to begin this spring, with completion during the second quarter of 1973," Mr. Powis stated. Peak employment during construction will be close to 2,000 people, with regular new employment following completion totalling nearly 600 people. Studies conducted by the mining industry indicate that normally six new jobs are indirectly related to each new job directly created by projects of this nature.

"The full cooperation of the Governments of Quebec and Canada in making these projects possible is gratefully acknowledged," said Mr. Powis. "In particular, we could not have proceeded with our expansion programs in the absence of the changes made last August to the Proposals on Tax Reform."

**The Chairman:** Is there anything else on this point, Mr. Powis?

**Mr. Powis:** No, sir. I believe there is a question regarding the amount of money involved in the expenditure in Montreal, which is in the order of \$7 million. The major expenditure that we are concerned about is in Noranda, Quebec which is in the order of \$23 million.

**Senator Gélinas:** If the regulations were not changed, is it too late for you to cut that expenditure?

**Mr. Powis:** We have spent a great amount of money already, sir. I think it is probably too late.

**The Chairman:** These moneys which you have spent you can charge to expense.

**Mr. Powis:** Yes, sir.

**The Chairman:** But you cannot earn depletion.

**Mr. Powis:** No, sir.

**The Chairman:** And this was the great benefit that the White Paper proposal was going to give in replacement for what you had enjoyed before, the tax holiday, and so on.

**Mr. Powis:** That is correct.

**The Chairman:** The automatic depletion.

**Mr. Powis:** Yes, sir.

**Senator Gélinas:** Mr. Powis, how much more employment would be created in the Gaspé copper development?

**Mr. Powis:** Perhaps I could refer to the press release, sir. The additional employment involved in the project as a whole was at the time for 600 people. It has been slightly expanded in scope since we made our announcement, and it is now in the order of 700 permanent employees. There are some 2,000 who are not permanent.

**Senator Connolly:** This is not employment during the construction and development stage; this is permanent employment?

**Mr. Powis:** Permanent, yes.

**Senator Molson:** Is this in Murdochville only?

**Mr. Powis:** No, this is everywhere. I think the figures for Murdochville are in the order of 400 people, and there are another 300 split between Noranda and Montreal.

**The Chairman:** As a result of your decision to go ahead on the basis of the original news release by the Department of Finance, up to this moment your total employment is how much?

**Mr. Powis:** At the moment I think we have probably around 1,500 people working on construction.

**The Chairman:** The plan which you embarked on regarding expansion, as a result of the encouragement from this press release, projects the employment of how many?

**Mr. Powis:** Seven hundred people.

**The Chairman:** Seven hundred more?

**Mr. Powis:** Yes, more than are presently employed.

**The Chairman:** More than the 1,500?

**Mr. Powis:** No, I am sorry, they are construction workers which do not involve permanent jobs. The 700 are permanent jobs.

**The Chairman:** How long will the construction workers be on the job?

**Mr. Powis:** Well, of course, it peaks. The construction period is for two years.

**The Chairman:** Then you have 700 permanent employees. Have you had to extend or create a townsite or any track-age, or anything of that kind?

**Mr. Powis:** The only infrastructure expenditure involved in this expansion program is the construction of some new houses at Murdochville, but this is not an overwhelming consideration in this connection.



**The Chairman:** I was wondering if, in this factor of increased employment, there is an increase in purchasing power in the area by reason of the development of these facilities?

**Mr. Powis:** It would be very considerable, yes.

**The Chairman:** When you say "very considerable," can you translate that into numbers or dollars?

**Mr. Powis:** Well, it is difficult to be precise, but our studies conducted by various people indicate that for every new job created in the mining industries there are six to seven jobs created indirectly. So I suppose you could say that the 700 we employ directly ought to have a rippling result, with a total of new employment of perhaps 4,200. It seems to work out that way.

**The Chairman:** Then there are also professional facilities for these people, which is an additional expenditure.

**Mr. Powis:** That is correct, sir. It involves a payroll between \$5 million and \$7 million a year.

**The Chairman:** That is direct?

**Mr. Powis:** Yes, direct.

**The Chairman:** And regarding all the people who come along to service these new jobs and the new people, there are payrolls involved there.

**Mr. Powis:** Yes, sir.

**The Chairman:** Is there anything else you want to add?

**Mr. Powis:** No, I do not think so.

**The Chairman:** Are there any further questions?

**Senator Walker:** To summarize, you would not have gone ahead with this if you had not expected that the minister's announcement would be as stated and that you would be allowed depletion on the whole operation?

**Mr. Powis:** That is right; at least, not on the scale we did. We might have gone ahead on a smaller program.

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**The Chairman:** Honourable senators, the next group is the Bethlehem Copper Corporation Ltd., represented here by: Mr. B. J. Reynolds, Director and Legal Advisor; and Mr. K. E. Steeves, Vice-President, Finance and Treasury.

**Mr. B. J. Reynolds, Director and Legal Advisor, Bethlehem Copper Corporation Ltd.:** Mr. Chairman, the President of Bethlehem is attending a dinner tomorrow evening at Bethlehem's mine to honour the company's first 10-year employees and is therefore unable to be here. He has asked me to represent him.

Last year, at the invitation of the federal Government, Bethlehem submitted recommendations for improving the White Paper proposals relating to the taxation of the Canadian mining industry. Unfortunately, the federal Government has chosen to ignore our representations, those made by other representatives of the Canadian mining industry, and the recommendations of this committee.

At the time of our submissions with respect to the White Paper proposals, we stressed our concern that the proposals, if enacted, would lead to a substantial reduction in exploration and new mine development, particularly in the remote areas of Canada. Exhibits A, B and C to our written submission, now before you, which relate to the Yukon Territory, indicate that our concern was well founded.

The comments contained in our present submission are based on Bill C-259 and on the main features of the proposed regulations as outlined in Mr. Benson's news release of July 6, 1971, to which Mr. Powis has referred. We are particularly concerned with his latter document, as is Mr. Powis, not because of our specific problems, but because, although only an outline contained in a press release, it indicates that the regulations, when formulated after passage of the bill, will restrict what we consider are already inadequate replacements for reduced incentives contained in the bill. We feel this particularly because the press release to a large extent follows wording contained in that of August, 1970 and the letter to the provincial ministers which was issued at the same time.

Mr. Steeves will deal briefly with the specific points in the brief before you, starting with that of depletion, with which Mr. Powis has already dealt in a specific manner. We will then be pleased to answer questions in these areas.

**The Chairman:** Before Mr. Steeves proceeds, would you identify the information referred to in the last paragraph on page 1 of your brief, which reads as follows:

It is already evident that the news release of July 6, 1971 differs substantially from the information released when the Tax Reform Legislation was introduced in the House on June 18, 1971.

**Mr. Reynolds:** The proposed regulations, as compared to this wine-coloured booklet.

**The Chairman:** You are referring to what I term the raspberry-coloured booklet.

**Mr. K. E. Steeves, Vice-President, Finance and Treasury, Bethlehem Copper Corporation Ltd.:** Right.

**The Chairman:** Containing the features of the tax reform legislation.

**Mr. Reynolds:** With your permission, Mr. Chairman, Mr. Steeves will deal with depletion. Before he does so, perhaps I should say that Exhibits A, B and C to our submission are results which we feel bear out the concern we expressed at the time of our proposal last year. They relate to the Yukon Territory, which is used because, frankly, it is an extreme example. In 1969 the exploration and development expenditures in that territory amounted to approximately \$17 million.

**The Chairman:** Where does that appear?

**Mr. Reynolds:** That is contained in Exhibit B. In this past year those expenditures amounted to approximately \$9.5 million. This downtrend is evidenced to a greater extent in Exhibit A, which outlines the inflow of capital to the Yukon Territory. It is also contained in Exhibit C, which outlines capital expenditure within that territory.

We feel that to a large extent these reductions are a result of the tax changes proposed, which there appears to be no doubt will be adopted.

**The Chairman:** What is the percentage of reduction in the capital expenditures on exploration and development since the White Paper was issued?

**Mr. Reynolds:** I could not give you the figures from the specific date of November 7, 1969. However, in the year 1969 the exploration and development expenditures in the Yukon Territory were approximately \$17 million and in the immediately following year \$9.5 million.

**The Chairman:** Are you referring to Canadian expenditures in Canada?

**Mr. Reynolds:** I am referring to expenditures in the Yukon Territory, not necessarily only by Canadian companies.

**The Chairman:** It is in the Yukon Territory though?

**Mr. Reynolds:** That is right.

**Mr. Steeves:** The Mining Association of British Columbia has prepared economic studies of the Yukon Territory and of British Columbia, two separate studies.

**The Chairman:** The Mining Association will be appearing before us.

**Mr. Steeves:** I believe that is the Mining Association of Canada. If you wish I could send you copies of the reports made in the last two years by The Mining Association.

**The Chairman:** Yes; we would like to receive them as soon as possible, and we shall deal with them promptly.

**Mr. Steeves:** With respect to depletion, one of the major points of our submission is that referred to by Mr. Powis with respect to the severe restriction in the remaining so-called incentives, which is brought about by the proposed regulations released on July 6, 1971. Because this is such an important document to this discussion, I have included a photocopy of it as Exhibit D to the submission.

**The Chairman:** The committee will be pleased to note a comment in the third paragraph of the first page of this brief. It refers to conditions before and after the White Paper, and reads as follows:

While the Senate report reduced the incentives to a greater extent than we recommended in our submission, it achieved a skillful compromise that would have resulted in the mining industry being able to continue its substantial contribution to the Canadian economy.

**Senator Connolly:** Bully for us!

**Senator Macnaughton:** You might read the following paragraph.

**The Chairman:**

Unfortunately, the Federal Government has chosen to ignore our recommendations and those of your Committee. The Tax Reform Legislation will remove

or so dilute the incentives that they will be completely inadequate to meet the essential needs of the mining industry.

I take it that it is this inadequacy that you are going to talk about, Mr. Steeves.

**Mr. Steeves:** I would like to start with the tax-exempt period and the fast write-off position. Our first statement is that we feel that the alteration of the tax-exempt period will have more serious consequences on the Canadian mining industry, particularly in western and northern Canada, than any other proposals in the act.

**The Chairman:** Why do you say, "particularly in western and northern Canada"?

**Mr. Steeves:** Because I think we are just getting started. We have not established the mining industry to the extent that it has been established elsewhere. Also, we face difficulties in the matter of population, transportation facilities, severe climatic conditions, and distances from markets. We do not have any processing facilities out there like the Cominco smelter, which is restricted to lead and zinc.

**The Chairman:** You can, of course, earn depletion, but earned depletion is not worth anything unless you have income.

**Mr. Steeves:** You have to get it off the ground first.

**The Chairman:** You have to get it off the ground first and earn income. The advantage of the system that we had concerning tax holiday was that you still had to get off the ground and earn income, but you could keep it all for a period.

**Mr. Steeves:** That is right.

**The Chairman:** You had automatic depletion, but you still had to earn the money in order to take advantage of it.

**Mr. Steeves:** You had to be successful in order to get any incentive.

**The Chairman:** Earned depletion is still on the basis that you have to earn money and be successful in order to gain any use from it. You say that what it offers you is not as broad in its sweep as what you did have.

**Mr. Steeves:** No. We think that the combination we had before was one best suited to the industry, for the types of mines that are now being developed in western and northern Canada, large low-grade mines that are generally in remote areas.

The July 6 press release, which severely restricts the write-off of assets, has been heralded as the replacement for the tax-free period. I make eight points where this is evident from the news release.

One serious mistake made is in the attempt to define the assets that are eligible rather than to exclude the assets that are not to be eligible.

**Hon. Mr. Phillips:** Are the eight points on the second page of your brief based upon your interpretation of the June 18, 1971 release, or do you have, by any chance, comple-



mentary or ancillary information based on contact with the Department of Finance?

**Mr. Steeves:** I received the same information that Mr. Ford received from discussions with the Department of Finance. The meeting was of The Mining Association of Canada Tax Committee with representatives of the Department of Finance.

**Hon. Mr. Phillips:** Was that at the same meeting attended by Mr. Ford?

**Mr. Steeves:** Yes. I personally was not in attendance, but I am a member of that committee and received a report of the meeting.

**Hon. Mr. Phillips:** And the report agrees with Mr. Ford's interpretation?

**Mr. Steeves:** Yes.

**The Chairman:** We will be hearing from the Mining Association of Canada. Proceed, Mr. Steeves.

**Mr. Steeves:** To summarize the assets that will not qualify, used assets is one, and we see no reason for eliminating them. If they are part of a new mine's assets, they will presumably be restricted to the recovery of depreciation, as any assets are when they are sold. There is no reason to exclude them.

Regarding minor points, the adjective "mining" is used when describing machinery and equipment. It would seem to imply that milling assets would not qualify. We cannot get a definite answer that this is not the intention. Social costs are grouped with transportation costs. Social costs will not qualify. Social costs are defined as housing, roads, schools, and that type of thing.

**Senator Connolly:** And hospitals that you might have to build.

**Mr. Steeves:** That is right. They are grouped with transportation costs and will not be eligible for a fast write-off if they are part of a major expansion; they will not earn depletion. This is in conflict with the June 18 announcement, where transportation assets were separate and only social assets were excluded.

Smelter and refining assets will qualify for the fast write-off only if they are part of a new mine, or if they can be considered an expansion of an existing mine. The addition of a smelter and refinery to an existing mine will not be regarded as an expansion of that mine. The expansion is based on the expansion at the mill capacity only.

**The Chairman:** That is really only playing with words.

**Mr. Steeves:** Yes, it is. It is vital to us, because we do not have a proper smelter.

**Senator Connolly:** Can we document that for when we are discussing the problems with the officials?

**Mr. Steeves:** That is in paragraph "h", under tax exemption.

**Senator Connolly:** It is documented in your brief, but what is your authority for making the statement?

**Mr. Reynolds:** The news release. In the fourth line of paragraph "h", the quotation is directly from the recent news release outlining those regulations. It refers to an increase in "the productive capacity of the mine mill".

**The Chairman:** Let us assume that Bill C-259 exists in some form next year, and that you went out and developed a mining property and started milling and processing operations. To what extent would the regulations that are proposed help you?

**Mr. Steeves:** You would get a fast write-off on all new assets acquired before production commenced. If you had made a mistake anywhere along the line and had to add something afterwards, it would not qualify.

**The Chairman:** You mean the idea is to over-buy?

**Mr. Steeves:** Do not make a mistake, I guess. In the case of a new mine, the social costs would qualify. If you were able to add your processing facilities, your smelter and refinery before production commenced, it would qualify for the fast write-off; but if you had to earn a little money first, it would not.

**The Chairman:** In the area in which you operate, that is in the west and the north, what would be the period of time between commencing exploration and development and when you might expect to have some earning capacity?

**Mr. Steeves:** In the Bethlehem situation the property was acquired in 1953, and production commenced on December 1, 1962.

**The Chairman:** That is when you started to earn?

**Mr. Steeves:** Our first revenues were in December.

**The Chairman:** How fast would those revenues build up?

**Mr. Steeves:** We had a combination of an increase in the price of copper. Also it was quite a successful operation, and revenues built up so that we had recovered our investment of the tax-free period, and the under-depletion allowance, within three years.

**The Chairman:** Within three years.

**Hon. Mr. Phillips:** If I remember rightly, at the time of the White Paper hearings you were a rather unique case.

**The Chairman:** That is right.

**Mr. Steeves:** There are several things unique about Bethlehem Copper Corporation Ltd. I believe it was the first attempt at a low grade mine; I am not that conversant with the world-wide mining industry, but I believe it was unique in its grade. I think it was the first mine in Canada that introduced Japanese financing; this was done because it was impossible to get it anywhere else.

**The Chairman:** As I understand it, Mr. Steeves, the problem of financing is not an easy one. You do not simply go out and say, "We have very favourable regulations whereby you get your money back fast, and we need some millions of dollars, so please queue up and deliver it to us."

**Mr. Steeves:** I think it is even more difficult now, or as difficult now as it was then, because the markets are much tighter now.



**The Chairman:** The Assistant Deputy Minister of Energy, Mines and Resources, Mr. Austin, speaking in Vancouver the other day, talked about the expected considerable increase in Japanese equity and financing in the mining industry in Canada. Have you any comment on that?

**Mr. Steeves:** Not really. I am surprised at that statement, but I could not comment on it.

**Hon. Mr. Phillips:** That is a sufficient comment.

**The Chairman:** Yes.

**Mr. Steeves:** Just as an offset, I think a week ago Plaza Developments announced that the Japanese had demanded that they cut their production by 20 to 24 per cent on all of their world mines.

**The Chairman:** The reason being?

**Mr. Steeves:** They just do not need it.

**The Chairman:** Overproduction?

**Mr. Steeves:** That is right, and they are having smelter problems and pollution problems.

**Senator Burchill:** Is that with respect to world-wide ore production?

**The Chairman:** In some minerals.

**Mr. Steeves:** I think it is in some minerals. The pollution problem is world-wide. Smelters are being forced to cut back to get their emissions within acceptable limits, and one way of getting down to acceptable limits is to reduce production; this is universal, I think. It is particularly bad in the United States, and the Americans are now exporting concentrates where they never had before. They are having some difficulty with their markets.

The next point I would like to raise is with respect to the depletion provisions. The major point in that regard is that we feel the depletion allowance is inadequate; even the earned depletion is seriously restricted by the announcement of July 6, 1971.

**The Chairman:** Have you mentioned the custom milling and the attitudes?

**Mr. Steeves:** Yes.

**The Chairman:** I know it is in your brief, but have you mentioned it in the course of what you have had to say?

**Mr. Steeves:** I will mention it; it is point No. 7. The definition of the processing assets that would earn depletion is in quotation marks, but what it does not say, I think, is more important. That is in the next line, where we state:

This will disallow all assets other than buildings and machinery, used assets, that portion of the assets used to custom process foreign ores and, most importantly, even new processing facilities unless they are part of the assets of a new mine or the expansion of an existing mine.

**The Chairman:** As I understand it, the great advantage of custom milling would be if you had a facility within an

economic distance where the production of various new mines could be delivered resulting in a lower mining operation cost.

**Mr. Steeves:** Smelter studies are now going on in British Columbia; I think everyone is somehow involved in the smelter study. We do not have copper smelting in British Columbia at the present time.

**Senator Connolly:** You do not have what?

**Mr. Steeves:** A copper smelter in British Columbia. We are under some pressure from the provincial and federal governments to get one, and we are nationalistic enough that we want one there too. The main problem with the construction of a smelter is the pollution problem. The next smelter that is built has to be within acceptable limits as far as pollution is concerned, and this means it will have to be big enough so that money can be spent on it to control pollution.

**Senator Connolly:** Is there any possibility of an outfit establishing a new smelter getting any special help in connection with pollution control equipment?

**Mr. Steeves:** Pollution control equipment will be eligible, I believe, under Bill C-259 for write-off at the rate of 50 per cent.

**Senator Connolly:** But there is no such thing as direct assistance, either federal or provincial, in a case like the one you described?

**Mr. Steeves:** No, I do not think so.

**Senator Connolly:** There may be a tax incentive.

**Mr. Steeves:** There is a separate capital loss allowance class which allows a 50 per cent write-off on a straightline basis, so you would be able to write it off in two years.

**The Chairman:** But you do not earn depletion.

**Mr. Steeves:** No, not on that part of it that would be considered a custom smelter. What I am saying is one mine in British Columbia cannot support a smelter now because you cannot economically build a smelter that small. These feasibility studies are not yet complete, so I cannot make that a positive statement.

**The Chairman:** If you had a smelter in British Columbia that was capable of taking the production from a number of mines, and the economy would justify the movement to the smelter of such production, to what extent would that add to employment and purchasing power?

**Mr. Steeves:** We are involved in a feasibility study right now; you are about six months too early. We hope to get our first report early in the spring.

**The Chairman:** Well, obviously, more hands would be required.

**Mr. Steeves:** I believe Mr. Powis stated that their expansion, which is related to the smelting and refining process, will involve 700 new jobs.

**The Chairman:** That will be direct employment. We can assume that if a smelter is involved, there will obviously be more hands required.

**Mr. Steeves:** Very definitely.

**The Chairman:** And to the extent of the numbers involved, there will be a substantial increase of all the ones who come in to service the people who are working, so it would be quite a contribution, would it not, to employment and to the development of certain areas?

**Mr. Steeves:** Very much so. I think the area where a smelter will be built will have to be one which is unpopulated. It is going to be a vital contribution wherever it is built and, hopefully, it will be built.

**The Chairman:** And you may have to develop a townsite?

**Mr. Steeves:** Yes, and railway lines.

**The Chairman:** If you were developing a townsite and railway lines in relation to the operation of a custom smelter, would those expenses qualify for earned depletion?

**Mr. Steeves:** Railway lines definitely would not; they are excluded altogether.

**The Chairman:** Yes.

**Mr. Steeves:** The townsite would also be excluded for depletion, unless it was connected with a new mine. The part connected with a new mine would be, but the part that was connected with the smelter would not.

**The Chairman:** So it looks as though there is an area where you have the provincial governments reaching in the direction of requiring further processing of Canadian mineral production in Canada. In British Columbia have they not introduced a provincial law?

**Mr. Steeves:** Yes.

**The Chairman:** The purpose of it, of course, is to have the production further processed in Canada so that Canada will get the benefit from employment and all the incidental expenses. Yet would you say that the thrust of Bill C-259 is such that it puts limits on being able to earn depletion, and therefore creates disadvantages as against encouragement?

**Mr. Steeves:** I think the limits give insufficient advantage to the importance that we place on the construction of new processing facilities.

**Mr. Reynolds:** Perhaps I could interject. A point that was made only very quickly, I think, was that if these smelting and refining facilities are not built in connection with a new mine or the expansion of an existing mine they do not qualify for the fast write-off.

**The Chairman:** That is right. This is the point I was making.

**Mr. Reynolds:** As well as the depletion.

**The Chairman:** They do not qualify for the fast write-off either.

**Mr. Reynolds:** If they are built by themselves.

**The Chairman:** So you have two handicaps in those circumstances. Firstly, if the smelter were built by itself in, say, British Columbia, you would not qualify for that fast write-off, which is 50 per cent a year.

**Mr. Steeves:** That is right.

**The Chairman:** Secondly, with those expenditures you could not earn depletion.

**Mr. Steeves:** That is right.

**Senator Connolly:** In other words, if you built a custom smelter without having a mine attached to it, if an independent operator established a smelter.

**The Chairman:** That may well be very uneconomic.

**Senator Connolly:** I think you are quite right, Mr. Chairman. I was going to ask the witnesses this. They seem to be talking about special conditions obtaining in northern British Columbia, the Yukon and the Northwest Territories, and to segregate those areas from the more populous areas of Canada. Would they think there should be some special arrangement made for tax inducements to spur development in the more remote areas? Can you envisage that as a possibility?

**Mr. Steeves:** I think it is important. It depends on how it is done. The first answer is to give sufficient incentives to keep mining in Canada, and then offer additional incentives for the remote areas. This has been recognized to some extent, because there was a bill before the House not long ago, Bill C-187, the Yukon Metals bill, which would have substantially increased the royalties payable in the Yukon. We were able to convince the Government at that time that this would not have left the Yukon even in a competitive position with British Columbia; that it would have been another factor that would reduce the activity up there, and it was withdrawn.

**Hon. Mr. Phillips:** I think, Senator Connolly, you raised that point last year as well, this whole question of special incentives for areas that are not populated, or are not even open yet.

**Senator Connolly:** I think it is the kind of thing you naturally think about when talking of mining development in Canada.

**The Chairman:** You did touch on it.

**Senator Connolly:** There is probably an inherent difficulty. If you go to certain parts of northern Ontario or northern Quebec, both of which are populous provinces, you may still be in territory that is just as virgin as some of the areas in northern British Columbia and the Yukon.

**The Chairman:** That is right.

**Senator Connolly:** If you have to open a townsite. Perhaps the best example is the iron ore development in Labrador and the north shore of the St. Lawrence 25 or 30 years ago, or perhaps a little longer than that. There was really nothing there, but now there are communities. I suppose there might have to be special legislation, such as that the



witness referred to, the Yukon metals bill, that kind of thing, over and above the provisions of the general Income Tax Act.

**The Chairman:** Of course, the earned depletion is spelled out, as to how you may earn it, and it is to be found in the brief in Exhibit D. If you are going into a new area such as you talk about it does cover a lot of things:

houses, schools, hospitals, sidewalks, roads, sewers, sewage disposal plants, airports, docks and similar property (other than a railroad not situated on the mine property) acquired to establish community and transportation facilities necessary for the operation of the mine.

So the earned depletion does go some considerable . . .

**Mr. Steeves:** Excuse me, but that is the fast write-off.

**The Chairman:** Yes, that is the accelerated capital cost allowance.

**Mr. Steeves:** That is specifically excluded.

**The Chairman:** On the earned depletion you get your acquisition cost . . .

**Mr. Steeves:** No, that is an exclusion. Those are the exclusions there listed.

**The Chairman:** It says on page 3:

Eligible expenditures include the following:

(a) Canadian exploration and development expenses in the mining and petroleum industries, except for:

What would your view be in connection with "exploration and development expenses in the mining industry?"

**Mr. Steeves:** We believe this is a very serious limitation, that all exploration and development expenses should definitely earn depletion. We had understood they would, possibly because it is only equitable that they should. The acquisition costs of Canadian resource properties will be excluded, and we can see no reason why they should be excluded.

**Senator Connolly:** What do you think is the reason they do exclude them? What justification does the department give for excluding acquisition costs?

**Mr. Steeves:** I do not know. The proceeds of the sale of mineral properties will be taxed. For mining properties, under the tax reform legislation we will now be allowed to write them off, whereas before we were never allowed to write them off. They may feel that is encouragement enough.

**The Chairman:** On the point you were making a little while ago, while we did not attribute the statements to you, they may have been encouraged by what you said and what we said in our report at page 36, paragraph 3, talking about the representations made by the mining industry:

All have pointed out that the extractive industries carry on operations on an internationally competitive basis and that any reduction in the incentives heretofore granted would seriously affect their future. They point out their importance in terms of Canada's bal-

ance of payments and they emphasize that the development of the Canadian hinterland, in some instances completely unoccupied and virgin territory, would not have taken place without these incentives and will not take place to the same degree in the future if these incentives are seriously reduced.

This is the point you were developing this morning.

**Senator Connolly:** I do not think it is personal to me. I think it was a general view of the committee.

**The Chairman:** That is the sum and substance of the submission. I am sorry I am cutting in, gentlemen, but this is the way we operate.

**Mr. Steeves:** I referred very briefly to paragraph (ii) on page 3 of Exhibit D, in my discussion on depletion. What this says is that any so-called social costs of exploration—remember, this is only exploration—such as housing, presumably camp costs, roads and exploration property, airports, docks, this type of thing, would not earn depletion, even as exploration costs. Paragraph (iii) refers to:

Canadian exploration and development expenses in the vicinity of a mine.

When we asked what "in the vicinity of a mine" was, I think the answer they gave us was that the courts will decide.

**The Chairman:** That is interesting. You do not spend any money in the meantime.

**Mr. Steeves:** Bethlehem is a good example of a mining company that was unable, because of restricted finances, to complete its exploration on its present property, prior to going into production. We had to finance the rest of our exploration from production. In the last two years we financed two new ore bodies on our original properties. One was discovered eight years after we went into production and one was discovered nine years after we went into production. That is just this year.

**The Chairman:** They qualify as new mines, is that right?

**Mr. Steeves:** We hope they will, but there is no definition that they will. Neither one of them is in production, and this is just an extreme example. They would certainly be considered to be within the vicinity of the mine because neither of them is farther away than two and half miles from Bethlehem.

**Senator Connolly:** All the work was paid for out of earnings from the original discovery?

**Mr. Steeves:** That is right. The effect of this exclusion is that it rewards a company that has sufficient funds to do all of its exploration ahead of time and knows exactly what the ore body is, but a small company with limited finances cannot afford to do that.

The next point, the excluded interest on funded exploration projects, is not going to earn the depletion. That is just another penalty that the little fellow will have to pay.

**The Chairman:** You can have expenses.

**Mr. Steeves:** You can, but you cannot earn depletion.



**The Chairman:** The capitalization of interest provisions now in the Income Tax Act may mean that if you borrow money and before you apply it, to the extent that you do not apply it you can capitalize the interest cost on it.

**Mr. Steeves:** That is right.

**The Chairman:** And take the capital cost allowance on it.

**Mr. Steeves:** Yes. I think this is another argument on it. You can do this in writing up assets to earn the interest, but you cannot do it with exploration costs to earn depletion.

**The Chairman:** We have noted that. Have you something else?

**Senator Connolly:** There is one other observation I should like to make here. It applies not only to this set of witnesses but to many other witnesses we have had. There are a great many bits and pieces that we are picking up, on specific points in various submissions. Can we expect that the officials in the Department of Finance or in National Revenue will have their attention drawn to these points, before they come here, so that we can try to have them all dealt with?

**The Chairman:** Yes, we will draw their attention to these points.

**Senator Connolly:** It is hard on these witnesses to be put to the trouble and expense of coming here from so far away, without having their points ultimately decided, or at least ultimately discussed in this committee. We cannot do it here now when they are here, simply because the officials are not available to us.

**The Chairman:** Senator Connolly, ordinarily, when we invite departmental officers, we indicate the areas for discussion, for information and answers.

**Senator Walker:** Following questions, really, Mr. Chairman.

**The Chairman:** In substance, yes. That has been my practice as chairman, that they should come prepared.

**Senator Walker:** That is why they can say yes on the spot.

**Senator Flynn:** They receive transcripts of these proceedings.

**Mr. Steeves:** We send them copies of the submission.

**The Chairman:** And they will get copies of the transcript of our proceedings today and we will give them a summary of the points which we think should be discussed and where we want their answers. They can always say that it is a policy matter and that they cannot answer. However, that is some answer. It means we can go ahead on our own.

**Senator Connolly:** Yes. Then we can always get the minister, on a question of policy.

**The Chairman:** Yes, that is right. Is there anything else, Mr. Steeves?

**Mr. Steeves:** The next point is the abatement system. This first arose on August 26, 1970, in an announcement just

prior to the meeting of the provincial ministers of finance. It is a method of attempting to ensure that the mining industry will not be taxed in excess of 50 per cent. In all the submissions that were presented on this point, it was obvious when the White Paper came down that the mining industry was facing a tax of 50 per cent, higher than in any other industry. Many representations were made, including our company, this committee and the Commons committee, on methods of ensuring that this did not happen. Basically they all followed two recommendations, which were included in our previous submission, and I have included them as Exhibit E on page 11. This is a simple method of avoiding something that would have been a very severe restriction on the mining industry and was creating an awful lot of uncertainty.

The abatement system that has been proposed has, we feel, increased the uncertainty rather than resolved it. It will extend it well beyond the date when the legislation will be adopted. The mining companies will be under threat, from the provincial governments, of the necessity of either increasing mining taxes or income taxes, both of which have been almost recommended in the news releases. That would put their tax rate here, as I have illustrated, up as high as 65 per cent. We think there is a much better solution to the problem in accepting any of the recommendations either of our company the other recommendations of this committee. This abatement system is difficult.

**The Chairman:** On the abatement situation, what would you ask for?

**Mr. Steeves:** We would prefer, rather than an increase in the abatement, an offset of mining taxes against income taxes, or some type of a floor depletion rate.

**Senator Connolly:** When you talk of mining taxes, you mean provincial taxes?

**Mr. Steeves:** Yes.

**The Chairman:** Expense, then?

**Mr. Steeves:** Yes.

**The Chairman:** And also floor depletion?

**Mr. Steeves:** Floor depletion.

**The Chairman:** A basic depletion, or what I call automatic depletion?

**Mr. Steeves:** Yes, a percentage depletion.

**The Chairman:** On a percentage basis. What percentage have you in mind?

**Mr. Steeves:** If you had an offset of mining taxes against income taxes, any percentage would reduce the tax rate below 50 per cent, so you could work at 16 per cent depletion allowance, which would give an effective tax rate of about 42 per cent, which we have now for producing mines.

**The Chairman:** And 42 per cent is a viable base?

**Mr. Steeves:** That is what we are operating on now.

**The Chairman:** Is there anything else?

**Mr. Steeves:** The second point on the abatement system is the illustration I gave here. I am not sure if it is true in all provinces, but I know it is in ours and in several others. Where the exploration is carried out in a province other than the province where you operate, you are still going to end up with a tax rate, as I illustrate here, of 64 per cent with full earned depletion; because the mining taxes are calculated on earnings in the province, excluding any exploration outside the province.

**The Chairman:** Earnings at the pithead, is it not?

**Mr. Steeves:** That is right. We have never received an answer on the solution to this.

**Hon. Mr. Phillips:** Would a simple deduction of mining taxes paid anywhere in Canada solve your problem?

**Mr. Steeves:** It would certainly relieve it to a great extent. That was one of the suggestions of this committee, a continued deduction of mining taxes, plus a small floor depletion.

**Hon. Mr. Phillips:** Do you need the floor part? It would be so much simpler if you could live with a straight deduction.

**Mr. Steeves:** We would prefer the floor, but we could live with the other—still at the same maximum of 33 1/3 per cent.

**Senator Connolly:** We discussed this at length when making our report on the White Paper. Did we have the minister here on this point?

**The Chairman:** No.

**Senator Connolly:** It is a matter of policy, I think, Mr. Chairman, as to whether the 15 per cent mixing tax in the province should be a deductible expense from the tax. It is an expense, as I understand it.

**Mr. Steeves:** It is going to be disallowed.

**Senator Connolly:** But at the present time it is an expense, is it not?

**Mr. Steeves:** Well, most of it is allowed under Regulation 701 as an expense.

**Senator Connolly:** But it is not a deduction from tax.

**Mr. Steeves:** That is right.

**Senator Connolly:** What you are looking for now is a deduction from tax after the tax has been computed.

**Mr. Steeves:** As Mr. Phillips has said, as an expense it would also probably be satisfactory if we had the depletion in addition.

**The Chairman:** Even without the basic depletion, deducting the tax as an expense, could you not just expense it? Would that not give you adequate relief?

**Mr. Steeves:** Plus earned depletion. That would probably be satisfactory.

**The Chairman:** Well, plus earned depletion; that is whatever you could earn under the rules.

**Mr. Steeves:** We would prefer to have a basic floor depreciation.

**Senator Connolly:** It is a matter of policy, I think.

**The Chairman:** Let us assume you cannot get the best of all these worlds.

**Mr. Steeves:** Well, I cannot speak for industry, but our company would be pleased to see mining taxes as a deduction plus earned depreciation.

**The Chairman:** Do you mean a deduction from earnings before?

**Mr. Steeves:** Either. Preferably from tax, but, if not, just as a straight expense.

**The Chairman:** A straight expense.

**Mr. Steeves:** Yes.

**The Chairman:** Is there anything else?

**Mr. Steeves:** Just as an example of the uncertainty of this, the original announcement was made on August 26, 1970, and to date only one provincial government has stated its position. Quebec has said that they would pass it on. There are thoughts that Ontario will do likewise, but I have not seen any public statement that that is the case. We have no idea what our provincial government is going to do as far as the abatement is concerned.

**The Chairman:** When you say, "pass it on," what are you referring to?

**Mr. Steeves:** This is the additional 15 percentage points that we are going to be allowed.

**The Chairman:** Yes.

**Mr. Steeves:** If it is taken up by the provincial government, and Mr. Benson has said they can do what they like with it, then we are facing a 65 per cent tax rate.

Briefly on prospectors, it was almost a unanimous recommendation that prospectors continue to be tax exempt on the proceeds from the sale of mineral properties. They will now be taxed on all of the proceeds. This is perhaps not generally known, but normally this is going to be ordinary income; it will be added right on to the ordinary income. There is one exception, where the prospector is able to sell his mineral properties to a company that will issue him shares. In that case when he sells the shares they are going to be taxed as a capital gain. That is the only exception.

**Senator Flynn:** On what basis? Will the shares be taxed on the value of the shares at the time of the sale?

**Mr. Steeves:** Yes, at the time of the sale.

**Senator Flynn:** By comparison with the selling price of shares later on?

**Mr. Steeves:** As he sells them, he will pay a capital gain on the proceeds from the disposal.



**Senator Flynn:** By comparison to the value placed on his shares when he disposes of the property?

**Mr. Steeves:** No, when he disposes of the shares.

**Senator Flynn:** Well, what will be the V day?

**Mr. Reynolds:** The value will be nothing; the full proceeds will be taxed.

**Mr. Steeves:** Mineral properties have no value on V day.

**Senator Flynn:** The whole price of the shares will be considered as capital gain?

**The Chairman:** Yes, and he will really be paying 50 per cent of the full value.

**Senator Flynn:** I know that, but at the time he disposes of his property to a company and receives shares, those shares could be valued at that time in order to determine the capital gain he will make later on when he disposes of the shares.

**The Chairman:** But the acquisition cost to him at that time will be pretty nominal.

**Senator Flynn:** It could vary from one case to the other.

**The Chairman:** Yes, but relatively the acquisition cost at that time will be pretty low.

**Mr. Steeves:** Generally his cost would be the cost to register.

**The Chairman:** And the money spent to develop the property.

**Mr. Steeves:** Yes, but generally his cost would be his cost to record.

**Senator Flynn:** Would it not be considered as the deemed realization at the time he disposes of the property?

**The Chairman:** No.

**Mr. Steeves:** It will, if he sells for anything other than shares. If he sells for anything other than shares, it will be deemed to be income and will be taxed as income.

**Hon. Mr. Phillips:** It is, in a sense, a roll-over awaiting the sale of shares.

**The Chairman:** That is right, if he does it that way.

**Mr. Steeves:** That is the only way he can claim it as a capital gain.

**The Chairman:** Is there anything else, Mr. Steeves?

**Mr. Steeves:** We have made a few points on mineral properties. As you know, mining properties will now be eligible for the write-off and the proceeds from sale will be taxed. There is a serious problem in that mineral properties will be given no value on V day.

**Senator Beaubien:** Why would that be? Why would mineral properties not have a value?

**Mr. Steeves:** Well, they are difficult to evaluate. What we have recommended in the brief is that the least that should be assigned to them is their cost, and, if they can be

evaluated, that is the value that should be used. What really causes a problem is that surplus accounts are going to become very important. Surplus accounts of companies have extreme importance under the new system. This will influence surpluses and how they can be distributed. That is a very technical discussion and I would prefer that you discuss it with some tax technicians. But you can see some real problems there. Any asset not given a value on V day is going to cause problems.

**The Chairman:** Everything is going to be gain.

**Senator Beaubien:** That is nonsense.

**Mr. Steeves:** The proceeds are going to be taxed. Sixty per cent of the proceeds of mineral properties sold in the first year will be taxable, and then from then on it will increase by 5 per cent. I think it is in the thirteenth year that 100 per cent of the proceeds will be taxable. Costs are not going to be allowed as an expense, and what we are saying is that costs should be allowed as an expense, if you are going to tax the proceeds. It is only equitable. If you can establish the costs, you should be able to offset them against the proceeds.

**The Chairman:** Well, the only way in which you can resist that is to say that the proceeds of sale are income.

**Mr. Steeves:** They are classed as income now.

**The Chairman:** If they are income, there is no question of gain.

**Mr. Steeves:** That is our next point. We say that they are long-term assets and should be taxed as capital gains so that one-half of the gain would be taxed.

There are certain procedures in placing a mine into production. I think option agreements are unusual to mining companies. We described it in more detail in our original submission, but, generally, it would involve the transfer of properties into a new company at the time that you are ready to place them into production. This type of procedure will be frustrated by the provision that they will be taxable, and we think that there should be a provision for the tax-free roll-over of mineral properties, particularly in a related and non-arm's length transaction. We think there should be provision for roll-over in any case, but particularly if it is non-arm's length.

**The Chairman:** On the theory that really there is no change.

**Mr. Steeves:** That is right. It is only a corporate change.

**The Chairman:** The style is changing a bit.

**Mr. Steeves:** On the subject of capital gains, one point we have made here is that we feel capital losses should be deductible from other income of a corporation rather than from capital gains only, if not in whole then on some criminal rate as there is for individuals. We have suggested the 10 per cent reducing balance rate that they use for such items as intangible assets, goodwill, and this type of thing. One-half of all capital gains will be added to the income of individuals, and we feel that this could result in an increase in the marginal rate of individuals on total income. We think that the capital gains should be taxed separately.



**The Chairman:** Of course, Mr. Steeves, we went through that the first time around. We thought that the capital gains tax should be a separate tax, and this would have avoided that problem. But, having regard to the way it is written into this bill it may be too late on a substantial point such as this to make any change. You may just have to live with it.

**Hon. Mr. Phillips:** We had a major success on integration, and a major failure on that point.

**Mr. Steeves:** I hail your success on integration.

**The Chairman:** You cannot win all the time.

**Mr. Steeves:** No. The employees' share options—I think this is just a reiteration of the same point. This will add to the income of the employee and he could end up losing the whole advantage because his marginal rate would be such that he might lose the whole incentive. Our comments on the depletion allowance are the same.

**The Chairman:** The same as those of Mr. Powis?

**Mr. Steeves:** No, I am sorry, I am referring to the dividend tax credit. Since we were told that the integration was dropped, we think that the artificial gross-up of 33-1/3 per cent has no basis in equity or theory, or anything else any more, and it could result in an increase in the total marginal rate of the taxpayer.

**The Chairman:** As the document that has been produced says, it helps the people who have smaller dividend income and it may tax a little more heavily those who have a greater dividend income, which suggests that that is the way the tax burden is to be carried. Have you anything to say on that?

**Mr. Steeves:** Well, I would challenge the point that the gross-up itself helps anybody. I feel that the dividend tax credit is a good system, and this is something that this committee recommended.

**The Chairman:** Is not the gross-up part of the way in which, ultimately, when you are dealing with sufficient income of an individual, that you do tax him more?

**Mr. Steeves:** It could. I guess I would have to work out some examples.

**The Chairman:** They have some examples in the summary.

**Senator Walker:** What you are doing now is making a suggestion regarding the overall principle rather than confining it to your own mining operation?

**Mr. Steeves:** The specific example in our submission is the loss of the 20 per cent depletion allowance to individuals as well as the gross-up theory. They chose a tax increase of 39 per cent, but if the province does not pass along the dividend tax credit it could end up as a tax increase of 66 2/3 per cent.

**Hon. Mr. Phillips:** I think you will find, however, that isolated in the grossing-up item, the dividend tax credit now works in favour of those with lower incomes and adversely affects those with higher incomes.

**The Chairman:** I think the cut-off is supposed to be around 40 per cent.

**Hon. Mr. Phillips:** Forty per cent.

**The Chairman:** Below that cut-off there is some advantage. Above it there is none.

**Senator Beaubien:** Mr. Chairman, you need the co-operation of the province because the bill says that you take off four-fifths of the gross amounts, not 100 per cent. So the province has to give you the other one-fifth. And if you do not get it from the province the tax is tremendously increased.

**The Chairman:** It is bound to be. Is there anything else? These are your general observations. We have dealt with your special problems.

**Mr. Steeves:** In the area of property holdings—this is a point we made previously—the mining companies are required to provide housing in remote areas. We often operate them at a loss, and we hope that we will not be prevented from claiming the loss on the housing because it is cleared by depreciation. It is a very real loss.

In the section on non-residents I think the major point is what they call the thin capitalization theory. We try to restrict the amounts of equity that we give out when we arrange new financing on the property. This would seem to encourage financing to at least one-third of the equity in order to be able to claim interest as a deduction. It is an unusual provision in that it will penalize the Canadian company rather than the non-resident company at whom we feel it should be aimed. We have a section on partnerships—

**The Chairman:** We have had a pretty fair discussion on partnerships, Mr. Steeves, and our thinking has crystallized pretty much.

**Mr. Steeves:** Our only point there is that in order to spread the risk of increased costs in mining ventures we will often form syndicates.

**The Chairman:** Do you mean joint ventures?

**Mr. Steeves:** Yes.

**The Chairman:** Is there not an exclusion there?

**Mr. Steeves:** No, we have no exclusion.

**The Chairman:** Is not there an exclusion on partnerships in connection with explorations?

**Hon. Mr. Phillips:** I do not think so in the partnership document.

**The Chairman:** I thought there was. In any event we have had the problem presented to us regarding joint ventures in the development of mining properties, that very often they take the form of a joint venture agreement. The question we have to consider is whether the joint venture has the character of a partnership and, therefore, is subject to the partnership provisions.

**Mr. Steeves:** That is exactly my point.

**The Chairman:** We have had that point and we are looking at it. Is that all?

**Mr. Steeves:** That is all.

**The Chairman:** Thank you very much.

**Senator Flynn:** Mr. Chairman, may I say something? You will notice the arguments brought forward by our witnesses in quoting paragraphs 3 and 4. On page 1 the first sentence of paragraph 6 reads:

We are puzzled that the Federal Government, now faced with rising unemployment, economic slowdowns and unsettled international conditions, is proceeding to implement legislation that would retard an industry that has displayed unprecedented growth and productivity.

**Senator Burchill:** Does your brief contain comparison with the regulations in the United States, particularly with respect to depletions and incentives to new mines?

**Mr. Steeves:** We made statements concerning that during our last appearance before this committee.

**Senator Burchill:** I know you did, but does the new legislation vary from the other in that respect?

**Mr. Steeves:** Not materially. After our last appearance I supplied some supplemental information with regard to Australia and the United States, in which the legislation was compared.

**The Chairman:** That is right.

**Senator Burchill:** I take it that the legislation in the United States is more favourable to the mining industry than this?

**The Chairman:** Mr. Steeves, clause 96(1)(d) will assist your consideration of the question of partnership and the exclusion to which I referred.

**Mr. Steeves:** Thank you very much, Mr. Chairman.

**The Chairman:** Thank you very much.

**The Chairman:** The next submission is by The Canadian Gas Association. Appearing are: Mr. G. E. Miller, C.A., Comptroller and Assistant Treasurer of Union Gas Company of Canada Ltd.; Mr. R. F. Sim, Assistant Secretary, TransCanada PipeLine Limited; and Mr. E. W. H. Tremaine, Treasurer and Assistant Secretary, The Consumers' Gas Company.

Do you intend to make an opening statement?

**Mr. G. E. Miller, C.A., Comptroller and Assistant Treasurer, Union Gas Company of Canada Ltd.:** Mr. Chairman and honourable senators, my name is Gerald E. Miller, Chairman of The Canadian Gas Association Taxation Committee, and Comptroller of Union Gas. On our panel we have Mr. Raymond Sim, sitting on my right, who is also a member of the Association's Taxation Committee. He is Assistant Secretary of TransCanada PipeLine. On my left is seated Mr. Edward Tremaine, Treasurer and Assistant Secretary of The Consumers' Gas Company.

Our brief deals with six points which we will discuss. I might also mention that it has been submitted to Mr. Benson in exactly the same form.

**The Chairman:** When was the submission made in relation to Bill C-259?

**Mr. Miller:** Before September 1.

**Senator Walker:** By "submitting", was it just handed to him, or did you appear before the minister?

**Mr. Miller:** We mailed it to him with a covering letter, to which we received a reply. We volunteered to meet the minister and he indicated that if he felt it was necessary to discuss the matters further with him he would invite us to appear before him.

**The Chairman:** And you had no subsequent invitation?

**Mr. Miller:** That is correct.

**The Chairman:** Well, here is your forum.

**Mr. Miller:** The attraction of adequate debt and equity capital at acceptable cost has always been a serious problem for the natural gas industry, which is very capital-intensive. This problem is becoming increasingly important as the industry is facing unprecedented demands for capital expansion to provide vital supplies of energy for the development of the Canadian economy.

As indicated by the Ontario Committee on Taxation in its 1967 report, Volume II, page 108, land, buildings and equipment represent for the transportation companies more than three times the proportion of total net assets and close to 10 times the proportion of total sales of all other Canadian companies. So we are in fact extremely capital-intensive.

Our first point is that we feel that Canadians should be encouraged to invest in equities of Canadian industry. We are concerned that the proposed dividend tax credit system and high rates of tax on capital gains substantially increase the tax burden on Canadian equity investments.

At page 8 of our brief we provide an example, headed "Schedule 1." The centre column takes us through the calculation of tax on the dividend tax credit system and capital gains tax system. At the foot of the page a tax increase of 97 per cent is indicated. So, for this particular example the result of the proposed bill C-259 would be to increase the tax burden by 97 per cent.

**Hon. Mr. Phillips:** That is, however, due basically to the capital gains tax, not to the treatment of the dividend tax credit.

**Mr. Miller:** Yes, that is true.

**Senator Connolly:** The capital gains tax shown on the table is \$150.

**Mr. Miller:** No, it is \$68; the \$150 is the amount of the taxable capital gain.

**Senator Connolly:** The capital gains tax is \$68 in each case?

**Mr. Miller:** That is right.



**Senator Connolly:** Mr. Chairman for the sake of the record perhaps we could have Schedule 1 reproduced at this point of the proceedings. It would not be possible to follow the proceedings without reference to this table.

**Hon. Senators:** Agreed.

**The Chairman:** Schedule 1 will be included in the record of the proceedings at this point.

*Schedule 1 follows:*

#### Schedule 1

### COMBINED EFFECTS OF PROPOSED

### DIVIDEND TAX CREDIT AND

### CAPITAL GAINS TAX

A Canadian investor, with a marginal rate of tax of 45 per cent purchases shares in a Canadian corporation at a cost of \$3,000. The shares are held for a two year period in which dividends at a rate of 5 per cent are received, and a capital gain of \$300 is realized. His tax position under the present and proposed systems would be as follows:

Tax calculation	Proposed 4/5	Proposed using 5/5 credit	Present 20%
Dividends received	\$300	\$300	\$300
Taxable credit	100	100	—
Taxable dividend	\$400	\$400	\$300
Tax thereon	\$180	\$180	\$135
Tax credits	80	100	60
Tax	\$100	\$ 80	\$ 75
Taxable capital gain	\$150	\$150	—
Tax	\$ 68	\$ 68	—
Net cash income and tax increase			
Total cash received in excess of cost	\$600	\$600	\$600
Taxes paid	168	148	75
Net cash income	\$432	\$452	\$525
Tax increase	124%	97%	—

**Senator Connolly:** It might be useful, Mr. Chairman, for the witness to take us through this table.

**The Chairman:** The witness should expand his points to whatever degree he feels necessary. If you wish, you may call on your colleagues on the panel for assistance.

**Mr. Miller:** Very well, I will call on Mr. Tremaine to explain Schedule 1, columns 2 and 3.

**Mr. E. W. H. Tremaine, Treasurer and Assistant Secretary, the Consumers' Gas Company:** A discussion of the schedule should ignore column 1, which indicates the effect of the provinces not adding the one-fifth. However, the indications are that they will do so.

The column to the right, the present 20 per cent tax credit, indicates the tax under the present tax act giving effect to the 20 per cent tax credit but ignoring capital gains, which does not exist today. The centre column, the 5/5 proposed, indicates a tax credit together with a capital gain. The total taxes payable under the proposals would amount to \$148, as indicated at the foot of the table, compared to \$75 in the past.

It was mentioned earlier that the principal amount of the increase is a result of capital gains. However, the tax on the dividend itself after deduction of the \$68 tax on the capital gain would be \$80, an increase of \$5.

**The Chairman:** The figures in the schedule assume the taxable gain at \$150.

**Senator Beaubien:** That is half the profit.

**The Chairman:** You have assumed that that would only occur with disposal of the shares.

**Mr. Tremaine:** That is correct.

**The Chairman:** So currently, from year to year there would just be tax at the marginal rate, and the dividend tax credit.

**Mr. Miller:** But assuming that stock market opportunities continue to rise over a period of years, and eventually, possibly many years later, you end up selling the stock, you are in fact accruing a tax cost.

**The Chairman:** Yes. But every year that you live, hopefully for a long period of time, you are accruing tax cost if you are earning more income.

**Hon. Mr. Phillips:** What you are saying is that because there is a capital gains tax, you simply get into a higher rate of taxation. Is that not elementary?

**Mr. Miller:** We are attempting to point out that with the change in the tax credit system, together with the capital gains tax, the attractiveness of the equity market for investment will be less than it was before.

We feel that the rates of capital gains tax are excessive. Possibly instead of one-half of the capital gains being taxed, in a developing country like Canada it would be more appropriately taxed at one-quarter.

**Senator Connolly:** This is a matter of policy. I do not say that you are precluded from discussing policy, because we are glad to hear your views on policy also. Firstly, it is policy, and secondly, it applies not only to the gas industry but to all of industry.

**Mr. Miller:** But the point of difference is that the natural gas industry is far more capital intensive and requires far more capital financing than Canadian business generally. It is far more critical to us.



**The Chairman:** You mean that the industry finances more by way of equity than by borrowing?

**Mr. Miller:** We are concerned about both equity and debt. We attract capital in balance of debt and equity. At the last meeting we attended, in our presentation we said that the industry's average is probably something like 60 per cent of debt and equity. We are concerned also about debt. That is our second point.

**The Chairman:** The situation you are developing is that it will affect your offering of shares. But it will affect any company that offers shares.

**Mr. Miller:** That is quite true.

**The Chairman:** The level of competition is not changed.

**Mr. Miller:** That is so. Our industry provides energy to the public generally. It is, if you like, a public service. Any increased capital cost has to be passed on to the customer. So it contributes towards inflation.

**The Chairman:** On the other hand, the Government has to finance its operations. There does not appear to be much of a limiting feature there up to the present time. They need it, so they tax.

**Mr. Miller:** That is true. Fortunately, if the yardstick is capital investment and we happen to be heavily capital-intensive, we get stuck with a higher portion of the burden.

**The Chairman:** What do you suggest should be done for your industry?

**Mr. Miller:** We have thought, in terms of the overall industry, of a lower capital gains tax rate. I think there is merit in considering a reduced capital gains rate for certain industries that are particularly capital-intensive.

**Hon. Mr. Phillips:** How would you determine that? What we are trying to do here is to suggest relief to cover specific economic segments of the community, having regard for their special problems. We are beyond the stage of considering whether a capital gains tax should be introduced, or whether it should be brought into income to the extent of 50 per cent thereof.

**The Chairman:** Or whether it should be selective.

**Hon. Mr. Phillips:** Yes. It would appear to us that to try to make it selective is a novel idea, but it would have to be specific in its application. We are looking to see whether you have special problems in your industry aside from the overall impact or thrust of the legislation.

**Mr. Tremaine:** One of the specific problems of our industry is that we have to raise a great deal of capital, both equity and debt. We feel that the equity capital should be raised in Canada if possible. We are afraid that some of the risk capital that is available today may be steered onto the debt side of the market rather than the equity side. If the general principle of capital gains has in effect been established, then we are suggesting that we revert back to the old dividend tax system and that possibly it be increased to 25 per cent.

**Hon. Mr. Phillips:** I think you make a point in an academic form, but I am not so sure that it can be of any value in terms of dealing with specific legislation.

**Mr. Miller:** We understand that. It is a matter of policy. It would be tough to change at this time. But we cannot get past the point that it will have an unfavourable and adverse effect on our particular industry, and we thought that we should point that out.

**Senator Connolly:** It is appropriate that you should point that out to us. An industry as important as this has an obligation to point it out so that we might have a better overall picture.

**The Chairman:** Attention will be focused on it at any time rates are increased. Some of the reasons given for a rate increase is the impact of the dividend grossing up and capital gains. The public generally may come to a realization then, more so than the investor.

**Hon. Mr. Phillips:** If you wanted to make something out of it, it would appear to me that you would have to suggest a ratio of funded debt to paid-in capital, so that if the paid-in capital was in excess of the funded debt, in such event the dividend tax credit should be handled in the following manner.

With the approval of the chairman, I would like you to consider that. If anything can be submitted to us under that heading, we would have something to work on. I can see your point about equity finances as against funded debt. If you said that equity paid in common stock was \$2 for every \$1 of funded debt, or \$3 for every \$1 of funded debt, and that in such event the dividend tax credit should be in the following manner, National Revenue could then look at the statement, and it would be simple for them to determine in which category the dividend tax credit should fall.

**The Chairman:** We know what the problem is. We are not making decisions right here and now. Have you something more to add?

**Mr. Miller:** Our second point is that Canadian industry must seek foreign capital in addition to Canadian funds, and we feel that foreign investors should be encouraged to invest in debt rather than equity capital of Canadian industry. We are particularly concerned about the proposal to increase the rate of withholding tax on interest paid to non-residents on debt capital.

**Hon. Mr. Phillips:** I believe somewhere down the line, Mr. Chairman, in our White Paper considerations, we suggested the elimination of withholding tax on foreign investments in order to encourage the inflow of foreign currencies provided it was invested in funded debt rather than in equity.

**Mr. Miller:** Mr. Chairman, we have found that section in your report; that is quite right.

**Hon. Mr. Phillips:** Are we not right on that?

**The Chairman:** Yes, but we were ignored.

**Hon. Mr. Phillips:** It is at page 77, paragraph 12; we are right on the point there.

**Senator Connolly:** Could we have it read?

**The Chairman:** At page 77, paragraph 12, we state:

Your Committee strongly objects to the proposal of paragraph 6.36 of the White Paper to increase the Canadian withholding tax rate to 25 per cent except in the case of payments to countries with which Canada has a tax treaty. With particular reference to interest, the Committee feels it would be a grave mistake to inhibit the lending of money into Canada (in contradistinction to the acquisition by foreigners of equity share positions in Canadian corporations) and the Committee is convinced that a substantial portion of available funds from foreign jurisdictions will derive from countries with which Canada does not have a tax treaty, such as Switzerland. The Committee does suggest to government that it seriously consider the elimination of all withholding taxes on interest payments to arm's length foreign lenders.

**Hon. Mr. Phillips:** We took the position that we were saying to foreign investors, "Come into Canada as long as you do not take our patrimony—that belongs to us as much as we can retain it—and there will be no withholding tax on the interest paid to you." That is the recommendation we made, and we thought it made sense.

**The Chairman:** It was not accepted.

**Senator Molson:** It still makes sense, Mr. Chairman.

**The Chairman:** Is there anything else that you want to add?

**Mr. Miller:** Not really, except to say that in our presentation in June of 1970, we brought this point out and I believe another group brought out the same point at that time. We feel it is every bit as important now as it was then.

**The Chairman:** We are not receding from what we said. You just heard one of the senators make the comment that it still makes good sense, but what can you do about it at this stage?

**Mr. Miller:** Our third point, Mr. Chairman, is that the association feels that all expenditures laid out to earn income should be tax deductible.

**The Chairman:** That is supposed to be a generally accepted principle.

**Mr. Miller:** We find it not to be so. I believe Mr. Tremaine has something to say on this point.

**Mr. Tremaine:** I have just one specific item, and again it involves the raising of capital. The commissions payable to investment dealers on the issue of debt securities, both short term and long term, are not allowed under the proposed Tax Reform bill and they are not allowed under the present Tax Act. We feel quite strongly, because we represent a capital-intensive industry, that this would be an ordinary cost of carrying on our business.

**The Chairman:** On the other side of the coin, the recipient of the commissions pays income tax.

**Mr. Tremaine:** That is right.

**Mr. Miller:** I might add that the commissions on the issue of equity are similarly non-deductible, whereas other expenses involved in equity issue are deductible.

**Senator Connolly:** Such as?

**Mr. Tremaine:** Printing and legal costs, audit costs, and that type of thing.

**The Chairman:** What specific suggestion have you in relation to that? Have you thought of how it should be dealt with and where?

**Mr. Miller:** Yes, we have. Under the present Income Tax Act and the new bill expenses incurred to raise debt and equity capital, other than commissions, are currently deductible. We would simply change the wording of those sections to allow commissions as a current deduction as well.

**The Chairman:** In doing that the Government is getting its tax revenue on an acceptable basis; that is, anyone who receives income pays income tax on it, and then the theory is that if it is an expense item where you are putting out money to earn income, it should be deductible.

**Mr. Miller:** That is right.

**Mr. Tremaine:** There are specific recommendations at the bottom of page 10, where we suggest that section 20(1)(e)(iii) should be deleted.

**Senator Connolly:** Mr. Chairman, it seems to me that part of the rationale behind this section was to get at "expense account living" and perhaps other charges that we thought to be improper and, in any event, hard to police, but what the witnesses are talking about does not fall into that category at all. They are talking about legitimate expenses incurred in bond issues and stock issues, which is part of the normal business operation of firms in their industry.

**The Chairman:** Yes, I understand that.

**Senator Connolly:** I just want to make the point on the record that even though section 20(1)(e)(iii) does talk about the expense of issuing shares and of borrowing money, it is directed specifically to this.

**Hon. Mr. Phillips:** Except that in addition, Senator Connolly, on page 11 of the brief, the suggestion is made that in the overall conception of deductibility all expenses should be a charge against income, but to the extent that it is not presently a charge against income under the new bill, 10 per cent of the accumulated balance of that portion of the expense which is not presently allowed be allowed as a deduction. Let us assume you had \$1 million worth of accumulated expenditures, which, under the bill, would not be allowed as an expense, the suggestion is that \$200,000 of that be allowed as a deduction in a given year, so that ultimately it would all peter out and go into income.

That goes back to the old conception that all dollars that flow in are taxable income, and all dollars that flow out are an expense.

**Senator Molson:** This would be a deferred expense item.

**Hon. Mr. Phillips:** Yes. In other words, under the bill which we are considering, all non-deductible expenses



should be allowed to the extent of 10 per cent of the accumulated balance in a given year.

If we considered that, Mr. Chairman, then instead of dealing specifically with underwriting expenses and the like, we would, at least be dealing with a fundamental principle.

**Mr. Miller:** The point of difference might be, though, that we feel commissions should be currently deductible whereas other so-called "nothings" should be on a ten per cent basis.

**Hon. Mr. Phillips:** Amortized.

**Mr. Miller:** Yes.

**Hon. Mr. Phillips:** This is an interesting suggestion, Mr. Chairman, and worth considering.

**Senator Molson:** Are we not running into the question here of whether this expense is laid out in order to earn income?

**Hon. Mr. Phillips:** The answer is yes. We are back to a philosophic concept, that all moneys in are income; all expenditures are deductible.

**Senator Molson:** I think at times we have agreed with that principle.

**The Chairman:** There might be more justification for that now that we have broadened the tax base. It might be said under the present act that this was not laid out to earn income.

**Senator Molson:** No, now we have got capital gains that currently become income, and some other changes that you point out, Mr. Chairman, that perhaps does change this aspect a bit. It is possible.

**Hon. Mr. Phillips:** It is an interesting point.

**The Chairman:** It is an interesting thing, and we should have a good look at it.

**Mr. R. F. Sim, Assistant Secretary, TransCanada Pipeline Limited:** On page 11 of our brief we draw a differentiation between expenditures laid out to earn ordinary taxable income and expenditures laid out to earn taxable capital gains. I think under any income tax system you will still be faced with the present problem of determining what is allowed expenditure and what does not earn completely taxable income. We are suggesting here that clause 14(5)(b) of Bill C-259, as it is now written, will allow 50 per cent of this "tax nothing" category, and this is why we feel this if those expenditures are laid out to earn capital gains. An expenditure which earns a fully taxable income should be fully deductible, and we are suggesting the 10 per cent write-off.

**The Chairman:** If we are still talking about the financing of a company by means of debt, would you say that the cost of raising that money is laid out to earn a capital gain? Would you?

**Mr. Sim:** No.

**The Chairman:** I would not think so.

**Mr. Sim:** The debt would normally be used to supply working capital to the company, which goes again in turn for current expenditure to earn current income.

**The Chairman:** You look through the physical act of the getting of the money and you look at the purpose for which you got it. Maybe that is a sensible way of looking at it.

**Senator Macnaughton:** I think so.

**The Chairman:** If the purpose is to provide working capital as against providing capital assets in the form of buildings and such things, would you make that distinction?

**Mr. Sim:** No, I would include the acquisition of assets, because the assets are really part of the income earning process and they are depreciated under the act. They are as necessary to earn the income of business as working capital.

**The Chairman:** You say there is another link in the chain that should be forged there to get the use of the money, and if the use of the money is to earn money, whether it is by way of expenditure on capital assets or for working capital, the cost should be deductible.

**Mr. Sim:** Yes.

**Mr. Tremaine:** The cost of obtaining money is really no different from the cost of obtaining any other assets.

**The Chairman:** That is right. If you confine it to capital gains, maybe you are putting yourself in the position that you should only get the half rate.

**Mr. Miller:** We mentioned earlier that this was not really the sole item involved in the cost of raising money that was not 100 per cent deductible in a year. The cost of legal fees and suchlike involved in raising capital are in fact deductible; they meet the present test.

**The Chairman:** It is a very interesting point, and I think we should have a good look at it. Is there any other question anybody wants to ask?

**Senator Burchill:** How many companies does your association represent?

**Mr. Miller:** We represent production, transmission and distribution companies. We also represent manufacturers, but we are not speaking to their problems here; their associations speak for them.

**Mr. Tremaine:** There are 30 to 40; something in that area.

**Senator Burchill:** Where are they principally located?

**Mr. Tremaine:** Right across the country west of Quebec.

**Senator Burchill:** Nothing east?

**Mr. Miller:** Yes, we have Gaz Metropolitain, which is a distribution utility in Montreal, Quebec.

**Mr. Tremaine:** There are none east of Quebec.

**Senator Flynn:** Quebec City, do you mean?

**Mr. Tremaine:** I am not sure how far Gaz Metropolitain goes.



**Mr. Miller:** We do go across the country. We include Westcoast Transmission, TransCanada PipeLine Limited, the Alberta utilities, the Ontario utilities. Really the production, transmission and distribution facilities across Canada.

**The Chairman:** Are TransMountain included?

**Mr. Tremaine:** They are an oil pipeline.

**Mr. Miller:** I do not believe they are included.

**The Chairman:** Are there any other questions on this point? If not, we will move to your next point.

**Mr. Miller:** There were two other items that we might mention very briefly. We talked about them in our last brief. It is not at all clear that perpetual rights of way would qualify as eligible capital expenditures, subject to acquisition. We feel this should be clarified.

**The Chairman:** When you refer to perpetual rights of way, you mean for the laying of a pipeline?

**Mr. Miller:** Yes, sir.

**The Chairman:** What is the point on that?

**Mr. Miller:** A pipeline has a rather long life; how long a life is quite controversial. I would say it is as much as a hundred years, possibly. We cover ourselves by gaining a perpetual easement or right of way, so that we are covered on that line for its life. The right of way has a useful life similar to that of the pipeline itself, yet for business purposes we depreciate it in arriving at our income for shareholder reporting purposes, but for income tax purposes it is not tax deductible.

**Senator Flynn:** The right of way itself?

**Mr. Miller:** The cost of obtaining the right of way, the payment to the landowner. Under the present act such costs are not deductible in any way, shape or form.

**Senator Flynn:** Because they are capital assets?

**Mr. Miller:** That is right.

**Senator Flynn:** They are just like a piece of land.

**Mr. Miller:** Not really. A point of difference is that we acquire a right of way solely because we are putting a pipeline in. Once the pipeline has completed its useful life, that right of way has no further use either.

**Senator Flynn:** The pipeline has to be replaced.

**Mr. Miller:** It is most unusual to use the same right of way for a replacement line.

**Senator Flynn:** It seems to me this is the same problem as with water.

**Senator Connolly:** An aqueduct.

**Senator Flynn:** I know of some that have been in existence for 100 years, or perhaps 200 years.

**Senator Connolly:** Some of the Roman aqueducts are still used.

**Senator Flynn:** They are always in the same right of way, but are replaced. Do you figure that once the pipeline has served its time the right of way would not be used any more?

**The Chairman:** Do you depreciate the pipeline itself?

**Mr. Miller:** This might help explain the situation. For proper, generally accepted accounting shareholder purposes, it is typical to depreciate the pipeline, and also to amortize or depreciate the cost of the right of way.

**The Chairman:** Yes.

**Mr. Miller:** I cannot speak for the whole industry, but I would expect to see the same rate of depreciation generally for the right of way as for the pipeline.

**The Chairman:** You do presently depreciate the pipeline itself, as against the right of way or easement?

**Mr. Miller:** We depreciate both.

**The Chairman:** I am talking about for tax purposes.

**Mr. Miller:** For tax purposes we are denied it. We claimed it, but we were denied the deduction.

**Hon. Mr. Phillips:** The reaction is that if a person buys a piece of land and puts up an apartment on it, if he does not get an amortization on the capital cost allowance on the land, why should he get it on the right of way? Probably the answer is that this is probably a piece of land, in the ordinary sense, on which you can put up from time to time a different type of structure, to adjust itself to the economic needs or changing conditions or fashions of living or industrial development and the like. I suppose also that if you had absorption of the energy which you are pushing through that line, you may have a valueless right of way.

**Mr. Miller:** That is true. It is a specific matter.

**Hon. Mr. Phillips:** I am not quite trying to fathom Senator Flynn's mind, because I see the way it is working. There is a distinction. The question is whether it is sufficiently differentiated to warrant different treatment.

**Senator Flynn:** I doubt that very much. I cannot see it.

**Senator Molson:** There must be some precedent in the transmission lines for electric power, surely, that are fairly common. I wonder what has been the policy for the right of way for electrical transmission lines.

**Hon. Mr. Phillips:** Does anyone know?

**Mr. Miller:** To the extent that they are taxpaying investor-owned corporations, the same tax rules would have to apply.

**Senator Molson:** They have been in business a great deal longer than you have.

**Mr. Miller:** It is the same piece of land.

**Senator Molson:** The right of way is a piece of land, a strip of land, and it is the same general principle, surely, as the pipeline.

**The Chairman:** You can get an easement to walk over a strip of land or to drive over a strip of land.

**Senator Flynn:** If you buy a right of way, it is only because you do not need to buy the land itself. You save money by buying the right of way instead of the land.

**The Chairman:** That is right, except that if you put a pipeline on a piece of land it is pretty hard to use it for anything else.

**Senator Flynn:** You can use the surface for farming.

**The Chairman:** Yes.

Is there anything more on that?

**Mr. Sim:** Mr. Chairman, I think the distinction is between a lease and the land itself, a capital asset. Really a right of way is similar to a lease. In fact, it is a lease. You have the right to use someone else's property, but in this case for an indefinite period of time.

**Hon. Mr. Phillips:** I could argue it both ways, depending upon my retainer.

**Senator Flynn:** Which way would you win?

**Senator Molson:** Either way.

**Senator Beaubien:** When you have a right of way to place a pipeline, you cannot use it for something else.

**The Chairman:** If they buried the pipes there, the farmer could grow crops.

**Senator Beaubien:** I mean that whoever has the right of way can only use it for a pipeline.

**The Chairman:** Yes.

**Senator Beaubien:** And therefore if you have no more gas to put through the pipeline you lose the value of the right of way.

**Senator Flynn:** No, because you could sell it back or you could use it for something else.

**Senator Beaubien:** If people stopped using gas.

**Senator Flynn:** Then your asset becomes obsolete, like a railroad bed.

**Senator Connolly:** Perhaps I had better not summarize it. Perhaps I had better ask you to do so?

**Mr. Sim:** We feel there is an anomaly in the act, that leasehold cost or rentals, etcetera, if they are laid out to produce income are deductible, but in this case we have a perpetual lease and it is not deductible because there is no provision in the capital cost allowance regulations to cover perpetual leases.

**Senator Connolly:** If you are going to call an easement a perpetual lease, I suppose I can accept what you say. What you do is you prepay the rent, if you are going to call it a lease; but in fact you are buying an easement, and what you want here in both cases is a deduction as an expense incurred in earning income, just as much as an expense to buy and lay the pipeline is an expense. Is that so?

**Senator Flynn:** Or if you have to repair the pipeline?

**Senator Beaubien:** And if you sold it at a profit, you would have to pay a tax on the profit.

**Mr. Miller:** Mr. Chairman, our point here was that we were seeking clarification. There is a possibility that the section in the bill on eligible capital expenditures has been designed to allow or recognize these perpetual leases or rights of way. But it is not clear. It is section 14(5)(b), "eligible capital expenditure". Some people feel that it is covered and some feel that it is not. We feel that it should be clarified.

**The Chairman:** It says that "eligible capital expenditure" means:

—the portion of any outlay or expense made or incurred by him, as a result of a transaction occurring after 1971, on account of capital for the purpose of gaining or producing income from the business, other than any such outlay or expense—

Then there are all the exclusions. It certainly takes some analysis to decide which way it goes.

**Mr. Miller:** We have had experts saying, "yes, it is included," and we have had experts saying "No, it is not included."

The second point on it is that if there were an eligible capital expenditure it would be subject to tax deduction only to the extent of 50 per cent. What can be more a business expense, quite independent of capital gains, than a perpetual right of way? It should be allowed 100 per cent.

**The Chairman:** I suppose they provided the 50 per cent because they were thinking in terms of capital gains tax.

**Mr. Miller:** We think this is erroneous thinking.

**The Chairman:** I see. Is there anything else?

**Mr. Miller:** Our fifth point is this. We also feel that the base for earned depletion allowances should include all exploratory development expenditures as defined in the bill. Would you like to discuss that?

**Mr. Sim:** Again, this is a reference which was brought up in the two briefs prior to this and the Department of Finance news release which covers the proposed regulations on depletion allowance. The definition of eligible expenditures on exploration and development expenditures for purposes of computing depletion is different from that contained as deductible expenditures in the bill.

**The Chairman:** Have you suggested any language for meeting your point?

**Mr. Sim:** This would be in the regulation which would be forthcoming. We are suggesting that the definition in the regulation for this base of earned depletion be the same as the definition of exploration and development expenditures which are actually contained in Bill C-259, which includes the acquisition of oil and gas properties and like expenditures.



The other point was that the change in depletion from the old concept of 33 1/3 per cent of income to one-third of the eligible expenditures would greatly increase the tax burden.

**The Chairman:** Those regulations you are addressing yourself to came out in July, 1971. Do you think the exclusions in the earned depletion section should be changed?

**Mr. Sim:** Yes.

**The Chairman:** Well, that is in line with what the people we heard earlier had to say.

**Mr. Miller:** We are particularly concerned, for example, about the cost of the acquisition of Canadian reserves. We feel it should be a proper credit for expenditure in arriving at the earned depletion base.

**The Chairman:** You think the cost of the acquisition of reserves fits under the heading of exploration and development.

**Mr. Miller:** Yes, it does.

**The Chairman:** Are there any definitions anywhere that would include that?

**Mr. Sim:** Bill C-259 and the present Income Tax Act allow the cost of oil and gas properties in computing income. They are deductible from income in toto. Our suggestion is that the base for depletion or the definition of exploration and development expenditures under the regulations should coincide generally with the definition within the Income Tax Act itself.

Oil and gas properties are a major cost in exploring and developing gas reserves, and we feel that the depletion which is available, or would be available, to these companies under the regulations as they are proposed in the July news release would be greatly limited as compared to the present system.

**The Chairman:** Mr. Sim, what you want to say is that Canadian resource property includes the acquisition of oil reserves or gas reserves. Is that not correct?

**Mr. Sim:** The oil and gas exploration rights are now deductible under the present—

**The Chairman:** I know that. I heard you. But you want the oil and gas reserves to be defined to include the cost of the acquisition of the Canadian resource property.

**Mr. Sim:** Yes.

**Senator Connolly:** If your company explores and finds properties which have oil and gas reserves, is the cost of acquiring those properties deductible?

**Mr. Sim:** Yes.

**Senator Connolly:** On the other hand, if your company buys properties that have already been explored and where discoveries have already been made, are those costs deductible?

**Mr. Sim:** Yes. The cost of acquisition is deductible. At one stage or another the company will have to acquire property. It may acquire either unproven property or proven

property. The cost of acquisition of both is deductible from the income which the company produces.

**The Chairman:** Mr. Sim, under the bill you get as a deduction under that heading of "Canadian resource property," the items you have been talking about. What you want now, in addition to that deduction, is to have that cost able to earn depletion.

**Mr. Sim:** Yes, that is quite right.

**The Chairman:** We heard that same point earlier. We could do that simply by enlarging slightly the regulations which were put out in July of this year. That is a simple point.

**Mr. Sim:** Yes, sir.

**The Chairman:** Is there anything else?

**Mr. Miller:** Mr. Chairman, the remaining point is quite important, particularly to the distribution utilities. It affects the tax rates on Class A utility income of electric, gas and steam investor-owned utilities.

Under section 85 of the present Income Tax Act, investor-owned electric, gas or steam corporations are granted a 2 per cent income tax rate reduction from the general corporate tax rate on Class A income from the sale for delivery in Canada of electrical energy, gas or steam. That is a 2 per cent lower tax rate.

**The Chairman:** Yes, that is a special rate.

**Mr. Miller:** Under section 143(3) of Bill C-259 the tax rate reduction would be phased out, and following the 1973 taxation year the general corporate tax rate provided under section 123 would apply equally to utility income of these utilities.

**The Chairman:** In other words, you would pay the full corporate rate.

**Mr. Miller:** That is correct. With regard to some background on the subject, in 1952 legislation was introduced to provide income tax rate relief for these public utility companies. Due to the nature of the business, these utilities are required to raise large amounts of capital for the expansion of public services within franchised areas served. Rates chargeable to the public for a service provided are subject to regulatory control and a limited rate of return is allowed on capital invested.

It was clearly a government intention that the tax rate relief granted should assist these companies in attracting the required capital.

**The Chairman:** And maintain lower rates.

**Mr. Miller:** This is true. There were all sorts of discussions on the subject in the 1951-52 budget speech, in the Commons debates and in the Senate debates. I believe you, Mr. Chairman, presented the bill in the Senate.

**The Chairman:** Yes.

**Senator Connolly:** Don't date him that way!

**The Chairman:** It is ancient history now, when you talk about 1951.



**Senator Connolly:** It was only nineteen years ago.

**Mr. Miller:** Our point now is that the conditions which originally prompted the allowance of this tax rate reduction exist even more so today than they did when the legislation was originally approved. These utilities must keep pace with rapidly-growing communities served, which necessitates increased capital financing needs.

There is another point as well, Mr. Chairman. Under section 123 of Bill C-259 the cumulative tax rate reductions of 4 per cent will be granted to all corporations on non-utility income by 1976. Everyone smiles to the extent of getting a 4 per cent tax reduction, and that is all very nice, except for the utilities, because, in contrast, the cumulative tax rate reduction on utility income will be limited to 2 per cent. So you can look at it the other way round as well. We will be required to take a greater share of the total tax burden.

**Mr. Tremaine:** Mr. Chairman, when we say "we", we mean the customer.

**The Chairman:** Oh, yes, the customer.

**Mr. Miller:** For every \$100 of additional income tax burden it requires a gas sale increase of \$200, so there is a compounding effect there as well.

**The Chairman:** What the bill is really doing is raising the taxes for your type of company and therefore, in effect, raising the rates.

**Mr. Miller:** That is quite true.

**The Chairman:** The rates that provide the only source of income, is that right?

**Mr. Miller:** Yes, sir.

**The Chairman:** And yet the general corporation provision provides for a scaling down of up to 4 per cent by 1976?

**Mr. Miller:** Yes, sir.

**The Chairman:** And you are only going to receive 2 per cent by that time. Is there any reason for that?

**Mr. Miller:** We have not found an explanation. It seems to have been an arbitrary decision, possibly a desire to put everybody on the same basis.

**Mr. Tremaine:** Or it is possible that they felt the job was done.

**The Chairman:** You are never through with rates, are you?

**Mr. Tremaine:** No, and we are never through laying new pipe either.

**Senator Molson:** Are the returns in this industry getting a little thin or marginal, or were they reasonably satisfied with the returns they were getting?

**Mr. Miller:** There was considerable discussion in 1951 and 1952; and the rates of return being allowed at that time, based on the cost of capital at that time, were not that much different from the rates allowed on the cost of capital now. Certainly the rates of return to the sharehold-

ers are higher; but the cost of capital is a lot higher in proportion. It is much the same.

**The Chairman:** In any event, there is a ceiling on the income they can make.

**Senator Molson:** Yes, I have looked at some of the statements, Mr. Chairman, and I think that by and large they seem to be holding their own. I am speaking in the context of the entire industry, that they seem to be more or less holding their own in the broad spectrum.

**Mr. Miller:** The energy boards or the regulatory boards have no desire to have unhealthy corporations, so they are prepared to allow a limited rate of return.

**Senator Molson:** Provided you can raise the capital which you need.

**Mr. Tremaine:** That is the important point. The interest coverage has to be there so that expansion can take place.

**Senator Molson:** Thank you, Mr. Chairman.

**The Chairman:** Is that all?

**Mr. Miller:** We have a recommendation on this point.

**The Chairman:** Is it in your brief?

**Mr. Miller:** Yes, it is in the brief. We recommend that clause 143(3) of Bill C-259 be amended to provide for corporate tax rate reductions on Class A utility income of one per cent annually, from 48 per cent in 1972 to 44 per cent for 1976 and subsequent years. This would maintain a 2 per cent differential.

**The Chairman:** What page are you reading from?

**Mr. Miller:** On page 1.

**The Chairman:** We have that now. Is that all?

**Mr. Miller:** That is all.

**The Chairman:** Thank you very much.

Honourable senators, we have one further brief to hear, and I notice it is 25 minutes after 12. If it meets with your wishes, perhaps we should deal with this at 2.15 p.m. I refer to the ad hoc Committee of Voluntary Agencies. I think that this is in line with some of the briefs we have had already in dealing with charities and matters of that kind. We would be rushing it if we tried to get it done this morning. I hope it does not inconvenience those who are appearing on this brief, but we will deal with it at 2.15 p.m. Is that agreed?

**Some Hon. Senators:** Agreed.

The committee adjourned.

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Upon resuming at 2.15 p.m.

**The Chairman:** We have one submission this afternoon, that of the ad hoc Committee of Voluntary Agencies. Those appearing are: Mr. Donald Pierce, of McClintock, Devry and Pierce; Mr. Menno Dirks, of the Canadian Bible College; and Mr. Ian J. Stanley, of World Vision of Canada. Who will be speaking on behalf of the group?

**Mr. Donald Pierce, secretary, ad hoc committee of supporting voluntary agencies:** I shall, Mr. Chairman.

Honourable senators, I am the Secretary of the ad hoc committee representing supporting voluntary agencies. On my right is Mr. Ian Stanley, the Canadian Stewardship Consultant of World Vision International of Canada; and on my left is Mr. Menno Dirks, Director of Stewardship, Christian and Missionary Alliance Church in Canada.

We understand that the Canadian Jewish Congress made representations to this committee with respect to points that are included in part of the brief which we wish to present today. Because of that, I do not wish to make a lengthy opening statement or waste your time in going over the same ground.

**Senator Walker:** Do you adopt the Jewish presentation?

**Mr. Pierce:** Yes, in its entirety. If I might go over the points briefly, Bill C-259, in sections 69 and 70, provides for deemed realization of capital gains on gifts and bequests. There is no exception for such gifts or bequests of properties to registered Canadian charitable organizations.

In order to answer the question, which was also raised by the Canadian Jewish Congress, whether the Government should encourage charitable giving through tax incentives, we submit that it is a philosophical question, and I hope that we can at least persuade you...

**Senator Connolly:** The Government has made up its mind by doubling the allowable allowance.

**Mr. Pierce:** Yes, and that is a great encouragement to all registered charitable organizations.

**Senator Connolly:** So I think the philosophy is accepted.

**The Chairman:** It is a matter of quantum.

**Mr. Pierce:** That, as I understand it, is the brief that was submitted by the Canadian Jewish Congress. We have answered the question in the affirmative, and we trust that you will also answer the question in the affirmative.

**Senator Walker:** Have you any new points?

**Mr. Pierce:** Yes, we have. We have attempted to define various methods that would benefit donors and charitable organizations, and, in effect, encourage charitable giving. In particular I am referring to the points mentioned in my brief, namely, charitable remainder trusts, pooled income fund, short-term trusts, and extension of the one-year carry-over privilege. The gentlemen with me are stewards of registered Canadian charitable organizations. Other members of the committee have assisted us in determining the kinds of gifts that donors would like to make to registered charitable organizations. Mr. Chairman, should I go over the original point in any detail, which is deemed realization of capital?

**The Chairman:** Any point made by the Canadian Jewish Congress was clearly put. Since that time the staff, including the chairman, have made a complete analysis of their presentation and have reached the stage where they are ready to make a submission to the committee, seeking support for the recommendations we propose. Without

indicating what those recommendations might be, I would say they are not unfavourable to the viewpoint presented by the Congress.

**Mr. Pierce:** I was not before you on that particular day.

**The Chairman:** It would be a repetition, and an unnecessary one, I would say, to go over the same ground.

**Senator Walker:** Unless you have new points to raise.

**Mr. Pierce:** The only point that I would raise is the question of the value at which the appreciated property should be transferred to the charitable organization. We take the view that the Government should encourage that giving, and that the value should be the fair market value.

**Hon. Mr. Phillips:** What is the significance of the value if, in respect of a bequest or a demise, the gift or bequest is not deemed to be realized capital gain?

**Mr. Pierce:** The significance is simply that the charitable annuity sections provide for a charity deduction for such gifts based upon the gift element of that gift. In other words, you expect to get an income of 8 per cent on a \$100,000 gift of securities 70 years old.

**Hon. Mr. Phillips:** You are talking about a gift *inter vivos*.

**Mr. Pierce:** That is right. That is the only point I would raise with respect to that. Again, to support that, it requires a philosophical argument and not a dollar argument. We have attempted, in the last few pages of the brief, to come up with the concept of a detached revenue that might be expected to be lost if the Government eliminated the deemed realization gains.

**Hon. Mr. Phillips:** We now have under the new act a 20 per cent deduction in respect of taxable income for charitable donations. We do not have to worry for the present in respect of deemed capital tax on demise. On the question of valuation on gifts *inter vivos*, is that not a question of fact at a particular time? Once it is not a deemed to be realization, how can you lay down any particular value in respect of that which is given? It is either money, securities, commodities, or real property.

**Mr. Pierce:** I do not understand the question.

**Hon. Mr. Phillips:** We do not have to deal with deemed realization in the event of death. We have restricted our observations to gifts *inter vivos*. We have 20 per cent deduction allowed under the proposed new bill. We have no problem, presumably, with respect to giving a gift *inter vivos* to charitable organizations. Therefore, we are back to the point of what is the credit to be given to the donor in respect of the value of that which he gives to the charitable organization. Do we have to concern ourselves with the donor? There are several types of donors. We are only interested in the position of the charitable organization. You are not concerning yourself about what valuation was placed upon the thing or the security given?

**Mr. Pierce:** Yes, we are, but only with respect to the amount of the charitable deduction that the donor may be entitled to.

**Hon. Mr. Phillips:** In respect of what type of asset?



**Mr. Pierce:** In respect of depreciated assets.

**The Chairman:** Other than dollars.

**Mr. Pierce:** Yes, other than dollars.

**Hon. Mr. Phillips:** Other than dollars and securities?

**Mr. Pierce:** Securities would be included with your real property and any other depreciable property.

**Hon. Mr. Phillips:** All right. We have narrowed it down.

**Mr. Pierce:** That is the only point that I have, as I understand it, in addition to the Canadian Jewish Congress issue.

I will now come to the description of the types of trust that we would like to see available to donors to charitable organizations. Quite frankly, a good many of these ideas may not be fashionable on this particular day, but the concepts we are talking about are taken primarily from the 1969 United States Tax Statute which, of course, is quite complicated in this area. We recognize the complexity and we certainly do not want to add to the complexity of the present Income Tax Act, but we feel these are the types of trust that donors would use and, in fact, would provide funds for charitable organizations to carry on the works which we feel are very useful.

The first one I would like to refer to is the Charitable Remainder Trusts. This, of course, deals with the question of depreciated properties, and under this type of trust the donor would grant some form of depreciated property. Let us say, for example, a donor had \$100,000 worth of securities which he donated under that trust with instructions to pay him a fixed income, or possibly a flexible income, during his lifetime, and, possibly, upon his death that the same income, or some other income, be directed to his spouse or any other person, and then on the death of the person named as beneficiary of the trust, the remainder would go to the registered Canadian charitable organization.

The first of the benefits that we would like to see a donor have with respect to this type of trust is that the value at which it would be given to the trust would be the fair market value, and there would then be, for the donor, a charitable deduction based upon the gift element. That would be the amount of money left over after he gets his income from that gift, the value of which would be determined by life tables.

**Senator Walker:** And after his wife gets her income from it?

**Mr. Pierce:** Yes, exactly.

**Senator Walker:** And then you value it?

**Mr. Pierce:** Yes.

**The Chairman:** At what time would the calculations be made? Would they be made at the time the donor makes the gift to the trust?

**Mr. Pierce:** Yes.

**The Chairman:** And then you would attempt, on the basis of life tables, to calculate his life expectancy as well as the

life expectancy of the spouse, and you would arrive at an amount which would be the gift element.

**Mr. Pierce:** The remainder would be the gift element.

**The Chairman:** Yes, the remainder would be the gift element. The remainder might have some capital element in it as well.

**Mr. Pierce:** Exactly, but, of course, the present bill, as does the Income Tax Act, provides for the capital element provisions. We are not concerned with that today.

**The Chairman:** The donor would have to be careful that he did not exceed the limit to which he could, without tax, make charitable contributions.

**Mr. Pierce:** That brings us to the next point.

**The Chairman:** The remainder would have to be within the limitations.

**Mr. Pierce:** What we are suggesting as well, Mr. Chairman, is an increase in the one-year carry-over privilege in order to permit donors to make better use of this type of trust.

At the present time the act permits a donor to claim his charitable deductions in excess of the existing 10 per cent deduction the year next following this particular taxation year.

**Senator Gélinas:** The excess over 10 per cent would carry over into the following year?

**Mr. Pierce:** Yes, and we are requesting an extension of that one-year carry-over privilege to make it a five-year carry-over privilege.

**Senator Walker:** Why?

**Mr. Pierce:** Because the size of the charitable deduction that would be involved here could possibly be substantial. For example, Mr. Dirks is from the west, and he has advised me that many farmers in the west, upon attaining a certain age, would like to donate their farms to a charitable organization, with the understanding that they can continue to live on the farm for the remainder of their lifetime and possibly gain some income from it as well. The value of that farm could be substantial, but the income from it could be quite low, and in order to permit them to take full advantage of the raised 20 per cent rate we want to give them a longer period of time over which they can apportion the once-in-a-lifetime gift. I should note at this point that for certain types of property in the United States the amount deductible actually goes as high as 50 per cent. I just mention that as a matter of interest.

At this point there are so few people who really take advantage of the existing 10 per cent rate that we feel an increase to 20 per cent no doubt will cover most instances that we are dealing with. Obviously, we will not turn down anything beyond that, but that is not a point which we are pressing strongly at this time.

**The Chairman:** You mentioned the once-in-a-lifetime gift. You are talking about the part of the gift that goes to the spouse, are you?



**Senator Connolly:** Surely, the concept of a once-in-a-lifetime gift does not enter into the discussion on the point you raised.

**Mr. Pierce:** No, it was a poor choice of words on my part.

**Senator Connolly:** A once-in-a-lifetime gift is something quite different. We are talking now about charitable donations which can be made by will or by deed *inter vivos* at any time and in any number.

**Mr. Pierce:** Exactly.

**Senator Walker:** Are you trying to bring in that once-in-a-lifetime gift provision?

**Mr. Pierce:** No.

**The Chairman:** That does not enter into the picture here at all.

**Mr. Pierce:** The next type of fund or trust that we would like to have encouraged is simply an extension of the remainder fund which is a pooled income fund. In this situation people have smaller amounts of money that they would like to invest and to give to charitable organizations and, or course, it is very difficult for an organization to invest \$1,000 or \$2,000 separately, so they would like to put it into a pooled fund and invest the entire fund. Each individual donor would be entitled, under the system we would like to see enforced, to a certain percentage of the income of the fund in proportion to the amount that he contributed to the fund. We would like to see the same type of benefit accrue to donors who make such gifts to pooled income funds.

**Senator Connolly:** Surely, that is possible under the scheme of the existing act and of the new act? Is it not purely a matter of segregating, say, the \$2,000 gift, knowing what the income on that might be if it comes from pooled funds and is averaged? Then, under your first formula, if the income in one year was not sufficient to let them have the full value of the \$2,000, let us say, they could spread it over a number of years. In this case one might be sufficient but it might not be, and perhaps you could have two or three.

**Mr. Pierce:** Certainly you can create these kinds of trusts under the existing act and under the proposed act. The problem is that there is no provision, that I can discover at least, for a charitable deduction to be granted to the donor at the time of the creation of the trust. This concept is recognized by the department, but only with respect to charitable annuities. All we are asking for is an expansion of that idea where a person need not transfer his cash to purchase an annuity. They should be permitted to transfer appreciated properties rather than purchasing an annuity which would permit the charitable organization more flexibility in its investments. That is very simply the difference. You are quite correct that it is possible to do this under the existing act. But as I understand it there are no charitable deductions permitted at the outset, and that is what we are directing our attention to at this time.

**Senator Connolly:** I would be surprised if you were correct.

**Mr. Pierce:** Well, I hope I am wrong. But this is my understanding of the situation at the present.

**Senator Connolly:** If a gift is made surely a claim for a deduction is available, and if it is hedged around with a return of income on the gift for a given number of years. I think this has always been possible under the existing act and will be under the proposed act.

**The Chairman:** One determination you would have to make is this: Is the pooled income fund a registered charity?

**Senator Connolly:** I was assuming that.

**Mr. Pierce:** Actually, under this system it need not be a registered charity. The ultimate beneficiary would be a registered Canadian charitable organization, but whether it would have the facilities to do the investing or not—

**Senator Connolly:** I am assuming that a gift is made to the organization and it becomes this organization's capital fund and it is invested. That is the assumption I have been working on. And in that case, I do not think you have any problem.

**Mr. Pierce:** That is very good to hear.

**Senator Connolly:** I may be wrong. I just put it to you that perhaps you have no worries.

**Mr. Menno Dirks, Member ad hoc Committee of Supporting Voluntary Agencies:** Mr. Chairman, where the problem might exist under this concept is that income that would be paid out would vary according to the experience of the organization; that is, income from the fund has to be paid out and this could vary from year to year.

**Senator Connolly:** That would not matter because that income is going to be taxable in the hands of the recipient.

**Mr. Pierce:** Senator Connolly, I do not wish to go into that point.

**Senator Connolly:** I do not say that you are wrong.

**Mr. Pierce:** I certainly cannot provide you with any statutory language which would permit that. The only language which I have found is in an interpretation in June of this year dealing with charitable annuities. This is why I made the statement. I have dealt with the department on this, and no one from the department has suggested this possibility under the existing act.

**Senator Connolly:** Do you mean they have told you this?

**Mr. Pierce:** They have not told me that; but they have not made the statement which you have just made, that it is possible under the existing statute.

**Senator Connolly:** Their authority has much more punch than mine.

**The Chairman:** You mean your punch is a delayed reaction.

**Senator Walker:** It depends on whose punch.

**Mr. Pierce:** They have not directed themselves to that particular point. They have not made the point you have just made.

**The Chairman:** Mr. Pierce, if you analyse this, you would have a group of people who would have contributed to a pooled income fund. Stopping there, in making contributions to the pooled income fund, that income fund had to pay out a certain amount of income each year to each participant who had contributed. At that stage, where does the charity come into it?

**Mr. Pierce:** The only stage the charity comes into it is that it would be an irrevocable gift which you would make to that trust, with the ultimate beneficiary being the registered Canadian charitable organization, and on his death to his spouse if he so directs the income to go there.

**The Chairman:** So the pooled fund would be administered by the trustee?

**Mr. Pierce:** Yes.

**The Chairman:** And the trustee would receive these contributions on certain terms?

**Mr. Pierce:** That is correct.

**The Chairman:** One term would be, as and when a particular donor and his spouse had passed on, whatever was left was to go to the registered charity.

**Mr. Pierce:** Yes.

**Senator Connolly:** Perhaps the registered charity might be paying out income under the terms of the trust and still administer the fund?

**Mr. Pierce:** Yes.

**Senator Connolly:** So the gift might be given in the first instance.

**Mr. Pierce:** Yes.

**The Chairman:** That is why I thought they might shortcut this situation, the pooled income fund being a registered charity.

**Mr. Pierce:** That is a possibility.

**Hon. Mr. Phillips:** I think we need a new law, honourable senators. Mr. Chairman, you are dealing with a crucial point on this pooled income fund that, in a sense the title of the asset given remains with the donor because the donor is getting the yield and, therefore, there is no gift tax. Despite of that, there is no gift tax being deposited. That is, in my opinion, the novel concept here, because in the case of a straight gift to a charitable organization, in the event of demise, there is a divorcement of ownership to the gift by survivors on death. Here you are introducing the concept of the yield remaining with the donor, and the capital must, by its legal nature, remain with the donor. Otherwise he is not entitled to the yield, other than the fact that you could say at a given moment of time the title passes to the charitable organization.

**Senator Connolly:** Does the trustee's title not intervene here?

**Hon. Mr. Phillips:** Yes, if the trustee's title intervened then there would be a gift; and if there is a gift we are back to

the point where you would have to register a fund as a charitable organization in order to get the exemption from the gift tax.

**Senator Connolly:** Let us say, for the sake of argument, and we will use the University of Toronto as an illustration, ten other people and myself give \$2,000 to the University of Toronto. We have given this money and they are going to hold it in trust. The trust is to pay the income to me during my lifetime and, following my death, to my wife during her lifetime. At the end of that time the remaining estate, for what it might be worth, belongs to the University of Toronto, and the trustee pays it to the university. But the trustee is also the university, so it is transferred from one book to another book.

**Hon. Mr. Phillips:** That is not what they are asking for. They are asking for a fund to be administered by a trustee, the income to go to the donor and the capital, at a given moment, to go to the charitable organization. If the capital were given outright to the charitable organization, then you value that which is given to the charitable organization as being exempt in relationship to the age of the donor or life expectancy—all that sort of thing, as Senator Hayden has suggested.

Here we are talking about an intervening trustee, and if the intervening trustee is not the owner of the assets given, then obviously ownership must remain with the donor. In order to prevent ownership remaining with the donor, you would have to get the trust so created to become a charitable organization.

**The Chairman:** Using the word "donor" is a little confusing. Mr. "A" might say, "I have \$50,000 either in cash or securities, and I am going to set that up in a trust fund. The terms of the trust fund are that as long as I live the income from it must be paid to me; that when I die the income must be paid to my spouse; and that when she dies whatever remains is to go to a registered charity." At the first stage, the person puts the \$50,000 in the trust fund, it produces some income, and is subject to income tax. I would think that he would also be subject to capital gains on gains that would be made in the fund. Is that not right?

**Mr. Dirks:** No.

**The Chairman:** So the donor is really the donor with respect to the remainder that is left at the end of the road. What happens if the amount of the remainder is greater than 20 per cent?

**Mr. Pierce:** Are you referring to at his death?

**The Chairman:** Yes. It is a point raised by the Congress.

**Mr. Pierce:** It refers to the carry-back provisions.

**The Chairman:** It is not up to us to lay out a plan on which you might operate. That is up to you. We do not want to be taking business away from your lawyers. Therefore we have to know your concept of a pooled income fund to see if it makes sufficient sense for us to deal with it.

**Mr. Pierce:** Your description was the one that we intended. As to the question whether or not the trustee should be the same as a registered Canadian organization, there is



no reason why he could not be, although at this particular time some do not have the expertise and they would have to retain someone, such as a trust company, to do it.

**Senator Connolly:** The trust is just an agent in such cases. If you have an independent trustee, that trustee must be a recognized charitable organization, or you would not get the benefit of the gift.

**Hon. Mr. Phillips:** What these gentlemen want is very nice humanitarianwise, but it is technically difficult under charitable remainder trust.

Going back to page 3 of the brief, the key to what is suggested is in subparagraphs (a) and (b):

(a) that any capital gain on such disposition to the trust should not be deemed as taxable to either the donor or to the trust.

(b) that the gift value be based upon the fair market value of the assets on the date of transfer.

The Government would say to such representation, "You have killed the whole concept of a capital gains tax."

**Mr. Pierce:** There is no doubt that I could argue on the other side of this issue. It all depends upon the philosophical question that I put originally.

**Hon. Mr. Phillips:** You have discussed charitable remainder trusts, the difference between the value of the thing given and the income that is going to the annuitant or donor. You are either within the 20 per cent or you are not, and you pay your tax accordingly. The rest is this whole business of increase in value.

**The Chairman:** If there is to be a run-over of five years, you are then enlarging the amount that might not be subject to capital gains tax. You could make a lot of capital gain in those five years, and over the whole period the sum total might be only 20 per cent. Do you think that is the intention, or is this an extension, whether warranted or not, of the use of charitable gifts and avoiding capital gains tax?

After 20 per cent in a year that you are allowed for donations, if you give securities instead of cash, should you be permitted to avoid the capital gains tax?

**Mr. Pierce:** We take the view that the Government should encourage private individual donors to give money or securities, or whatever, to charitable organizations to facilitate those organizations in carrying out the very good works they are doing at this particular point in time. The way the population is growing, they will be required to do even more.

**The Chairman:** Supposing that we agree with that, let us then get down to the hard core.

**Mr. Pierce:** Clearly what we are doing here is encouraging to the fullest possible extent the view that any capital gains that might accrue, even during the lifetime of the individual or his spouse, should not be taxed, but should ultimately go to the Canadian registered charitable organization who would benefit by that much. We feel that it is a good thing.

**The Chairman:** Why do you not say that any gift to any registered charity, whatever the amount, should not be subject to any tax?

**Mr. Pierce:** You are referring now to the effect of the carry-over privilege. In order to encourage people to give gifts of this particular nature and size, we should permit them a charitable deduction, or as much as possible of the value of the gift. We are hoping that we will get these kinds of gifts, and we want the donors to take full advantage of them. That is why a period of time is necessary, because their income is probably quite low.

**The Chairman:** What do you propose in respect of losses?

**Mr. Pierce:** Capital losses?

**The Chairman:** Yes.

**Mr. Pierce:** We have made no proposals with respect to them, but there is no income tax with respect to charitable organizations.

**The Chairman:** No, but I am talking about the situation where you have a trust fund and you have various elements in the trust fund. You have the element in the fund that produces the income which goes to the donor, and you have the element that produces the income which, at some time in the lifetime of the fund, will go to the spouse and then there is the remainder.

**Mr. Pierce:** Yes.

**The Chairman:** In the period of the operation of that fund gains may accumulate, and gains may also accumulate in the period when the donor is the one who is drawing the income.

**Mr. Pierce:** Yes.

**The Chairman:** How do you propose to treat the gain at that stage?

**Mr. Pierce:** It would not be taxable under our proposal. There would be no tax, in fact, to the particular trust which in this case would be the registered Canadian charity organizations.

**The Chairman:** So at the end of the road the remainder of the gift from the donor to the charitable organization might be getting pretty close to zero.

**Mr. Pierce:** That is right. The value of it would be the value of the gift element plus the gains minus the losses.

**The Chairman:** And he would not have paid any capital gains tax in the meantime.

**Mr. Pierce:** Exactly.

**The Chairman:** Are there any other questions on that, or shall we move on to the next item?

**Senator Walker:** Let us deal with the next item.

**Mr. Pierce:** The last type of trust that we are proposing is the concept of a short-term trust. By this method, if a donor determined that his income in any particular year might be excessive, he could donate securities, or some form of property, to a charitable organization and thereby



reduce his income for that particular year, or for a five-year period, or whatever the term might be.

**Senator Beaubien:** Only for that period of time?

**Mr. Pierce:** Yes, just for that period of time.

**Senator Walker:** Just for the year?

**Mr. Pierce:** For whatever period of time it might be; it could be one year or five years, or whatever. The charitable organization would have the income from the fund during that period of time. At the end of that period of time, the donor could draw back the asset at the original cost base that he put it in at, so there would be no question of capital gains or losses. This is simply a method whereby the income from a particular property would go to the charitable organization. It is an artificial method whereby an individual can reduce his tax; there is no question about that.

**Senator Molson:** He can give that same sum of money in another way. You are just trying to provide a method whereby he can reduce his tax if he chooses to do it in that way.

**Mr. Pierce:** Yes.

**Senator Walker:** For the year.

**Mr. Pierce:** For whatever period of time is specified.

**Senator Beaubien:** Why does he not simply give the income from the security?

**Hon. Mr. Phillips:** He would be putting himself in a higher tax bracket, senator. For example, if he has \$10,000 and he has a yield of, say, 6 per cent, and if he adds that to his income, it would put him in a higher bracket, so to avoid that he hands over the \$10,000 to the charitable organization and the 6 per cent yield on that, or \$600, goes to the foundation and it does not go into his income; and he is still protecting his capital as it reverts to him.

**Mr. Pierce:** But in the meantime the charitable organization has the income from that particular fund.

**The Chairman:** It is a conditional gift.

**Mr. Pierce:** I do not believe it is a conditional gift; it is an absolute gift for the period during which it is made.

**The Chairman:** Is there a limitation or a restriction?

**Mr. Pierce:** The only restriction is that it will revert to the donor after a specified period of time.

**Senator Connolly:** You could almost call it an "Indian gift".

**The Chairman:** It has a limitation in time; it is only good for a year.

**Mr. Pierce:** The time limitation is for whatever period is specified.

**Senator Molson:** It is not a gift, Mr. Chairman.

**The Chairman:** That is why I was querying it.

**Mr. Pierce:** It is a gift of the income; that is all it is.

**Senator Molson:** I do not think it is a gift because it has a time limitation, and to me that does not constitute a gift.

**Senator Walker:** A gift has to be outright.

**The Chairman:** Senator Molson, I suppose you might make a gift of securities or cash to a trustee to hold for a period of five years with instructions to pay the income annually during that time to a registered charity trust fund, and then at the end of that period of time to have the remainder of the principal revert to you. In that instance, all the donor has done, if you want to call him that, is avoid income tax on the income.

**Senator Molson:** Exactly.

**Mr. Pierce:** That is not quite all; he has also provided an income to the charitable organization.

**Senator Molson:** But he could have provided the income to the charitable organization in another way; that is not the only option available to him. In the situation we are discussing he is providing the income and taking care of his own tax position.

**The Chairman:** You will find quite often that a testator, under his will, leaves securities and directs that the securities are to go to a son or daughter, and also provides that there is a life interest in the income to another son or daughter. This may be a variation of this, except, of course, as far as the testator is concerned it does not come back to him.

**Senator Connolly:** He cannot take it with him and he cannot send for it.

**Senator Beaubien:** Mr. Chairman, in the case of this gift, does it have to be less than 20 per cent of his income?

**Mr. Pierce:** That is right.

**The Chairman:** Yes, but you can enlarge on the 20 per cent exemption in any year, and the statute will be amended to permit you to do that. They are asking here for a five-year carry-over provision which would mean that if there was more than the 20 per cent in the first year, you could carry the excess over into the next year and the next year, and this would continue for five years.

**Senator Beaubien:** Provided the five-year average is no more than 20 per cent?

**The Chairman:** Yes.

**Mr. Pierce:** That would not apply in this particular situation.

**Hon. Mr. Phillips:** Did you say the American revenue statute provides for this type of thing?

**Mr. Pierce:** Yes, it does.

**Hon. Mr. Phillips:** Under all headings?

**Mr. Pierce:** Yes, and many more, but I have not gone into the more intricate ones.

**Senator Burchill:** Is the 20 per cent subject to capital gains? At page 3 you state:

we would respectfully submit that gifts or bequests made by any person to registered Canadian charitable organizations should not be subjected to a capital gains tax—

**Hon. Mr. Phillips:** The answer, senator, is that under the proposed law there is a capital gains tax.

**Senator Burchill:** On gifts to charitable organizations?

**Hon. Mr. Phillips:** To the extent that your gift of capital property would now be subject to a capital gains tax if you gave it, unless the law was amended. That is, it would be taxable income of the testator on death.

**Senator Connolly:** Would you give Senator Burchill a concrete example of what you are referring to? I think it would be helpful to have it on the record.

**Hon. Mr. Phillips:** If a person has a revenue-bearing building for which he paid \$100,000,—and we will forget recapture provisions and all that type of thing—and it is worth \$300,000. If he makes a gift to a charitable organization he, of course, gets his 20 per cent exemption in respect to his taxable income for the year under the proposed act. But the \$200,000 is deemed to be capital gain, and to the extent that 50 per cent would be part of his income in the year in which he makes the gift, you would have \$100,000 added on to his other taxable income. He could give 20 per cent of his taxable income to charities at large. The same principle applies on death. He has paid \$100,000 for the building. It is worth \$300,000 on death. The \$200,000 forms part of the taxable income in the year of death because it is deemed to be a capital gain. We are going back to the basic point.

**Senator Burchill:** How is the value ascertained?

**The Chairman:** At fair market value.

**Hon. Mr. Phillips:** That is the problem which always arises in handling estates. Sometimes it is based upon real estate valuation for tax purposes; sometimes it is based upon a valuation of contiguous properties; sometimes it is based upon an appraisal; sometimes it is based on offers that may have been made within a reasonable period prior to death. You could have ten, twelve, fifteen or twenty variations in determining the value.

**The Chairman:** I should call your attention to section 56(2) of Bill C-259 which is headed "Indirect Payments". It says:

A payment or transfer of property made pursuant to the direction of, or with the concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been made to him. So you have quite a number of amendments.

**Mr. Pierce:** That is true.

**The Chairman:** Are there any other points?

**Mr. Pierce:** No, I think we have covered all our points.

**The Chairman:** Thank you very much. That concludes our business for today.

**Senator Molson:** Mr. Chairman, before the committee adjourns, I have one point I would like to raise in connection with this proposed bill which I spoke to our counsel about at lunchtime. Would I be in order in asking a question at random on this subject?

**The Chairman:** The only point I could quarrel with is that I could never conceive of you asking a question "at random."

**Senator Molson:** That is very gracious of you, Mr. Chairman, but I do not think that I can accept that compliment.

**The Chairman:** Whatever the question is, please go ahead and ask it. Then, if we should answer it *in camera*, I will say so.

**Senator Molson:** No, I think it is probably completely out of place, but I feel it is something which I would like to see appear in our record. If a person should die and leave his or her estate in trust for the benefit of the spouse; if there is a capital appreciation at the time of death; then, at a later date, if some of the assets are sold at a gain, where is the impact of the tax in this particular case? I assume that on death there is a deemed realization, so the capital gains on the estate would be taxed and would form part of the deceased's income for that year and would attract a 50 per cent tax added on to his income for the year.

**The Chairman:** Yes.

**Senator Molson:** The estate is held in trust for the benefit of the spouse of the deceased. Once the securities or properties are sold at a further gain or at an increased price—

**The Chairman:** By the spouse?

**Senator Molson:** Well, that is my question: Are they sold by the spouse or by the trust? Who is paying the tax, and when?

**The Chairman:** Well, if the husband makes a gift to the spouse—

**Senator Molson:** He may make a gift, but he has not. The husband has died, but he has not made a gift.

**The Chairman:** Either the assets that he dies with remain in his estate or they are disposed of in accordance with the terms of his will.

**Senator Molson:** And that sets up a trust for his spouse?

**The Chairman:** That sets up a trust for his spouse.

**Senator Molson:** And the income will go to the spouse, and the remainder will go—

**Senator Walker:** To the life interests and residue.

**The Chairman:** No, if you take the first instance where he gives certain assets to his spouse, which she enjoys during her lifetime, she is subject to a tax on it when she dies. If she is smart and there is not too much involved, she is only taxed on what she has left.



**Senator Molson:** If she realizes during that period and pays a capital gain on her income or on the trust income?

**The Chairman:** You are talking about two different things.

**Senator Molson:** No, sir, this is the reason I am asking this question, Mr. Chairman. I am seeking light and wisdom.

**The Chairman:** We will straighten this out. She would either receive it by way of life income or she would get it absolutely. Now, if she gets it absolutely it is hers, she makes a gain on it and she is subject to a capital gains tax.

**Senator Molson:** You mean if she gets it absolutely? Regardless of the value on the date of death, if she gets it absolutely there is no capital gains tax?

**The Chairman:** Yes.

**Senator Molson:** And the securities and properties pass from the deceased to his wife absolutely without any tax?

**The Chairman:** Yes.

**Senator Beaubien:** At his cost.

**Senator Molson:** Yes, at his cost or his valuation.

**The Chairman:** That is right.

**Senator Molson:** If he sets up a life interest trust for his wife, first of all, there is deemed realization on his death, is there not?

**The Chairman:** Yes.

**Senator Molson:** So there is a capital gain against—

**The Chairman:** No, there is a roll-over.

**Senator Molson:** If it is a trust and not absolute?

**Hon. Mr. Phillips:** If the income goes to the wife.

**The Chairman:** Yes, where the income goes to the wife only.

**Senator Walker:** The roll-over is postponed.

**Senator Molson:** I know if it goes directly to his wife there is no tax between the spouses. But I thought that possibly they could set it up as a trust in which the capital went to someone else and only the life interest went to the wife, and that possibly there was a deemed realization at that point.

**The Chairman:** When you refer to capital going to somebody else, it could only go after her death; it is a life interest.

**Senator Molson:** Yes. There is no capital gains tax at that point. If an asset is sold after the death of the testator, and there is a substantial sum realized on the capital gain and the wife is receiving all the income from the trust, who pays the tax and when? Is it a charge on the estate? Is it a charge on the wife's income? What happens if the wife's income is insufficient?

**The Chairman:** It cannot be a charge on the wife's income. She gets a life interest. So we eliminate that.

**Senator Molson:** For the sake of argument, the residue could go to either the grandchildren or the children. The wife has a life interest, and there is a substantial capital gain realized while she is enjoying the income. Who pays that?

**The Chairman:** The trust pays it.

**Mr. Douglas Ewens, Assistant to the Chairman:** The trust is subject to a rate which would apply if you assumed the trust to be an individual.

**Senator Molson:** If the total income of the trust were \$10,000, and then there is a capital gain, 50 per cent of which is \$10,000, does the trust pay tax on the two sums together, or \$20,000?

**Mr. Ewens:** Including only one-half of the capital gain—

**Senator Molson:** Yes. It then pays income tax on the total income, plus half the total gain, and the rate applies to that dimension of sum.

**Mr. Ewens:** Not exactly. It gets a deduction if it is paying income out to the wife. It is only taxed on accumulating income. Your assumption was that the wife did not get the capital.

**Senator Connolly:** In that case the wife does not get the capital gain. That capital gain is an appreciation of capital. Does it not remain in the trust until the death of the life tenant, and then the capital gains tax applies and—

**The Chairman:** It is a roll-over; it goes back to the estate.

**Senator Connolly:** It would have to be paid by the trustee on behalf of the residual legatee.

**Mr. Ewens:** The tax is paid at the time the trust realizes the capital gain at the trust's "personal" rate. The trust may then re-invest those proceeds.

**Senator Connolly:** Senator Molson's example is that one of the capital assets is a security which, between the death of the husband and before the death of the wife, appreciates considerably in value. It is sold by the trust and presumably continues to be held as part of the capital of the trust, in cash or other securities. It may be re-invested. At the time that the gain is realized, it is still held by the trustee. Under the bill, is the capital gains tax assessed in the hands of the trustee at that time?

**Mr. Ewens:** I believe it is.

**Senator Connolly:** Under what section?

**Mr. Ewens:** Under section 104(2), which provides that the trust is taxed as an individual, and if that capital gain were realized by the individual it would be taxed in the year of such realization.

**Senator Connolly:** It would be a taxable capital gain that would affect the income received by the widow.

**Mr. Ewens:** She would still be getting income from the realized capital gain, assuming it was earning income and not just held as cash. It would be put in a bank or would be re-invested in some way.



**Senator Connolly:** But the capital gain tax would be paid by the trustee.

**Hon. Mr. Phillips:** The capital gain would be taxed, and what would then remain to continue earning income would be the gross capital gain less the tax paid on it.

**Senator Connolly:** Is the capital gains tax paid at the time it is realized, when the wife was getting life income from this fund, or is it postponed until her death, in which event it would be payable presumably by the trustee on behalf of the residual beneficiaries?

**The Chairman:** If the trust has the capital, and the trust makes a gain, it is then a gain to the trust, and it will be subject to capital gains tax.

**Mr. Ewens:** The roll-over applies on the husband's death. If it is a qualifying trust, whereby the spouse is the sole beneficiary of the income and no other person is a capital beneficiary until after the wife's death, it qualifies for a roll-over and no capital gains tax is paid upon the husband's death. The capital is then considered to be the capital of the trust, the trust is deemed to be an individual, and it is subject to the rules and rates applying to ordinary individuals.

**Senator Connolly:** The whole estate is then looked at at the time of the wife's death, because presumably it is then going to the children, and capital gains which may be payable then fall in.

**The Chairman:** There would be a further appreciation.

**Hon. Mr. Phillips:** You may have two capital gains. You may have the roll-over capital gain going back to the time of the death of the testator, and the residual capital gain after taxes.

**Senator Walker:** Supposing the capital gain happens 10 years after the wife has been the recipient of a life income, and she dies 10 years later. Is that the time that the residual legatee or the trustee of the residue of the estate pays the capital gains tax?

**Senator Molson:** That was my original point. But they said that the capital gains of the assets disposed of are payable in the year when disposition occurs, and are paid by the estate.

**Mr. Ewens:** A further appreciation after that capital gain was realized by the trust and later was re-invested would certainly attract a tax on the death of the widow. There will also be a deemed realization every 21 years. You cannot go along indefinitely without incurring some tax.

**Senator Molson:** That is something that nobody had mentioned previously. This does not depend on that estate being a whole estate; it is whatever may be the life interest. It does not mean that the individual has to have his pictures, carpets, and everything he owns in that trust; it is whatever he sets up as a trust for his spouse.

**Hon. Mr. Phillips:** That is right; except that the remainder that he does not set up for his spouse is deemed to be realized.

**Senator Molson:** That is dealt with separately.

**The Chairman:** That is dealt with directly in his own estate.

**Hon. Mr. Phillips:** It is taxable income in the year of his demise.

**Senator Connolly:** If it goes to his wife, it is not taxable.

**Mr. Ewens:** There is always the 21-year limitation.

**The Chairman:** Tomorrow the following will be appearing before us: The Canadian Petroleum Association; The Mining Association of Canada; The Canadian Mutual Funds Association; and The Canadian Pulp and Paper Association. I suspect that The Canadian Pulp and Paper Association will be dealing with international source income, and I expect Mr. Fowler will be present he is always clear and concise, so it is a pleasure to listen to him.

I obtained some information which is highly speculative, and that is that Bill C-259 may be sent over to us on or before December 1. If that is the case, it would seem that we will be able to meet our deadline with respect to providing an interim report next Wednesday morning, and, if it is approved, tabling it in the Senate in the afternoon. That will deal with a substantial number of the problems that have been presented to us so far, and, of course, that will go to the other place right away, while they are still in Committee of the Whole.

**Senator Walker:** They are waiting for it, are they not?

**The Chairman:** I believe they are. The House of Commons members have had access to the briefs which have been filed here, and I expect they are making use of them. Perhaps they have also read some of our proceedings which are available.

Robert Thompson made a speech the other day and, with respect to parts of it, one would think he was reading the Canadian Jewish Congress brief on charitable gifts. That is a good thing; it was a sensible speech.

**Senator Molson:** It was a good speech.

**Senator Walker:** You will find most of the Tories will do that, but they are not gallant.

**Senator Connolly:** You mean just now, Senator Walker?

**Senator Walker:** Just give them a chance.

**The Chairman:** There is one other thing.

**Mr. Ewens:** Senator Molson, further to the discussion you commenced, at the time of the death of the widow who had obtained the benefit of a roll-over on her husband's death, her estate is deemed to realize the capital gain and no further roll-over is provided for her beneficiaries.

**Hon. Mr. Phillips:** You said there would be no further roll-over to the extent of the capital gain made by the trust.

**Mr. Ewens:** At any rate, on the spouse's death—that is, the wife's death—there is a deemed realization provided by section 104(4).

**Senator Molson:** Even if the capital is still designated as passing, on her death, to the children?

**Mr. Ewens:** Yes.

**Senator Molson:** There is no roll-over to the second generation then?

**Mr. Ewens:** That is right.

**The Chairman:** If she obtains capital, then there is a deemed realization.

**Mr. Ewens:** Only if she dies and the capital is to pass on to her children. You cannot defer it any longer than that.

**Senator Beaubien:** It cannot go to the grandchildren?

**Mr. Ewens:** It can go to them, but not tax-free.

**Senator Molson:** Why is there realization when it goes from the husband to the spouse?

**The Chairman:** That is just what it says.

**Senator Walker:** There is a roll-over to the wife when the husband dies. If there is a realized capital gain of \$100,000 in the meantime, is there still a roll-over?

**Senator Beaubien:** No, the tax is paid.

**Senator Walker:** By her?

**Senator Molson:** By his estate.

**Senator Walker:** Once the estate has been settled, there is a roll-over. Five years later there is a capital gain in the amount of \$100,000. Would that result in a roll-over on the wife's death?

**Mr. Ewens:** No. Her trustee pays the capital gains tax at the date that the trust realizes the gain.

**Senator Walker:** Out of the residual savings?

**The Chairman:** Yes.

**Hon. Mr. Phillips:** As an individual.

**The Chairman:** Yes.

**Senator Molson:** Why is there realization on her death if she was never been designated as the beneficiary of the capital? The capital is designated, by the poor chap who died, to go to the children, and his wife has a life interest and it is held in trust for this purpose. Why is there a roll-over on her death?

**Mr. Ewens:** An indirect answer, Senator Molson, would be that if the husband had bequeathed the property directly to the children, on his death there would be a deemed realization. The bill, however, creates relief if he leaves his estate to his widow or to a qualifying trust for her.

**The Chairman:** Honourable senators, we will adjourn until 9.30 tomorrow morning.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

STANDING SENATE COMMITTEE ON

# Banking, Trade and Commerce

The Honourable SALTER A. HAYDEN, *Chairman*

No. 45

THURSDAY, OCTOBER 28, 1971

**Ninth Proceedings on:**

**"Summary of 1971 Tax Reform Legislation"**

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Thursday, October 28, 1971.

(56)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further examine:

“Summary of 1971 Tax Reform Legislation”

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Connolly (*Ottawa West*), Desruisseaux, Gélinas, Macnaughton, Molson, Sullivan, Walker, Welch and Willis—(14).

*Present, but not of the Committee:* The Honourable Senator Laird—(1).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *Canadian Petroleum Association:*

Mr. D.B. Furlong, Managing Director;

Mr. F.J. Mair, Manager, Administrative Services, Hudson's Bay Oil and Gas Company Limited;

Mr. R.C. McCallum, Treasurer, Canadian Fina Oil Limited.

### *The Mining Association of Canada:*

Mr. C.R. Elliott, First Vice-President and Chairman, Tax Policy Group. (President, Conwest Exploration Limited);

Mr. J.L. Bonus, Managing Director and Chief Executive Officer;

Mr. D.H. Ford, Chairman, Tax Committee, (Director of Taxation, Noranda Mines Limited);

Mr. D.B. Craig, Member, Tax Committee, (Taxation Manager, International Nickel Company of Canada Limited);

Mr. K.E. Steeves, Member, Tax Committee, (Vice-President—Finance, Bethlehem Copper Corporation, Limited);

Mr. V. St. Onge, Member, Tax Committee, (Taxation Manager, Quebec Cartier Mining Company).

### *The Canadian Mutual Funds Association:*

Mr. A.D. Johnstone, President, (President, Mutual Funds Management Corporation Limited);

Mr. J.D. McAlduff, C.A., Chairman, Taxation Committee, Vice President and General Manager, Investors Group Trust Co. Limited);

Mr. W.R. Miller, Chairman, Administrative Committee, (Vice-President, United Funds Management Ltd.);

Mr. C.T. Grant, Vice Chairman, Taxation Committee, (Counsel, Commonwealth International Corporation Limited).

At 12:35 p.m. the Committee adjourned.

2:15 p.m.  
(57)

At 2:15 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Benidickson, Blois, Burchill, Connolly (*Ottawa West*), Desruisseaux, Gélinas, Macnaughton, Molson, Smith and Willis—(11).

*Present, but not of the Committee:* The Honourable Senator Thompson—(1).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *Canadian Pulp and Paper Association:*

Mr. Howard Hart, Executive Vice President;

Mr. A. Hamilton, President, Domtar Limited;

Mr. T. Bell, President, Abitibi Paper Company;

Mr. Colin Brooke, Manager, Tax Division, Domtar Limited;

Mr. R.W. Wilson, Tax Specialist, Consolidated Bathurst Limited;

Mr. D. Ford, Northwood Pulp;

Mr. D.A. Wilson, Director, CPPA.

At 3:30 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, October 28, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, as I told you yesterday, today we have a number of submissions. This morning we will hear from: the Canadian Petroleum Association; The Mining Association of Canada; and The Canadian Mutual Funds Association. We have fixed a hearing for the Canadian Pulp and Paper Association for 2.15 this afternoon.

We have here this morning representing the Canadian Petroleum Association: Mr. D. B. Furlong, who is the Chief Executive; Mr. F. J. Mair, Manager, Administrative Services, Hudson's Bay Oil and Gas Company Limited; and Mr. R. C. McCallum, Treasurer, Canadian Fina Oil Limited.

Mr. Furlong will make an opening statement, and then he will operate with his panel.

**Mr. D. B. Furlong, Managing Director, Canadian Petroleum Association:** Thank you, Mr. Chairman.

Honourable senators, we do appreciate this opportunity to meet with you today. Mr. Frank Mair is on my immediate right, and Mr. Ron McCallum is sitting next to him. We in the Canadian Petroleum Association represent over 200 companies engaged in exploration, development and transportation of oil and gas and their allied functions. These two gentlemen who are with me are part of a committee of income tax experts who have been concerned most of their professional lives with the tax problems of the oil and gas industry. In particular, this committee has actively participated in the last few years in reviewing the Government's tax proposals and the preparation of our communications to you and to others on this subject.

We recognize that we are speaking on behalf of a sectional group, the oil and gas group, and we also recognize that you gentlemen are looking to the interests of Canada as a whole. But we believe that our proposals are directed to the same broad interests as those you are concentrating upon, and that the comments we make, although they refer only to the oil and gas industry, are designed to be, and are, in the general interest of Canada.

We would like to say politely but forcibly that we believe many of the provisions of Bill C-259 will damage and not assist Canada's progress.

I would now like to call on Mr. Mair to specify the areas that we would like to highlight for your approval or discussion today.

**Mr. F. J. Mair Manager, Administrative Services, Hudson's Bay Oil and Gas Company Limited:** Honourable senators will recall that the Canadian Petroleum Association made a submission to this committee in May, 1970, and we still feel that the recommendations we made in that submission are applicable and should be considered. As the result of the various submissions, your committee recommended, for example, that the depletion base be broadened for earned depletion. That has not been done, and this is one of our main points.

I will summarize the comments we make in this submission. Firstly, we recommend that the earned depletion requirements be made consistent by providing a bank of earned depletion based on expenditures made since 1947, and also with respect to costs subsequent to that date such as the costs of resource properties, interest and of depreciable properties. Secondly, we recommend that where the act as it presently exists requires that a grouping of depletion be made, the earned depletion should follow the same pattern.

Thirdly, we recommend that proceeds from the sale of resource property should be treated in a manner that is consistent with the treatment of acquisition costs of those properties.

Fourthly, we recommend that mergers or amalgamations or the transfer of assets between companies, wholly-owned subsidiaries, should not be subjected to tax, as is proposed in this bill.

Fifthly, we recommend that the new act should not have a retroactive effect, as it does in some cases.

Finally, we would ask that much of this act be clarified, so that we can understand what it does say.

We are very concerned in many cases, particularly with respect to partnerships. We do not know whether we are a partnership when we go into a joint venture or not. We feel that if we are, this will cause a great deal of difficulty in the oil industry because, as you know, we do have many joint ventures.

We do have some specific recommendations as to what parts of this bill should be changed or amended. We can go into those later, but as of now we would be happy to answer any questions you may have with respect to our submission.

**The Chairman:** Mr. Mair, you were talking about the retroactive effect of this bill in relation to your industry. Would you illustrate that?

**Mr. Mair:** Yes. This is not specifically related to our industry. Section 80 of the proposed bill would tax gains

on the redemption of bonds and a gain on redemption of bonds is related to the issue price. To use Hudson's Bay Oil and Gas as an example, we issued bonds in 1955 and as of now they are at a substantial discount. The bill would tax any gains that we made on the redemption of those bonds.

I recognize too that those amendments which have recently been published change that. They did not amend section 80 but provided a new section, 39(3) in which they are still taxed, but they are taxed as a capital gain rather than as ordinary income. So it has changed to some extent, but it is retroactive legislation to the extent that these bonds are now at a discount.

**Senator Connolly:** If capital gains are to be taxed for everyone else and if you make a capital gain on redemption of one of your bonds, is it not equitable and reasonable to assume that you should have to pay the tax?

**Mr. Mair:** I would have no objection to paying a capital gains tax on any gain we made, if it were done consistently with other gains, which presumably are to be taxed on any gain after valuation day. But there is no provision to tax these on valuation day value: it takes them on the gain that has been made prior to that time.

**Senator Beaubien:** What would you have paid for the bonds?

**Mr. Mair:** As an example, those bonds were issued at 100. Recently, as you know, the price of the bonds has increased, but they were trading around 80 to 85.

**Senator Beaubien:** If you paid 100 for them, you would not be taxed?

**Mr. Mair:** No, we would not. My point is that if we bought the bonds today, we would not be taxed, but if we buy them next January we would be taxed on the 15 points difference.

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** Mr. Mair, if the chair approves, I think it would be more helpful to this committee if, instead of dealing with general roll-over and merger provisions, partnerships, retroactive features—some of which we have already studied and which are worthy of further study, if we have time—you concentrated on the earlier items that you mentioned, because they are specifically related to your industry, such as the extension of the base for earned depletion and this sort of thing. My feeling is that we should get through with the particular items that affect you most, and then let us see how much time the chair will give on the other items. Otherwise, I think we will have a tendency to roam all over the act.

**The Chairman:** I provoked this discussion, I asked the question. Mr. Mair, we have had some presentations here on the matter of earned depletion and the broadening of the qualification; and also on other works of the proposed regulations. I assume that both of these items are pertinent to your industry.

**Mr. Mair:** This is the most important item we have.

**The Chairman:** Would you develop this and tell us what your position is?

**Mr. Mair:** As we set out in our previous submission, we have properties now which have resulted from tremendous expenditures made over the past 20 years. Our feeling is that no recognition is being given to that. Production from these properties will require us to earn depletion so that, although we may have spent a lot of money in the past, we now will have to spend more moneys in order to get depletion on all those properties.

These investments were made with the carrot held in front of us that we were going to get depletion some day. As you people well know, the oil industry has gone for many years—which I think is reasonable—without being taxed, because of these tremendous expenditures, but always with the idea that when we get in to produce the properties we would get depletion. Now the new act proposes to restrict that depletion and you will not get it unless you continue to explore and develop.

**The Chairman:** In your operations to date, did you say you went without income or without profit?

**Mr. Mair:** Without taxable income. It is because of the provisions of the existing act, which recognizes the long pay-out period of the oil industry. That is, a company may have to spend 15 to 20 years before it finally reaches a position of getting a pay-out. Because of the provisions of the existing act, the company does not pay tax, but it does come to the point now where most companies are approaching the taxable position, and many of them are taxable now.

**The Chairman:** Let me analyze that for a minute. Going back to 1947, you spent a lot of money on development?

**Mr. Mair:** A tremendous amount.

**The Chairman:** And you have taken care of that through your earnings. So, you have increased your cash flow in that fashion, and in that way you have money available to pay dividends and thus keep the public interested in your shares.

**Mr. Mair:** That is what we are hoping to do. Of course, there is one other side of that picture. Most investors in the oil industry went into it with the idea of a capital gain too.

**The Chairman:** Whatever the ideals they went into it with, of course, the act down to this date has at least seen to it that if they earned money and spent money they did not pay any tax on what they earned, to the extent that they have expended moneys. So, only the net that they might have would have been taxable in that period.

**Mr. Mair:** That is true.

**The Chairman:** I am trying to figure out why you want to go back to 1947 now and want to include all those expenditures that you made as part of earned depletion. I can understand from here in, because you have two categories. You have your write-offs, that is, your capital cost allowances; and then you can earn depletion by defined expenditures. Why would you go back to 1947 and pick that up? I would like to know what your thinking is on that?

**Mr. Mair:** Perhaps I may illustrate that by an example. If we make an investment, say, in gas processing plant, we



use a discounted cash flow method of evaluating that gas plant. Up to this point we have said we will be able to get depletion on the sale of natural gas, liquids sulphur, and so on. So our evaluation of this project was based on the fact that we would get depletion. Now we have come to the point where we will not get that unless we go and spend money on exploration and drillings. Therefore, many of the evaluations of producing wells, gas plants and this sort of thing have been based on the fact that we expected to get depletion. Now the act is changed so that we will not get it unless we expend further amounts of money.

**The Chairman:** Except that, in the period down to this date, and before the new act comes into force, in relation to those expenditures you were reimbursed out of your earnings for the expenditures you made. What further did you get in that period? You got depletion?

**Mr. Mair:** No, you did not get depletion. Because of the way in which depletion is calculated, you do not get depletion until you are in a taxable position.

**The Chairman:** All these things do not matter unless you have earnings.

**Mr. Mair:** That is true. The point I am making is that the shareholders invested risk money, risk capital, and were encouraged to do so with the idea that, over a long period of time, say ten years or more, this capital would be spent and would develop properties which would produce income for them. We have now reached that point in the industry. We are reaching that sort of maturity where we would expect to get a return on our investments. But now the ball game has changed.

**The Chairman:** Well, just trying to relate the two, starting with the new act you know where you are at. You will get write-offs.

**Mr. Mair:** Yes.

**The Chairman:** And you will get what is called earned depletion within the conditions laid down for that. So two questions arise. I asked you only one. I asked you why you thought you should be able to bring what you have spent and deducted from income in the past into the new rules provided in the new act. The second question is: What is wrong with the conditions for qualifying for earned depletion? If they do not go far enough to suit your industry or meet the requirements of your industry, then what additional things are needed?

**Mr. Mair:** We feel that they are too restrictive and that any item which must be deducted in calculating the depletion should also qualify to earn depletion. For example, the acquisition cost of petroleum and natural gas rights must be deducted before you calculate depletion. We feel, therefore, that it should earn depletion. The same is true of interest expense which must be allocated and deducted before we calculate depletable profit. We feel it should also earn to the extent that you have it deducted.

In addition to that, the depreciable cost of assets—for instance, well heads, gas plants and that sort of thing—must be deducted. We feel again, therefore, that they should earn depletion.

**The Chairman:** You say that anything affecting your industry that is entitled to capital cost allowance should also qualify for earned depletion as well—that is, the particular thing should qualify?

**Mr. Mair:** I feel that is true, yes.

**The Chairman:** As a general principle.

**Mr. Mair:** As a general principle, yes. I think you will recall, Mr. Chairman, that your committee did recommend the broadening of this depletion base, and we are in complete agreement with what you suggested.

**Senator Connolly:** In effect, what you are saying is that the expenditures that you incur, whether they are to purchase properties or to erect plants or processing facilities, are first of all deductible from any income that you have.

**Mr. Mair:** Yes.

**Senator Connolly:** As such, those expenditures you get out of your revenues without paying tax on them. In addition to that, what you are claiming is a depletion allowance on those same expenditures, a return of capital. Will you tell us neatly what the justification is for the additional tax concession? I am not questioning it or quarrelling with it. I am simply asking you to state why it is required.

**The Chairman:** May I add, Senator Connolly, that that has been the "plus" in dealing with this industry as far back as you want to go. They did have write-offs and the sweetener was depletion.

**Senator Beaubien:** What is done in the United States? What is the law there?

**Mr. Mair:** Depletion is calculated on a completely different base in the United States. It is calculated on what we call gross depletion. That is, they have an alternative and they must use the better of the two methods of doing it. They calculate depreciation allowance based on the gross income from those properties, but it is limited to a percentage of the net profit; that is, 50 per cent of the net profit on a property-by-property basis. In Canada, on the other hand, we calculate depletion on a net basis—that is, the net profit—and we do it on an overall basis. All properties are thrown in together.

**Senator Connolly:** Would you care to answer my question?

**Mr. Mair:** I am not sure I can recall the exact question, Senator Connolly.

**Senator Connolly:** Well, I say that in the first instance, for all the expenditures that you make in establishing and operating a gas or oil field, you are allowed deductions from taxable income. In addition to that, you say the industry should have a further tax incentive, namely that all those items should qualify for depletion. This is a double incentive, is it not? I ask you why you should have it.

**Mr. Mair:** I think the simple answer might be that the rate of return in the oil industry, contrary to what most persons outside the industry might believe, is relatively low. It is in the range of 7 to 8 per cent; that is, with the existing



depletion law the rate of return is in the range of 7 to 8 per cent for the whole industry.

**Senator Molson:** Seven or 8 per cent of what?

**Mr. Mair:** Of capital invested. This is with the existing law. The proposed bill would restrict the amount of depletion we are allowed. We are saying that this restriction should not be as severe as proposed, and when we make expenditures to acquire acreage or equip wells, and so on, that should help us earn this depletion. That is, if we are to accept the concept of earned depletion, we propose that it should be broadened.

**Senator Walker:** You want to be paid twice, in other words. You are already being allowed all your expenses. Those expenses having been allowed, you now want depletion on what the expenditures have originally been. Is that correct?

**Mr. Mair:** We want depletion on the profit, after having deducted those expenses. The proposed bill would restrict that depletion by saying that you must spend money in order to earn that depletion. We are saying that if we spend money on developing these projects, that money should then earn the depletion.

**Senator Connolly:** Are you telling us that because this is a wasting asset it will finally be completely exhausted in time, and that, therefore, the capital that is required to develop it should be returned through the tax act?

**Mr. Mair:** That is the original basis on which depletion was set up, that it is a wasting asset and that the capital should be returned to the shareholders without tax. If you analyse it carefully, essentially the depletion is an incentive; that is, it is a reduction in the tax rate in order to encourage people to invest in that industry.

**Senator Connolly:** You are coming to the same point. Because it is a wasting asset, you are making the argument that you should have depletion as well as the write-off.

**Mr. Mair:** All industries have the write-off. They have the write-off of their expenditures. We do have that perhaps at an accelerated rate, but in addition to that it is normal in resource industries to provide this incentive of depletion, which, essentially, is just a lower tax rate in order to encourage development of those industries.

**Senator Connolly:** All right. That is the argument. I am glad to have that on record.

**The Chairman:** Senator Connolly, not only is that what the witness says, but that is what the summary of the tax reform legislation says.

**Senator Connolly:** Of course. I know.

**The Chairman:** It says that substantial tax incentives are maintained in the new bill. In other words, they existed prior to the new bill and they are maintained in the new bill to recognize the risks involved in exploration and development, the international competition for capital and the levels of incentives available in other countries. That is the reason why they continued the depletion in the form of earned depletion; they felt that it should not be automatic.

**Senator Connolly:** That not only applies to this industry; it applies to any resource industry. I think it is appropriate for us, when we have witnesses from a given industry, to determine if there should be two tax incentives, why the second incentive would be justified. I think you have given the reasons and the chairman has read from the summary which says that the principle is recognized in the law.

**Senator Walker:** Just the amount?

**Mr. Mair:** We are concerned with just the amount.

**The Chairman:** The attack here is that the definition of earned depletion is not broad enough.

**Senator Molson:** Mr. Chairman, surely we have dealt with this at great length on the White Paper and our recommendation at that time was that the base might be broadened.

**The Chairman:** We have not changed our ideas on that.

**Senator Molson:** The only question to be determined is whether there is a way in which we can help these people.

**Senator Connolly:** What we need are details as to the items that should be added to the definition of "earned depletion."

**Senator Burchill:** Is that what the term "broadened" means?

**The Chairman:** Yes, it means increasing the items.

**Senator Burchill:** You say you recommend that the grounds for depletion be broadened? You are recommending what this gentleman is asking?

**The Chairman:** In principle, yes.

**Senator Walker:** Only he feels, and probably quite properly, that the base should be broadened even more.

**Senator Beaubien:** Mr. Mair, if Bill C-259 had been the law 15 years ago would the different companies that make up the Canadian Petroleum Association have paid more taxes than they have over the last 15 years?

**Mr. Mair:** Many of the companies would have paid more taxes because they would not have earned sufficient depletion to claim a depletion allowance. I might go one step further. Many of the projects might not have been started at all if this earned depletion concept were as narrow as it is, because we would have had to take into account the fact that you might not get depletion. This is particularly important to our industry at this time. As you know, we are expanding into the northern parts of Canada, the Arctic islands, offshore; and the huge amounts of capital that are required for that exploration and development program would not be attractive if we are too restricted in our allowance for depletion.

**Senator Connolly:** Is the one-for-three formula too restrictive?

**Mr. Mair:** We argued in our previous submission that it should be no more than one-for-two and that it should be broadened. Now, they have not changed either of these items for the oil industry. In fact, they have made no changes at all except in the proposed regulations which

state that interest expense will not be an item which will earn depletion either.

**Hon. Mr. Phillips:** Mr. Chairman, may I draw your attention to the following item, and perhaps we can get back to the specific point. We are all in agreement, as quoted on page 4 of the brief, that both the Senate committee and the House of Commons committee recommended that the base for earned depletion should be broadened to include depreciable assets and the costs of resource properties. So both the Senate and the House of Commons committees were convinced on that point. Therefore there is no sense in carrying further coals to Newcastle on that. They were not reflected in the bill, however. That was the recommendation of these two committees. Then we go back to the earlier part of your present brief and on page 1, in the second paragraph, towards the end, you are saying:

—therefore all "Canadian exploration and development expenses" as defined in the proposed legislation should earn depletion in addition to other costs such as interest and depreciables.

**Mr. Mair:** That is right.

**Hon. Mr. Phillips:** In effect, are you asking therefore that the earned depletion base include not only depreciable assets and the cost of resource properties, but also all Canadian exploration and development expenses, as defined in the proposed legislation? Broadly speaking, would that cover what you are asking?

**Mr. Mair:** Yes.

**Hon. Mr. Phillips:** So, in effect, you are asking for a recommendation that the base in respect to earned depletion be extended not only to cover depreciable assets and the cost of resource properties, which has already been recommended by this committee, but also in relationship to the wording of the new act to include all Canadian exploration and development expenses as defined in Bill C-259?

**Mr. Mair:** Yes, sir, that is right.

**The Chairman:** The committee might be interested in knowing the exact language of our prior recommendation. May I just refer you to page 41 of our Report on The White Paper, paragraphs 26 and 27:

26. Eligible expenditures for purposes of earning depletion under the White Paper proposals are section 83A expenditures excluding the cost of acquiring mineral rights. There expenditures are in respect of exploration and development. Many expenditures not included in these 83A costs so as to be entitled to 100 per cent write off are equally exploration and development expenses. Thus replacement of capital assets in expansion of refinery facilities and well and associated equipment are necessary costs in developing oil and gas reserves. Likewise expansion of refining facilities and replacement of equipment and buildings are necessary if continued operation is to be maintained. Gas plant facilities should be considered an integral part of any development program. Gas at the wellhead usually is not a saleable product and must be separated from certain components to bring the gas up to the standard set by the Gas Conservation Board. In addi-

tion government orders (provincial) require the conservation of gas that is produced with oil.

27. While the treatment of these facilities as depreciable assets subject to capital cost allowance may be justified rather than broadening the scope of exploration and development expenses under Section 83A of the Income Tax Act, your Committee is of the opinion that the basic character of these expenditures is part of any development program intended to lead to production in commercial form of oil and gas. Accordingly, your Committee is of the view that eligible expenditures to earn depletion should include all such expenditures for purposes of the determination of earned depletion.

This is exactly what you are asking for today and we have tried that once before, in our recommendation; and neither your recommendation nor ours was heeded.

**Senator Connolly:** And the House of Commons committee pretty well went along with this recommendation.

**Hon. Mr. Phillips:** The House of Commons committee went along to the extent that depreciable assets and costs of resource properties be included. I do not think they went quite as far as we did in respect to exploration and development expenses.

**Mr. Mair:** Mr. Chairman, the Commons committee recommended that we go back to the inception for past expenditures.

**Hon. Mr. Phillips:** That is a different point.

**Mr. Mair:** That is true.

**The Chairman:** Do you have any other questions on this point? It does not seem that much needs to be said to ascertain what our view is. It is already in writing.

**Senator Connolly:** We have said it, the Commons have said it, and the industry has said it. Has the witness any idea why the bill does not say it?

**Mr. Mair:** No, I do not. I thought that this was a fairly logical and reasonable request, and I have no idea why there was no attention paid to the representations either of the Commons committee or of this committee.

**Senator Connolly:** Would it be that the tax savings represent money that the Treasury needs? Is that the only conclusion you can come to?

**Mr. Mair:** I think it might be. It may have some bearing, but this is some time down the road, and I really do not think that the immediate effect on tax revenue is being considered.

**Hon. Mr. Phillips:** Senator Connolly, you will see at least one of the reasons why the Minister of Finance has possibly excluded acquisition costs at the foot of page 2 of the brief.

**Mr. Mair:** I might say, Mr. Chairman, this is one of the answers we were given at one point. However, as we pointed out, this can easily be restricted and should not be a valid reason for rejecting this wholly.



**The Chairman:** Oh, no; there could be an exclusion for transactions of that type.

**Mr. Mair:** Quite.

**Hon. Mr. Phillips:** It is not for us as a Senate committee to play off one sector of the economy against another, but one question was not raised by the witness. At the foot of page 3 of the brief, where reference is made to eligible expenditures in relation to the broadening of the earning base, the comment is made that the mining industry has done very well but that it has been neglected. Representatives of the mining industry appeared here yesterday and they were very unhappy.

**Mr. Mair:** If they were very unhappy, then we are just slightly more than "very unhappy".

**Hon. Mr. Phillips:** They are unhappy, but you say they are well treated.

**Mr. Mair:** Particularly with the deputation we have here today, I would not like to make the point that they are well treated. I think they have received some concessions in this area of earned depletion which we were not given.

**Hon. Mr. Phillips:** The gravamen of their case is that they are not so sure they have it.

**Mr. R. C. McCallum, Treasurer, Canadian Fina Oil Limited:** If I may draw your attention to the chart appended to our brief, it depicts the difference in the treatment of certain items which we have been discussing today. You will see the relative treatment of the items which are eligible, presumed at least, between the two industries.

**The Chairman:** I do not understand. Please tell me if I am wrong in thinking you are putting your case forward on the basis that your neighbours, the mining industry, are better treated than you. You are putting forward the merits of your case.

**Mr. McCallum:** We are merely suggesting—and this is just one of the points raised in our brief—that we are in many instances treated comparably with the mining industry but in these specific cases, so far as earned depletion is concerned, we are not.

**Mr. Furlong:** We are in many ways similar industries, and it is only logical and proper to treat us in a similar manner.

**Mr. Mair:** That is not to say that the mining industry is getting too much, but that we are getting only one item under the category of earned depletion.

**Mr. McCallum:** Mr. Chairman, before we leave this matter of earned depletion, we should refer to one other aspect which is now of importance to the industry. As you well know, the industry is on the threshold of a new era as far as development is concerned. It is now expanding into the frontier areas, such as the Arctic islands and the offshore areas of Canada, on the east coast, the west coast and Hudson Bay.

The bill as presently drafted will reduce the expenditures which will fall under earned depletion proportionately to the total cost of finding reserves in the future. This is to say the exploration portion of our total cost of finding

and development of oil will not in the future form the same proportion of our total costs as it has in the past.

Historically, these costs have amounted to approximately 60 per cent of the total, whereas in the future, while we do not have statistics available, we anticipate a substantial decrease.

**The Chairman:** Do you mean by that that once you find and prove a well which can be operated commercially you just go ahead and operate it?

**Mr. McCallum:** Our problem is that when we find oil in the Arctic islands, or offshore, there are tremendous additional costs involved in providing the equipment necessary to move the oil to market. As the legislation is presently constituted, all these costs will not earn depletion.

**The Chairman:** They will be entitled to capital write-off.

**Mr. McCallum:** They will be entitled to capital write-off, but they will not earn depletion.

**Senator Connolly:** When oil or gas is discovered in remote areas such as offshore or in the Arctic islands, does not the real responsibility of the producing companies cease? The matter of moving those products to the market is a problem for another industry, namely, the pipeline industry, although you may have interests in pipelines.

**Mr. McCallum:** Yes.

**Senator Connolly:** Are we referring to your industry or the transportation industry when we discuss the question of moving these remotely produced products to the market?

**Mr. McCallum:** I may have misled you when I referred to the cost of moving the products to the market. I am not referring to the pipeline or the transportation portion of the costs, but to the hardware and machinery necessary for production.

For example, operating offshore involves the construction of tremendously expensive production platforms which I understand can cost in the range of \$20 million to \$30 million depending on the size of the field. This type of operation has never before been encountered and, as we interpret the bill, will not qualify for earned depletion.

**Senator Connolly:** There has been considerable experience in offshore production in the Middle East, the North Sea and the Gulf of Mexico. What is the status of depletion for the structures in those areas?

**Mr. McCallum:** For example, under the United States law the costs do not particularly apply as far as the depletion calculation is concerned. As Mr. Mair indicated previously, it is calculated as a percentage of the gross income. There is not necessarily a relationship between the costs incurred and the depletion allowance.

**Senator Beaubien:** It does not have to be earned, but is received automatically.

**The Chairman:** Yes, that has also been the case here. It would be interesting if we could have an enumeration. The effect of these provisions on the offshore search for oil and the calculation of the costs for earned depletion is a



new consideration. It does qualify for capital cost allowance.

I have seen photographs of platforms and rigs, and everything else, but I am not an oil man and not many, if any, of the committee would qualify as experts. Therefore, if we are going to talk intelligently or deal intelligently with that subject, which may be a special feature now—

**Senator Connolly:** Especially with the present development in Nova Scotia.

**The Chairman:**—we should now have some help from you as to the set-up required and the cost of making such a step-up for those developments. The only value they have to us is that they may assist us in our consideration. But we should have them quickly, because these committee hearings will not go on very much longer and decisions will have to be made soon.

**Mr. McCallum:** I am not qualified to discuss the technical aspects.

**The Chairman:** I am not thinking of technical aspects, but of items.

**Senator Connolly:** Mr. Chairman, you are not thinking of getting it today. You are thinking of getting some material supplied to us reasonably quickly.

**The Chairman:** I would say within not more than a week.

**Senator Connolly:** Can you do it?

**Mr. McCallum:** I believe we can.

**The Chairman:** If you are talking about technical aspects, that is fine, if you wish to write a paragraph on that. But I am thinking about all the elements that go into this set-up that gives you the facility for making your search beneath the floor of the ocean, and even to penetrate that, in order to locate oil. What are the things that go into that? You will have a list, because you are writing them off for capital cost allowance.

**Mr. McCallum:** I attempted to get some statistical information before I came here. Unfortunately, we are at the stage where we are just getting involved in this type of operation in Canada. We do not have any statistics available. I attempted to obtain some from the United States, but was unable to do so.

**The Chairman:** Something is being built here now and is working. Therefore, the information must be available. This is an important development to the region where this is going on. I am thinking in terms of Nova Scotia, the Maritime Provinces, and out on the west coast. It is very important. It can improve the economy of those areas very substantially, and it can also improve the employment situation.

**Senator Connolly:** Mr. Chairman, I wish to make a correction in the record. I am urged to do this by our colleague, Senator Molson. He said that to be perfectly impartial, from the point of view of this committee, we should not talk about Nova Scotia, but about Sable Island.

**The Chairman:** The designation "Nova Scotia" was intended as a general location of an area. Certainly, Sable

Island is closer to Nova Scotia than it is to Ottawa. Are there any other points that you wish to raise, Mr. McCallum?

**Mr. McCallum:** The only thing that I wish to add is that we will certainly attempt to have something in your hands within a week.

**Senator Connolly:** Do not fail to say what would be the impact on development offshore of the absence of depletion allowance under the proposed bill.

**Hon. Mr. Phillips:** The committee has been concerned with the distinction between partnerships and joint venture operations. Obviously, joint venture operations are closely connected with your segment of the economy. Can you help out a group of confused senators, including counsel, as to the basic distinction between a joint venture operation and a partnership, as defined under the new bill? We are trying to get a definition of a joint venture operation with a view to indicating where it differs from a partnership as covered by the statute. It is one of the problems that concerns us.

**Mr. Mair:** Under the terms of the new bill I could almost join you, because I am also confused. A description of a joint venture, which might help to distinguish it from a partnership, is that if two or more companies join together in what we call a joint venture, each has the right to take its product in kind. We have contacted the Department of Finance officials on this point, and they have told us that it is just a question of law. In other words, if you find an oil well, each can take his share of the production, and each can determine at which rate he wants to write off his capital cost allowance, and all that sort of thing, under the existing act.

We are not certain—and this is one of the points we have made in our submission—that we will not be classed as a partnership, despite the fact that we think we are different from a partnership.

**Hon. Mr. Phillips:** Do you merge ownership with fixed assets in a joint venture, or do you retain your own ownership?

**Mr. Mair:** It is owned jointly. All of the equipment is owned jointly. Another difference in a partnership is that each partnership can commit the partnership to whatever actions he may take. In a joint venture operation one partner is designated as the operator and is the person who has the authority to do all the various things necessary to develop and equip the property and to produce it.

**The Chairman:** That would not be an essential difference. The basics of a partnership would be the sharing of costs and profits.

**Mr. Mair:** We share the costs, but we hope that the distinction of being able to take the product in kind is something different from a normal partnership. We are not certain of this, and that is the reason why we have made the comment.

**The Chairman:** Is there not an exclusion in the bill—I do not pretend to know the whole thing—on the application of partnerships to exploration and development? Would that be a method of providing an exclusion?

**Mr. Mair:** There are some true partnerships, of course. They refer to partnerships in section 66 of the bill.

**The Chairman:** If, in attempting to deal with those various classes, you used the exclusion method and made it available at the option of the joint venturers as to whether they would go the partnership way or the other way—

**Mr. Mair:** That is what we recommend.

**Senator Connolly:** Do I understand that in your industry you have partnerships operating in certain instances and joint ventures in others?

**Mr. Mair:** That is true.

**Senator Connolly:** What is the difference between the two, in your industry?

**Mr. Mair:** In partnerships, individuals—it is because of the way the Income Tax Act is written that it has been done this way—join in a true partnership or a partnership agreement in which each is committed and is liable for any of the actions of the others; whereas, in a joint venture, it is an agreement drawn between two or more companies, generally speaking, in which they appoint one as operator. But he is operating merely to cut down expenses, so that you will not have two or three people operating in the same field.

We go further than that, of course. We then have what we call a unitization, in which all owners put their acreage or their rights into this agreement and one operator produces it. Each owner of rights in that unitization will receive a net amount, even though there may not be a well drilled on his property. A calculation is made of what reserves he has, or the company has, in the whole pool, and he receives his pro rata share of that.

**Senator Connolly:** This is still a joint venture?

**Mr. Mair:** It is one step further than a joint venture.

**Senator Connolly:** But it is still arising out of a joint venture.

**Mr. Mair:** that is true.

**Senator Connolly:** So the only distinction as between a joint venture and a partnership would be the arrangements as to the operation.

**The Chairman:** I do not think that is sufficient to make a real distinction.

**Senator Connolly:** I do not think it is a legal distinction.

**The Chairman:** As you know, senator, you can have a limited partnership. In other words, a partner can specify the limit of his liability in the partnership.

It seems to me that the only way to deal with this would be by the exclusion of certain types of operations—not an absolute exclusion, but just the exclusion at the option of the parties. There could conceivably be situations where you might want to espouse what is in the act.

**Mr. Mair:** That is true, Mr. Chairman, and that is why I agreed with you earlier when you mentioned we should be able to make an election as to whether we wish to be

treated as a partnership or not. I might add further that in the tax statutes of the United States there is a provision whereby they can elect not to be treated as a partnership, and, for that reason, many of our agreements state that this is not a partnership.

**Senator Molson:** Mr. Chairman, is there an element of an agency in a joint venture? In other words, if one company is acting on behalf of the others, is that company not then an agent for these other participating companies?

**The Chairman:** I am not sure that is what they have described. There would be a boss man.

**Senator Molson:** Yes, but he is given powers by the other participating companies.

**Senator Connolly:** I would be inclined to feel that there would be an element of agency, Mr. Chairman.

**Mr. Mair:** Yes.

**Senator Connolly:** We are comparing oranges and apples, perhaps, because the legal definition of a partnership is one thing, and the practical operation of a partnership in the oil industry in Canada, as against the operation of a joint venture in the oil industry in Canada, is another thing. The witness is describing what the practical application is. I do not feel we should ask him to define a partnership because we cannot do it ourselves, and some of us are lawyers.

**The Chairman:** I was ready to concede. I was not ready to abandon the search for an alternative route. I feel the exclusion route is the way. If we attempt to define a partnership we would only create more litigation, but if we provide the exclusion route we would lessen the possibility of litigation.

Are there any other points you wish to develop?

**Mr. Mair:** There is one other point, and it is in regard to an anomaly under the present act which is carried forward into the new bill. Perhaps I can best illustrate it by using figures: If you were to purchase some petroleum and natural gas rights for, say, \$900,000, and then you turned around and sold them to someone else for \$900,000, you would be liable to pay \$150,000 in income tax.

**The Chairman:** Where you have no income arising out of the deal?

**Mr. Mair:** That is right.

**The Chairman:** That is interesting.

**Senator Molson:** I wonder if we could learn how to do that, Mr. Chairman.

**The Chairman:** I was just wondering that myself. I know in the practice of law we have not found any way to do it.

Where is that dealt with in your brief?

**Mr. McCallum:** It is at page 5 of our brief.

**The Chairman:** At page 5, half way through the second paragraph, you state: "We know of no other case where a tax is levied without there being a profit".



**Senator Connolly:** What clause of the bill would this be under?

**Mr. Mair:** This arises out of a combination of sections 59 and 66.

**Senator Connolly:** What is your position with your company?

**Mr. Mair:** At the present time I am the General Manager, Administrative Services. Previously I was the Treasurer of Hudson's Bay Oil and Gas Company Limited.

**Senator Connolly:** You have not used a note since you started and now you are quoting us sections of the bill.

**Senator Molson:** Do not get worried, Senator Connolly.

**Mr. Mair:** A situation could arise where this might have an application. For example, two companies who are participating jointly in one area may have a clause or an agreement under which if one company purchases at a Crown sale, a certain acreage for the purchase price of, say, \$900,000, the other company might have 24 hours or one week or one month in which to say it will purchase half of it at a purchase price of \$450,000. In that instance you would be deemed to have bought that half at \$450,000 and sold it for \$450,000 and the tax on that would be \$75,000.

**Senator Beaubien:** How can there be tax if there has been no profit? Is it deemed to be income?

**Mr. Mair:** It arises because when you acquire a lease you must write it off against depletable income, but when you sell it, it is considered to be non-depletable income, so when you buy it, it reduces the amount of depreciation you are able to claim, and when you sell it you do not get that back.

**Senator Connolly:** Mr. Chairman, perhaps this requires some explanation.

**The Chairman:** Yes, we will have a look at it and see what the basic explanation is.

**Mr. Mair:** I might add, Mr. Chairman, that the house committee did recommend that where there was no gain there should be no tax.

**The Chairman:** That is a logical principle; it is basic business.

**Mr. Mair:** Yes, but it is not necessarily logical.

**The Chairman:** I am not suggesting that they both go together. Is there anything else you wish to add?

**Mr. Mair:** Mr. Chairman, I have nothing further to bring forward, except that I do have a list of proposed amendments which we would recommend be made to the act.

**The Chairman:** Do you wish to file them?

**Mr. Mair:** Yes, I will file them, if I may.

**The Chairman:** We will have a look at them.

I would suggest, honourable senators, that these proposed amendments submitted by the Canadian Petroleum Association be printed in our record at this point.

**Hon. Senators:** Agreed.

*Text of proposed amendment follows:*

#### PROPOSED AMENDMENTS

The Canadian Petroleum Association recommends that the following amendments be made to Bill C-259 or the Regulations proposed as a part thereof:

1. that the Regulations proposed by Finance Minister Benson on July 6, 1971 be amended to cover expenditures from January 1, 1948 to November 7, 1969 in addition to the proposed provisions;
2. that Subsections (i) and (iv) of Section (a) of the proposed earned depletion regulations be deleted;
3. that the costs of depreciable assets which must be deducted in calculating depletion should also be eligible expenditures to earn depletion;
4. that Section 69 should be amended to allow the transfer of depreciable assets between taxpayers who are dealing at non-arms-length without attracting income tax;
5. that Section 59 or Section 66 be amended so that the purchase and sale of resource properties be treated in a consistent manner;
6. that the numerous provisions related to partnerships in Subdivision J of Division B of the proposed bill together with 66 (15) (b) (iv) and other parts of Bill C-259 be clarified so that our industry does not suffer adverse tax effects from normal joint venture operations.

We note that there are many amendments to the proposed bill, which our Association has not yet been able to completely evaluate but which do not solve all of our problems; for example, the proposed Section 39 (3) changes the impact of Section 80 of Bill C-259 but still remains retroactive taxation.

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**The Chairman:** We will discuss them later.  
Does that close your submission?

**Mr. Mair:** Yes, Mr. Chairman.

**The Chairman:** We now have the representatives of the Mining Association of Canada. Mr. C. R. Elliott, First Vice-President and Chairman, Tax Policy Group will make an opening statement and introduce the panel.

**Mr. C. R. Elliott, First Vice-President, and Chairman of Tax Policy Group, The Mining Association of Canada:** Mr. Chairman, may I begin my introductory remarks by expressing my appreciation and that of my associates and the association, of having the opportunity to appear before you in respect of our views on Bill C-259.

I believe that the Senate's report on the White Paper would have eliminated most of the features of the bill that we now object to. Our association last appeared on June



18, 1970, at which time we discussed the White Paper on Tax Reform. We now have the actual bill before us, and this makes it somewhat easier to be specific. I hope that since we now have the bill you and your colleagues will find our remarks to be of a more particular nature.

We have endeavoured to express views objectively and to make constructive recommendations. You will note that our submission enters into some considerable comment on specific clauses and proposals contained in Bill C-259, and therefore our remarks made today will be concerned more with technical details of the bill than with its philosophical content. However, I should not like to leave you and your colleagues with the impression that there are not still certain philosophical considerations in the bill that remain of very great concern to our industry. The first section of our submission deals with broad non-technical considerations of concern to the Mining Industry.

With me today are the members of the taxation committee of the association. Your Chairman has already identified me. On my immediate right is Mr. John Bonus, the Managing Director and Chief Executive Officer of our association, who recently moved from Toronto to Ottawa, where he now carries out his functions in the executive offices in this city. We have Mr. Donald H. Ford, who is Chairman of the association's tax committee.

**The Chairman:** We had Mr. Ford here yesterday so we know him.

**Mr. Elliott:** Mr. David Craig I think you probably also know; he is at the far end of the line. We have Mr. Keith Steeves of Bethlehem Copper Corporation, who I think was here yesterday.

**The Chairman:** Yes, we know Mr. Steeves.

**Mr. Elliott:** He is also Chairman of the B.C. Mining Association's Tax Committee, and very familiar with the problems. We also have Mr. Keer Gibson of Clarkson, Gordon & Company, who acts as tax consultant to the Mining Association.

I would like Mr. Ford to comment briefly on two or three matters in the report which we regard as of most concern to us at present, and thereafter we are at your disposal.

**The Chairman:** I understand that this comment will be addressed to items that materially affect mining companies.

**Mr. Elliott:** That is correct.

**The Chairman:** Not general items in the bill.

**Mr. Elliott:** No.

**Mr. D. H. Ford, Chairman, Tax Committee, The Mining Association of Canada:** Mr. Chairman, honourable senators, I realize that some of what I propose to say has been said to you at least once before and I will try not to be any more repetitious than I have to be. However, some of these points are so important to us that I think they need emphasizing.

Our brief deals with problems we see in the bill itself and problems in the proposed regulations. As you know, the regulations governing the mining industry are not yet available. What we have is a news release issued by the

Department of Finance in July of this year outlining the proposed regulations.

**Senator Walker:** This is what you were speaking about yesterday, is it not?

**Mr. Ford:** Yes, sir. There are two important points about this news release, although there are lots of others which we can discuss if there is time or interest. First I would like to discuss the exclusion of expenditures on Canadian exploration and development expenses in the vicinity of a mine after it comes into production. Both exploration and development expenditures in the vicinity of a mine should, we believe, earn depletion. First of all, the word "vicinity" has us puzzled. It is difficult to define. Somebody said that it means "in the neighbourhood of", but that is a fairly vague term. The exclusion of underground exploration is one which puzzles us. We believe that the reason for the exclusion is that the Department of Finance sees great difficulty in differentiating between underground exploration and on-going mining. I think they believe also that little incentive is required to encourage mining companies to undertake exploration underground.

**The Chairman:** You know, Mr. Ford, you say by way of explanation that the department is having difficulty in distinguishing between underground development and the development that flows along in the operation of the mine.

**Mr. Ford:** That is my inference, sir.

**Mr. D. B. Craig, Member, Tax Committee, The Mining Association of Canada:** We are specifically speaking at the moment of underground exploration.

**The Chairman:** I was going to comment that there are in litigation at this time issues which involve this very question, and these distinguish between the two bases. The Department of National Revenue has been able to make the distinction for purposes of making an assessment, and they have submitted their evidence in court. Therefore I am not sure it is a very good explanation as to why the difference cannot be recognized.

**Mr. Ford:** I think that is true. Essentially the words in the act governing exploration are "searching for minerals in Canada" as opposed to delimiting a known orebody, determining the extent of a known orebody. The element of search is not present in that situation, whereas in true exploration you are searching for minerals. These are the words of the present act.

**The Chairman:** Underground exploration would be the search and exploration for minerals.

**Mr. Ford:** Yes, sir. I do not think that many companies lightly undertake underground exploration in preference to surface exploration. It is an extremely expensive operation. The cost of driving a drift underground in order to explore is in the order of \$100 a foot. A 2,000 foot drift is in the order of \$200,000. It just is not possible to drill accurately at any depth from the surface. The point of a drill, as I understand it, tends to wander as you go deeper, so if you are looking at a 3,000 or 4,000-foot depth under the ground in the vicinity of an existing mine you must make your exploration expenditures from underground; this is a

high cost operation and is being excluded from the earning of depletion, which we think is unfair.

**Senator Beaubien:** What would be the reason for excluding it? Is there any reason, or is it an oversight, do you think?

**Mr. Ford:** I believe—and this is a personal opinion—that the exclusion arises out of the difficulty the Department of Finance sees in separating true underground exploration from ongoing exploration of a main orebody, which the chairman commented on.

**The Chairman:** If you are taking a mineral out of a certain level below ground, that is a well recognized type of operation. If you have drills working underground to go to much lower areas to see whether there is a continuity of ore and continuity in grade of what you have, these would appear to be assessments more closely related to exploration than to looking ahead to provide feed for your mill.

**Mr. Ford:** Yes, sir. Consider two situations. If you have the alternative of moving one hundred miles down the road and doing exploration from the surface you are assured that will earn depletion. If you have a good a prospect in an existing mine and you explore it from under the ground, you are assured that that will not earn depletion. What choice are you going to make? What implications are there here for an established mining community, perhaps, where additional ore would prolong its life?

**The Chairman:** Have you any suggestions on what language might be used to expand this item?

**Mr. Ford:** I think the exception needs to be removed. The exclusion from the element of expenditures to earned depletion, which is in the outline of the news release of July, 1967, should be removed.

**The Chairman:** What is the language of the exclusion?

**Mr. Ford:** Eligible expenditures include the following: Canadian exploration and development expenses in the mining and petroleum industry, except for Canadian exploration and development expenses in the vicinity of a mine, and after it came into production. There is a list of four exclusions there.

**The Chairman:** Yes.

**Mr. Kerr Gibson, Tax Consultant to the Mining Association of Canada:** It is probably contemplated that the regulations would use the expression "exploration and development" in searching for minerals. I think the industry's submission is that that would make a satisfactory distinction between exploration and ongoing development of the mine, so that no exclusion for exploration in searching for minerals in the vicinity of a mine would be dealt with.

**Mr. Ford:** Mr. Gibson is saying the key is the searching for minerals, which is the wording of the present act.

**Mr. Gibson:** If the company is merely doing development work in the extraction of known ore, it is not qualified as searching for minerals and the distinction will be made.

**The Chairman:** What you are saying is that once you open up a mine you cannot have exploration and development expenses thereafter.

**Mr. Elliott:** Mr. Chairman, I think what he is saying is that there is a distinction between underground exploration and the development of an already discovered ore body. They are two different things, and work carried on within the area of a known ore body would be mining operations, whereas exploration is work which is carried on, either from the surface or from underground, that is not within the area known to contain mineral of ore grade. I think that is pretty well what he was saying.

**The Chairman:** Anyway, I think you have told us enough to understand what the problem is, and whether you should and, if you should, how you would correlate underground work to exploration and development in an existing mine.

**Senator Connolly:** In a given situation I suppose that you could conceive of a possibility of confusion, as to whether you were working the existing ore body or in fact looking for a new body, exploring for new ore. I suppose there are particular problems in this area.

**Mr. Ford:** I believe, as the chairman said, that there have been some problems and they have been settled and the courts have decided.

**The Chairman:** Some of them are in litigation. The department has settled them by making assessments or re-assessments and they are in litigation.

**Mr. K. E. Steeves, Member, Tax Committee, The Mining Association of Canada:** Our recommendation would leave it so that the taxpayer would have the onus to prove that the expenditures were exploration rather than on normal development.

**Senator Benidickson:** May I point out that we had the problem of determining what was a new mine and thereby entitled to a three-year tax exempt period. The government had set up, for that determination, a committee. They did not leave it entirely to the Department of National Revenue. They had a committee representing certainly the mining department, the National Revenue Department, and probably the Department of Finance. It was not left entirely to the tax collector and the National Revenue people to determine whether it is a new mine. They did have a long-term practice of getting the technical assistance, for determination, of the mining experts in the Department of Mines. Problems of this kind may have to be worked out by the tax department, with some assistance from the other departments.

**The Chairman:** Except that they do not give themselves any leeway in the bill.

**Senator Benidickson:** In the statute.

**The Chairman:** There should be leeway in the bill for the determination.

**Senator Benidickson:** It may be a recommendation from this committee. We may see the necessity of recommending that something of this kind be continued, as was the



practice to determine what was in fact a new mine under the old principles.

**Mr. Ford:** If I may say so, the Department of National Revenue in fact does this in a determination of what is underground exploration now. I know the situation whereby the Department of Mines and National Resources was asked by the Department of National Revenue to advise whether expenses claimed by the taxpayer as underground explorations were in fact underground explorations.

**The Chairman:** But if you have an exclusion, the door is shut on that.

**Mr. Ford:** It is not quite shut, sir. It is the end of the matter, but then there are still the courts and they are called on to decide the matter in this instance.

**Mr. Elliott:** I suppose the regulations would shut the door.

**The Chairman:** Yes.

**Mr. Gibson:** It is noteworthy that while these distinctions can cause problems, they do not in fact decide many problems. There have been very few cases which have been brought to the attention of the courts to be resolved in the past.

**The Chairman:** I think we both know about one, anyway.

**Mr. Gibson:** Yes, but there have not been many and I think the main problem would be resolved.

**Mr. Steeves:** On the honourable senator's suggestion about this committee under the new act, the definition of a new mine is going to be every bit as important as it was before. In the past, there were the write-off provisions. So I think the continuation of this committee is assured, and this may probably be another factor that might be considered.

**The Chairman:** I think we have got a grasp of what the problem is and where there may be some remedy.

**Mr. Craig:** It is an important point, in the sense that, to the extent that it does not apply to underground exploration, because of the expenses, the companies perhaps will not do as much underground exploration. They will not find those ore bodies that might be near an existing mine—which may support the existing communities. To the extent that you do not continue to explore an existing mine or ore body area, the life of the community is shortened.

I think part of the history of the mining business has been that they do not like to leave communities in the lurch after the ore body is exhausted. What we are saying is that this kind of exploration should be encouraged, for that reason alone, not only because the other way produces inefficiencies as well. We think that the proposal is not efficient and also that it creates certain social upsets in those communities.

**The Chairman:** It is not unreasonable. As a matter of fact, I can recall a number of mines that carried on and, as they started to exhaust more and more of their known supply, it was only at that stage, by going underground and doing underground exploration and development, that they were able to enlarge and expand the life of the mine.

**Senator Benidickson:** That has happened in many cases.

**The Chairman:** Yes.

**Mr. Craig:** We have the history in our company, of the Creighton Mine, which is now down to its ninth shaft. Creighton has been dead, and advertised as dead I do not know how many times in its history, but it again continued underground exploration and has found ore bodies quite a way from the existing level. As a result, the mine continues and it is now down 7,000 feet and the community still exists.

**Senator Connolly:** Where is that?

**Mr. Craig:** It is the Creighton Mine, in the Sudbury area.

**The Chairman:** There is another one that you must recall Preston East Dome. I think it is finally doomed now, but it lasted for many years longer than the available ores or reserves as they then knew them, over what would keep them going. But they kept poking out and down and up and drilling, and that would certainly be underground development.

**Mr. Craig:** Underground exploration is not difficult to define, because it is done by a quite different people in the mining field, the exploration people. They are usually away from the existing ore body rather than in the existing ore body, so we do not see a technical difficulty really in assessing that, as far as the department might be concerned.

**The Chairman:** Thank you very much. What is the next point?

**Mr. Ford:** The second half of this exclusion, sir, is the exclusion of development expenses in the vicinity of the mine after it came into production.

**The Chairman:** We talked about that yesterday.

**Mr. Ford:** That was in respect of an open pit mine. This relates to the underground mining operation. If you have two identical ore bodies and the owners of one are a wealthy mining company with access to capital while the owners of the second are a small company with less access to capital, an unfair situation can develop. Presumably, the first mine can be predeveloped to sink the shaft to the depth it needs to go eventually to drive the drifts and make all the workings for the extraction of the ore from the mine, because the first company has the capital to do so, and in that case every nickel it earns will earn depletion. The second mine, perhaps with no financing at all, will only sink its shaft part way. It will only spend as much on development as it needs to in order to generate a cash flow. The second mine, which will continue the development after it attains the cash flow, will finish up with a mine developed in the identical fashion as the first one except that the earned depletion of the first mine will be substantially greater than that of the second. This to us does not seem to make any sense.

**The Chairman:** I remember that yesterday we had this point developed by Bethlehem Copper.

**Mr. Ford:** Yes. We believe that the cost of permanent underground workings, the present class 12 in Schedule B



of the Income Tax Act, those expenditures should qualify to earn depletion regardless of the moment in time at which the money was spent—whether it was spent before or after the mine came into production.

**The Chairman:** Have you got language?

**Mr. Craig:** All exploration and permanent underground development should qualify to earn depletion. That is the way we would put it.

**The Chairman:** What is your next point?

**Mr. Ford:** The third point in this group, sir, is on the development costs of a major expansion of an open pit. I don't know whether you want me to spend any time on this.

**The Chairman:** We had something on that yesterday. Is there anything you wish to add?

**Mr. Ford:** I don't think so, sir.

**The Chairman:** It is all addressed to these proposed regulations and their provisions.

**Mr. Ford:** Yes.

**The Chairman:** I am not hurrying you but we did have it yesterday. We understand the point and, as a matter of fact, even now we are working on it.

**Mr. Ford:** Yes, sir. The second exclusion from earned depletion that I should like to mention is the exclusion of so-called social and industrial infrastructure expenditures from those which will earn depletion. To us it makes no sense that these expenditures should be excluded from earning depletion. I refer to expenditures such as railroads, off-property roads, docks that are distant from a mine, houses for the employees, recreational centres, hospitals, schools and the kinds of things that you can think of. We do not really see that the dollar you spend on a dock, which may be 30 miles from a mine but is necessary in order to move the product of the mine, is any different from the dollar that you spend on the concentrator, which produces the product you are going to ship to the dock. We don't see any difference in the dollar you spend on the employees either, because without houses you don't have employees.

**Senator Benidickson:** And without the ore the houses would be abandoned.

**The Chairman:** Without the ore they would not be built.

**Senator Benidickson:** Or they might have a shorter life than any other community.

**The Chairman:** We have had instances of that very recently in certain areas not too far from where you make your home base, senator.

**Mr. Ford:** Our industry is frequently required to make these expenditures in remote areas, you know, and I hope it is for the good of the country. But it is really a distinction which seems to us to be quite unnecessary, in saying that this dollar will earn depletion but that dollar will not. The thing is really a package and should not be separated.

I might mention in what you refer to as the "raspberry book", that the initial proposal was that the industrial infrastructure—that is, airports, docks and off-property roads—would earn depletion but the social capital, that is, the townsite and employee welfare expenditures, and so on, would not. That is part way to what we want, but in the outline of the proposed regulations those two have been put together and both are disallowed from earning depletion.

**The Chairman:** Social capital under the proposed regulations will qualify for a fast write-off.

**Mr. Ford:** Yes, they would, sir, but not on a major expansion of an existing mine, which seems to me to be a bit anomalous.

**Mr. Craig:** This particular proposal was almost universally recommended by your committee, by the Commons committee and by the province of Ontario and the province of Quebec. For some reason, however, it has been dropped. It is difficult to understand why they are not going to permit this to earn depletion. Perhaps the only answer we can get at the moment is that they suggest that the degree of risk involved in these kinds of expenditures is not as great as the degree of risk involved in the mining complex *per se*. But we would suggest that the degrees of risk involved are identical to the extent that you have ore. To that extent everything is involved in exactly the same risk. I am at a bit of a loss to understand why this was dropped.

**The Chairman:** If I understand the difference, it is that in relation to the expansion of an existing mine that is one category where you do not get entitlement.

**Mr. Craig:** The accelerated fast write-off?

**The Chairman:** Yes. If it is a new mine you would get the accelerated write-off.

**Mr. Craig:** So long as those expenditures were made before the mine came into production.

**Mr. Gibson:** In neither case would they qualify for the earned depletion allowance.

**The Chairman:** So the question we have to look at is why should there be a difference in treatment of identical expenditures between the category of a new mine and the category of an expansion of an existing mine. Is that right?

**Mr. Ford:** Yes, that is correct.

**Mr. Steeves:** There is the difference also that the one that earns depletion is the one that has the fast write-off. The problem that we have is that they are recognizing the fast write-off. The townsite expenditures are allowed to have the fast write-off for a new mine, but they are not allowed to earn depletion.

**The Chairman:** I understand that this is the difference. In the expansion of an existing mine, for those expenditures you can get your capital cost allowance, but you cannot earn depletion. Is that right?

**Mr. Ford:** That is with a new mine. With the expansion of an existing mine the infrastructure is not eligible for the fast write-off.

**The Chairman:** We are talking about two different things. There is a fast write-off and there is also a capital cost allowance which may be at whatever the regular rates are. In the expansion of an existing mine, certainly you would be entitled to the capital cost allowance, but you would not be entitled to the accelerated, which is 50 per cent a year.

**Mr. Ford:** No, it is up to the income from the expanded mine. That is, you can write off as fast as you have income from the expanded mine, which could be 100 per cent in one year and 10 per cent in another year.

**Mr. Gibson:** To the industry, much the more important point is the qualification for earned depletion.

**The Chairman:** Yes. The question there is why there should be a difference. Why on identical expenditures should you be able to earn depletion on a new mine but not be able to earn depletion on the expansion of an existing mine?

**Mr. Gibson:** Perhaps I should amplify the point a little. In the case of earned depletion, social and infrastructure expenditures would not qualify in the case of a new mine or an expanded mine. What the industry is saying is that this expenditure involves the same risk as the mine expenditure which qualifies.

**Mr. Craig:** Earned depletions simply do not qualify, period. None of these costs would give you \$1 for every \$3.

**The Chairman:** Then I guess you would subscribe to a statement made earlier in this committee that anything that is entitled to be written off in the course of the development of a mine should also qualify for earned depletion. Would you support that?

**Mr. Gibson:** Yes, that is right, that is anything related to bringing a new mine to production or an expanded mine, yes.

**The Chairman:** In relation to mining generally, whether it is in relation to the expansion of an existing mine or the development of a new mine, anything that is entitled to be written off by way of capital cost allowance, those write-off should also qualify for earned depletion.

**Mr. Elliott:** Those expenditures that are entitled to a capital cost allowance should qualify for earned depletion.

**Mr. Ford:** Including also development expense.

**The Chairman:** Everything that is done in the development of a mine to bring it to production, or everything that is done to expand an existing mine for the purpose of bringing it into production surely should qualify.

**Hon. Mr. Phillips:** That would eliminate the cost of roads and rights-of-ways. They are not subject to capital cost allowance, or should not be included.

**Mr. Ford:** Most of them are included because we have special categories.

**Hon. Mr. Phillips:** You are all right then in relating it to capital cost allowance?

**Mr. Ford:** What we are saying is that we have come a long way since the Carter Report, and we have come a long way, perhaps, since the White Paper. But we are unhappy with this concept of earned depletion on a too narrow base. If we could see some line of logic there—

**Hon. Mr. Phillips:** I was concerned for a moment that on expanding your depletion base to include expenditures involving capital cost allowances that you do not eliminate other expenditures that should be included in the base.

**Mr. Steeves:** Expansion and development expenses should also be included.

**Hon. Mr. Phillips:** But we have already covered that point.

**The Chairman:** Mr. Gibson, anything that would qualify for earned depletion qualifies for capital cost allowance.

**Mr. Gibson:** I do not think that is true in relation to exploration and development expenses. But apart from that I think basically that would be the case.

**Hon. Mr. Phillips:** Could you not get costs on acquisitions that might not qualify for capital cost allowance? Do you not need capital cost allowance on the costs of acquisitions and exploration and development expenses?

**Mr. Gibson:** That is right, we do. I thought the chairman's question was that at the present time as the rules are written I think anything apart from exploration and development expenses would qualify for earned depletion.

**Hon. Mr. Phillips:** Yes, but if we were looking for an expanded base for depletion purposes would we not have to say quite broadly—

**Mr. Gibson:** Yes, that would be very helpful.

**Hon. Mr. Phillips:** We were thinking of the earned depletion base being related to the cost of exploration and development expenses and all expenditures in respect of which capital cost allowances are allowed, whether they are accelerated or otherwise.

**Mr. Ford:** All costs which bring a mine to production or expanding an existing mine, the total input into the mine should be allowed.

**Mr. Elliott:** I think that for the record there may have been some confusion in the use of the technical term capital costs. All of these things are subject either to capital cost allowance as defined in the act or to an expense *per se* as in the case of acquisition of properties as it is under the bill we are considering. I feel that the chairman's point is well taken. There might be some of these which on the technical interpretation of the words "capital cost" we do not mean capital cost. However, all capital expenditures which are entitled to be claimed as a capital cost or write-off should qualify for earned depletion.

**The Chairman:** Yes.



**Mr. Ford:** We have not mentioned the 3-year tax exemption. But, of course, the accelerated write-off is designed to replace that.

**The Chairman:** I feel that at this stage we have tried to deal with the tax holiday situation and we did not succeed.

**Mr. Ford:** The only comment I would like to make in that respect is that, I believe in the August 1970 News letter, the letter to the provincial ministers of finance and treasurers, Mr. Benson made a statement to the effect that major expansion would be put on much the same basis as new mines by excluding the write-offs for infrastructure expenditures and by not putting them on the same basis.

**The Chairman:** What is the next point?

**Mr. Ford:** The next point is the expenditure of processing assets in Canada, to process Canadian ore, only to the stage it was previously processed in Canada. This apparently will not apply across the board although as we understand it the intention of the Government is to induce additional smelting and refining facilities in Canada. Our understanding is that the earned depletion will not apply to expansions of existing smelters and refineries which, it appears to us, expresses two different wishes of the Government.

**The Chairman:** There are two different areas it will not cover. It will not cover the expansion of facilities of existing smelters, nor will it cover the situation where you are doing custom smelting.

**Mr. Ford:** That is right. If it were associated with a major expansion of a mine, the expansion of the processing facilities would qualify; but on a custom operation it would not and this makes no sense to us at all. There is no spare smelting or refining being done in Canada.

**The Chairman:** I think a simple comment would be that if you do not permit these write-offs on custom smelting jobs, you are penalizing the industry by increasing the cost, or you are preventing the smaller mines from being developed and therefore you are lessening the provision for jobs...

**Senator Connolly:** Or you are exporting processing and employment

**Mr. Ford:** And you are running counter to the policy of the major provinces where mining is an important industry where they have certain penalties in the matter of royalties, leases and so on. They have imposed penalties where certain refinements and extra processing is done elsewhere outside the province or outside of the country.

**The Chairman:** That is right.

**Mr. Ford:** At least one province has encouraged processing in Canada by providing for additional write-offs.

**Senator Benidickson:** That is what I meant by running counter to provincial policies, which either provide incentives for further processing within the province or the country,—

**The Chairman:** Or penalties for not doing so.

**Senator Benidickson:** They either provide incentives or penalties for the purpose of encouraging further processing within this country. This seems to run counter to that.

**Mr. Craig:** In the situation of an existing mine and mill, the development of another mine and expansion of the existing mine will obviously necessitate the expansion of the existing milling operation. At that time it may be decided to smelt the ore on site. The expanded mill probably would not qualify because it is not new from the ground up. The smelter and part of the new mine would qualify but unless the expanded mine is 20 per cent of the existing milling capacity it does not. Therefore, it is really not known whether the smelter would qualify in full. Our suggestion is to erase that, because the name of the game is to generate more processing in Canada.

**The Chairman:** What would the language be?

**Mr. Craig:** Just that.

**The Chairman:** Maybe you have to use that many words in order that we understand. What would be the language for such a provision? The place, I take it, would be in the proposed or similar regulations.

**Mr. Craig:** Our point is that the cost of increasing Canadian processing should qualify for depletion.

**The Chairman:** We know the rationale and we will now go to the next point.

**Mr. Ford:** The next point arises from the statements of the previous witnesses. We are concerned with one or two sections of the industry which appear to be having hard times, particularly the potash group of mines, which generally came on stream in 1968 and 1969, before the publication of the White Paper. The expenditures made on their plants, which are very sizable, particularly in Saskatchewan where the shaft-sinking cost is enormous because of the underground zone which tends to let water in very readily, had no depletion.

The potash market itself has been in a depressed condition; there has been a provincial limitation upon production. Therefore the three-year tax holiday, or that part of it up to December 31, 1973, which they received and the present system of earned depletion, which continues to 1976, is really of very little value to those operators.

When the White Paper was under discussion there were suggestions that some relieving provision should be introduced. This follows the statements of the representatives of the oil industry this morning. The depletion that would have been earned from those expenditures to bring the mines into production should be calculated and the depletion actually claimed up to the introduction of the new system deducted. We have recommended before that it should be allowed to carry into the new system any balance of such depletion.

It seems to me that there is a hardship involved here through no fault of the operators of the mines.

**The Chairman:** Do you mean to the extent that they have not recovered their total outlay they should be able to carry it forward?



**Mr. Ford:** Yes, because their investment was made on the basis of the system as they knew it. They had every reason to believe that the depletion would continue and the three-year exemption would be of value. Because of the interference of one level of government, perhaps for its own reasons, in the production of those mines, they are unable to earn a reasonable rate of return on their investment.

**Senator Benidickson:** You are speaking of prorating, such as in potash because of poor markets.

**Mr. Ford:** That is right.

**Senator Molson:** In fairness, the price is also a factor.

**The Chairman:** Yes, but you have to live with the price.

**Mr. Ford:** It is a factor, but I believe some of those mines had already forecast the potash market and had made certain arrangements to sell their production. However, they were not allowed to produce all they could perhaps have sold.

Also in the field of earned depletion, we do not understand why although the purchase and sale of mineral properties will be taxable under the new system, the cost of the mineral property required to develop a mine should not qualify for depletion.

**The Chairman:** We have heard that before, that the cost is a deductible item and the sale price generates income.

**Mr. Ford:** Yes, fully taxed.

**The Chairman:** Would the pollution cost be a general expense, or is that considered to be a capital item?

**Mr. Elliott:** Under the new bill, as I understand it, the cost of acquisition qualifies as expense, whereas the sale will be taxable after the transition on the full amount realized without relation to any depletion allowance. The deduction of the original cost would have reduced the amount of depletion.

**The Chairman:** Maybe the answer is that the capital gain should apply, because the cost has been allowed as an expense, then the income, which should be the gain, would be received. Certainly it would be better to pay 50 per cent than 100 per cent.

**Mr. Ford:** There are transitional provisions to recognize that these properties have a cost, in that in the first year of the system only 60 per cent of the proceeds will be taxable and so on up to 1980, when the whole property will be taxable.

Our point is that the expenditure should earn depletion.

**Mr. Elliott:** that would be in accordance with the Chairman's suggestion or, alternatively, it should be determined as mining rather than general income.

**The Chairman:** As I understand you, Mr. Ford, you wish the cost of acquisition of properties to qualify for earned depletion.

**Mr. Ford:** Yes; it is presently excluded.

**The Chairman:** It seems sensible; all mining operations start from the acquisition of the property.

**Mr. Ford:** It is now a deductible expenditure similar to any other exploration expense.

**Mr. Steeves:** That points up the problem of the loss of depletion experienced by the previous witnesses.

**Mr. Elliott:** That would automatically be included in items necessary to earn depletion.

**The Chairman:** Certainly the acquisition of property would qualify.

**Mr. Ford:** The last point on the use of earned depletion is that there is an anomaly in the Income Tax Act which requires the deduction of exploration and development expenditures before arriving at the base upon which the present percentage of depletion is calculated. This is continued in the new act in that you will have to deduct exploration and development expenditures before arriving at the base, which tells you how much of your earnings have been used. The more you spend on exploration and development, the greater your earned depletion bank becomes, but the slower you can use it. You have to do your exploration in alternate years.

**The Chairman:** You would prefer to be able to earn depletion before you reduce your income or earnings by the deduction of all these expenses?

**Mr. Ford:** Yes, sir. The Department of Finance pointed out this anomaly in its White Paper, and it does not make sense to us to continue this.

**The Chairman:** There are quite a lot of ramifications in that.

**Mr. Gibson:** It is not such a major change. It really only affects the rate at which the depletion earned can be obtained by the company.

**The Chairman:** If you reduced your earnings by all these expense items, there is less against which you can charge your earned depletion, and, therefore, it is spread out over a longer period of time. But on your capital cost allowance you do not have to take them. You can take them whenever you have money.

**Mr. Gibson:** The industry's proposal, that this restriction be withdrawn, is not an enormously expensive proposal for the Government to consider. Mr. Ford's point could be demonstrated by the simple statement that when the system matures, a company that is spending more than half of its income on exploration would have earned depletion which it would not be able to claim.

**The Chairman:** If you charge off against your earnings all the items that you expend, and which will earn depletion for you, the base which you have to charge off those earned depletion allowances will be less.

**Mr. Craig:** The more you spend on exploration, the less you actually get in that year.

**The Chairman:** That is right, unless you increase your earnings by the expenditures.

**Mr. Steeves:** You have to recognize that exploration and development is something apart from your operations, and

you are allowed depletion against the operations. Perhaps you should lump the two together, but your limits would be the same.

**The Chairman:** We had this put forward at the time we were studying the White Paper.

**Mr. Steeves:** There is a paragraph about that in the White Paper.

**Mr. Ford:** As you know, the approach of the news release was to outline the new regulations and to describe the kinds of assets which would qualify for accelerated depreciation in the four categories. It then went on to earned depletion, and in that discussion it referred back to the categories of assets that would earn accelerated write-offs. There are a lot of small points in there.

**The Chairman:** Is it dealt with in your brief?

**Mr. Ford:** Yes, on page 16. In order for an asset to qualify for fast write-off, and therefore qualify for earned depletion, it must be new. This seems to be unreasonable, because it interferes with an economic decision of management. If a motor is available for \$2,000 new and you can buy a good used one for \$1,500, why should you be penalized and not earn depletion? There is a substantial market for used equipment. I could show you half a dozen catalogues listing various used mining equipment for sale. The important point is that it should be new to the taxpayer rather than brand new. It seems to be a distinction that serves no useful purpose.

**Senator Connolly:** In your example you talk about a motor that would cost \$2,000 new and \$1,500 used—

**Mr. Ford:** If you buy a used one you do not get an accelerated write-off and you do not earn depletion on the \$1,500.

**Senator Connolly:** The person who originally bought it got the accelerated write-off.

**Mr. Ford:** The Government was trying to give him an incentive to develop a new mine.

**Senator Connolly:** And you want the same incentive for the second user.

**Mr. Steeves:** If you make the assets subject to recapture on sale, I do not think there is any loss to revenue.

**Senator Connolly:** That is right. There would be a recapture.

**Mr. Ford:** The second point in the same group of words is the requirement that the assets be acquired before the mine came into production. I believe you heard Mr. Steeves speak to this point yesterday. It seems to be an unreasonable requirement in that a decision to further develop the ore in an integrated mining operation may not be made immediately, or perhaps cash is not available to continue that further development.

Providing that the complex that is being constructed is attributable to the new mine, it seems that all those expenses should qualify. It may be a large mine and a decision is made to build a smelter. Perhaps the size of the

mill has to be increased, and you would need some funds generated to do it.

It might arise that in your design of the mill you buy one kind of mining equipment, but it is not satisfactory and you decide to replace it with a more expensive kind. It seems to me that that is part of the real cost of mining production, and any increased costs should earn depletion. It sounds like a small point, but we can see difficulties arising from it.

**Senator Connolly:** Under the proposed regulations increased costs would not qualify?

**Mr. Ford:** No sir. The assets must be acquired "before the mine came into production".

**Mr. Craig:** Perhaps I can give you an example from the Thompson Mine. In the process of developing our mine, the decision was made that they were going to mill and smelt the ore only. Halfway through the development stage they decided to refine the material at Thompson. The mine came into commercial production before the refinery was completely built. Any additions to that refinery after the mine came into production would not qualify. We had certain infrastructure costs. The refinery was not quite completed before the mine came into production. Those infrastructure costs would not qualify after the mine came into production.

**The Chairman:** You could not earn depletion on it.

**Mr. Craig:** No. Not everything works as well as you would like it to work. You have equipment changes and de-bugging operations. These all relate to a new mining operation. We say that within a reasonable period of time, say two years after the mine comes into production, those costs should qualify for the fast write-off and consequently earn depletion.

**Senator Connolly:** Can you find any reason why the department drew the line that way?

**Mr. Steeves:** It is easy to administer. You had to set a date. Everything that is turning up on that day qualifies, and everything that is not, does not.

Another example would be mill deliveries from new mines. The number we have had in the last few years is quite small, and you will often get a mine starting at a slower rate, but it will end up in quite a reasonable time because the mills will be phased in as they are delivered. It is unreasonable that the second and third mill should not qualify.

**The Chairman:** I suppose it raises a question of replacement as against the completion of the mill or the project?

**Mr. Craig:** We are suggesting a two year period for the mine to come into production. I do not think that is unreasonable.

**The Chairman:** And whatever you have to do during those two years would be treated as part of the original development.

**Mr. Craig:** That is right. It would allow the replacement of an asset for two years . . .



**Senator Benidickson:** If there were bugs in it or because of late delivery.

**Senator Beaubien:** If it was defective you would have to replace it.

**Senator Connolly:** I am just wondering whether you are going far enough. I suppose there must be situations where you order some new, sophisticated type of equipment which, perhaps, you are going to try out and after it has been in for a couple of years you find it to be impractical and so you decide to remove it and put something in which has been tried and proven. In those circumstances, surely you are entitled to get depletion on that.

**The Chairman:** It is a question of whether they get earned depletion on it. They would certainly get write-off.

**Senator Connolly:** Yes, but earned depletion.

**Mr. Craig:** We would not get the benefit of a fast write-off.

**The Chairman:** When I say you would get the benefit of a write-off, I am referring to the regular—

**Mr. Craig:** It is rather confusing because some of the things in fast write-offs also apply to earned depletion.

**Mr. Steeves:** Another example similar to what you describe, and this happens quite frequently, is as much as you attempt to test the metallurgy in a new mine, you are doing it in a laboratory and quite often it works out differently when you get the machinery installed; when you first turn it over you are liable to find your recovery is not what it should be and you end up rushing in some grinding capacity or some crushing capacity, or some flotation equipment. You would probably have had it installed for six months and, therefore, it would not qualify, and you have enough problems as it is with the necessary changes which you did not contemplate, so, surely, you should get some depletion.

**Senator Molson:** Who decides when the mine comes into production?

**Mr. Ford:** The Department of Revenue.

**Mr. Craig:** There is a rule of thumb, senator, which says that it is into production when you are at 60 per cent capacity. This is a rule of thumb. I do not think this has been changed.

**Mr. Elliott:** I believe they would have to continue in the present committee system with regard to qualifying new mines for the tax holiday.

**The Chairman:** Yes, the same method.

**Mr. Ford:** This is an interesting question. This is not the law; it is a matter of interpretation, and as Mr. Craig said, it is when you are at 60 per cent of the capacity. In other areas, unrelated to mining, the rule of thumb is 25 per cent of production.

**The Chairman:** They have a purpose in reducing that and it is to give them the help of the money faster.

Are there any other points on this?

**Mr. Ford:** Not really. There are several small points where we see difficulty with the wording of the regulations in dealing with the Department of Revenue. These are covered quite adequately in the brief, so I will not take up your time with them.

In terms of the proposed act we have made some comments on several significant sections.

**The Chairman:** Where do these appear in your brief?

**Mr. Ford:** At pages 10 to 15. I do not think I need take your time unless you would like me to discuss the comments on foreign exploration and transfers of mineral property?

**The Chairman:** Have you drafted something in that regard?

**Mr. Ford:** We make comment on it in the brief.

**The Chairman:** That will be fine.

**Mr. Ford:** Mr. Steeves has a point he would like to make.

**Mr. Steeves:** In our discussions this morning we talked about earned depletion on further processing assets. One of the major points in that regard is that smelters and refineries will only be eligible for the fast write-off provision if they are part of a new mine or a major expansion; they themselves will not be considered a major expansion. I feel this is insufficient if we want to encourage further processing in Canada; we should allow the fast write-off.

**Mr. Elliott:** Mr. Chairman, we have probably covered the main points in our brief. There is just one suggestion which I would like to throw out to the committee, and that is this: There has been a suggestion from members of our association that they would be pleased to have officials of the Department of Finance who are struggling with these regulations to visit some mines. Many of them have indicated in private conversation that this is something they have never done and they would appreciate the opportunity to do so.

**The Chairman:** Have you made a written offer?

**Mr. Elliott:** This is now in Mr. Bonus' hands; he will proceed with that.

**Senator Burchill:** Have any officials visited the mines at all? This is a worthy suggestion.

**Mr. Elliott:** If your committee, sir, would add the weight of your approval to our invitation, it could smooth the way for those officials to accept our invitation.

**The Chairman:** We could note in our report that it might be advisable and educational.

**Senator Benidickson:** Mr. Chairman, going back to our many months of study with respect to the White Paper, my recollection is that the industry, when the White Paper was published, became alarmed to the extent that expenditures stopped; that, of course, had a significant effect on the designers of the White Paper and the Minister of Finance. At the time we were discussing the White Paper the industry got some support from the provincial governments, and it was quite obvious in midstream that the Minister of



Finance felt obliged to announce the cancellation of certain proposals in the White Paper.

He addressed his proposed changes not only to your association, to give you some encouragement in order to get going again, but he acknowledged that he had received protests from a number of provincial treasurers.

With respect to this new proposed act, which is another kettle of fish altogether, has your association made representations, as you did at the time of the White Paper study, to the provincial treasurers as regards the effects on your industry, and, if so, have you had any indication that they support you in any of the propositions that have been put forward in your presentation?

**Mr. J. L. Bonus, Managing Director and Chief Executive Officer, the Mining Association of Canada:** Perhaps I could answer that, Mr. Chairman. The point is covered in our brief to the extent that we do explain that if the tax abatement percentage points are now being made available to the provinces were to be taken up by the provinces the industry would be worse off than it was in the first place. Conceivably the industry could actually pay at that stage a tax level which would be higher than most of the other industries in Canada, let alone the other mining industries in the world. I believe that this point has been made by some of our provincial mining associations to the provincial authorities, and I believe that there are some assurances from some provinces to the effect that they do not intend to increase their mining taxes, but, of course, we do not know what the future may hold.

**Senator Connolly:** That is only as good as the undertaking of the government that gives it, I suppose, because another government would not necessarily feel bound by it.

**Mr. Ford:** If I may add this, the provincial mining associations' tax committees have made representations to the provincial mining ministers with respect to the very problems we have discussed here this morning. I know that on an individual company basis, discussions have been held in at least Ontario and Quebec with the revenue officials of those provinces, pointing out the problems we see.

**Mr. Craig:** We have been requested to clarify some aspects of the regulations, so we have done this, at least in our case with the Province of Ontario which did not understand the regulations in depth and asked for our clarification. This we have given.

**Senator Benidickson:** They have not indicated to you whether or not they will officially endorse any of your propositions, now that they have looked at the regulations, by communicating with the federal officials?

**Mr. Craig:** They need this data for the federal provincial conferences. Our part was really to try to be informative. What they take from that is entirely up to the provinces.

**Mr. Ford:** The problem is that we are not dealing with regulations but with an outline of proposed regulations. If we knew what the rules were, we would know better what to say about them.

**Senator Molson:** That is a good point.

**The Chairman:** Gentlemen, have we exhausted the subject?

**Mr. Elliott:** I think we have, Mr. Chairman. Thank you very much, Mr. Chairman for your time.

**The Chairman:** Thank you.

**The Chairman:** Honourable senators, the third brief this morning is from The Canadian Mutual Funds Association. I have on my immediate right Mr. A. D. Johnstone, who is President of the Mutual Funds Management Corporation Limited, and President of this association. He will introduce his panel.

**Mr. A. D. Johnstone, President, The Canadian Mutual Funds Association:** Mr. Chairman, honorable senators, as President of The Canadian Mutual Funds Association may I express our gratitude for the opportunity presented to us today to further our discussions with respect to several matters which we view with grave and serious concern.

With me today I have on my immediate right Mr. John McAlduff from Winnipeg, the Executive Vice-President of Investors Group Trust Co. Ltd., who is chairman of the association's taxation committee. Next to Mr. McAlduff is Mr. Carl T. Grant, of Toronto, of the prominent Toronto legal firm of Zimmerman and Winters. On the far right is Mr. William R. Miller of Toronto, who is Treasurer of the United Investment Services Ltd.

As you have noted from the preamble to our brief, The Mutual Funds Association comprises approximately 90 per cent of the assets of the total mutual fund industry in Canada; but more importantly, it represents 90 per cent of the residents of Canada who employ mutual funds as their savings vehicle, and it is these roughly three-quarters of a million shareholders that essentially we represent today.

At its previous appearance before this committee in April, 1970, Mr. Godfrey, the then president, presented a verbal summation of a 50-page brief relating to the White Paper proposals. Our brief today is of an entirely different nature and does not lend itself to such summation.

The brief in your hands deals with six very specific problems, which have an important bearing on the financial wellbeing of these three-quarters of a million shareholders of mutual funds in Canada, and potentially of many, many hundreds of thousands more. The first four items we view as being of genuine and serious concern to our industry, and the last two items seem to be of lesser importance. The taxation committee has been hard at work for many months, and has sought answers to many of these questions in continuing dialogue with representatives of the department and spokesmen thereof whenever circumstances permitted it, but resolution of primarily these four specific problems has not been forthcoming.

**Hon. Mr. Phillips:** Does that mean with the Department of National Revenue or the Department of Finance, or both?

**Mr. J. D. McAlduff, Chairman, Taxation Committee, The Canadian Mutual Funds Association:** We have had meetings mainly with the Department of Finance. We have had some unofficial dialogue with officials of the Department of National Revenue.

**Mr. Johnstone:** Mr. Chairman, perhaps I might ask for some direction regarding your assessment of the best

means of furthering this discussion. Would it be in order for Mr. McAlduff to enunciate each specific problem and then turn to discussion following each separate section?

**The Chairman:** Yes.

**Mr. McAlduff:** With your permission, Mr. Chairman, I will do this. The first item, and probably the most important from the point of view of our member companies and their shareholders, concerns the retroactive effect of this tax reform bill on already existing registered retirement saving plans invested in mutual funds. This is a retroactive effect because of the new investment restrictions in the tax reform bill. Under the old Income Tax Act the only investment restriction for registered retirement savings plans was that 90 per cent of the income had to be from Canadian sources. This presented no problem to our member companies, because as Canadian corporations the dividends they paid to the registered retirement savings plans trusts that invested in them were 100 per cent Canadian. However, under the new bill, Bill C-259, a mutual fund trust or mutual fund corporation is now considered to be in its entirety "foreign property."

**Senator Connolly:** They are now considered to be what?

**Mr. McAlduff:** Foreign property, unless it is exempted by regulation. The new rules are that a registered retirement savings plan must have at least 90 per cent of its assets invested in Canadian property in order to avoid some very heavy penalty. It is unthinkable really to have more than 10 per cent of the assets of a registered retirement savings plan invested in foreign property. However, the new rules say that a mutual fund corporation will be deemed to be foreign property unless it complies with certain regulations yet to be issued. It is our understanding that these regulations will say that if at any time during a year the foreign property content of a mutual fund exceeds 10 per cent, then it will be foreign property.

**Hon. Mr. Phillips:** If you will pause for the benefit of honourable senators, your point is that that relates to the whole question of permissive income by being so described as being foreign property, under the international section of the act. What do you mean by the concept of foreign property? Within the meaning of Bill C-259?

**Mr. McAlduff:** That is right. The problem is that here is a tax penalty essentially. If a registered retirement savings plan has more than 10 per cent of its assets invested in foreign property it will be required to pay a tax of one per cent per month, which is 12 per cent per annum, off this excess. This penalty is so severe that certainly no registered retirement savings plan can be invested more than 10 per cent in securities which are considered to be foreign property.

Canadian mutual funds have been used by 75,000 registered retirement savings plans over the past 13 years. They have been a very popular form of investment media. There is approximately \$200 million invested by registered retirement savings plans in Canadian Mutual Funds. I would estimate that at least 80 per cent of our present Canadian mutual funds will fail to qualify under this new legislation.

Here is what this means. It means that we will have to set up special mutual funds specifically for an investment

by registered retirement savings plans, mutual funds that will at all times keep their foreign asset content down below the 10 per cent maximum. We are not quarrelling with this. We have accepted it and we are going to do it, and most of our member companies are embarked on this right now.

What we have objected to is the forced transfer of moneys already invested by 70,000 registered retirement savings plans in mutual funds, into these new vehicles. For one thing, we think it is unreasonable to try to force this transfer. For another thing, we think it is virtually impossible to effect it, to get 70,000 people to make that transfer before the end of 1973.

**Senator Beaubien:** Mr. McAlduff, are you not given any time to conform to this?

**Mr. McAlduff:** Yes, we have been given until the end of 1973.

**Senator Walker:** Are you suggesting then that it is not merely a question of time, but that this whole thing would be interfered with?

**Mr. McAlduff:** The ones that are presently investing. Indeed, the Minister of Finance, in tabling this legislation, indicated that moneys already invested in foreign property could remain invested. But it so happens, because of a peculiarity of our industry, this will not be the case under the legislation as written. Here is the reason why. We set up a separate registered retirement savings plan for every type of mutual fund investment. In other words, if a person invests in Investors Growth Fund and wants it registered, then we set up a registered retirement savings plan trust for him, for his Investors Growth Fund shares. If he wants to invest in shares of Investors Mutual, we have to set up a separate registered retirement savings trust. This is an administrative necessity.

**Senator Connolly:** You are going very quickly on this. I am sure it is clear, but I have lost you, or you have lost me, if I may put it that way. Will you start again?

**Senator Beaubien:** Mr. McAlduff, are you doing that now, before this, or because of Bill C-259?

**Mr. McAlduff:** No, we have always done that.

**Senator Connolly:** This is very easy for Senator Beaubien to understand because he is an expert, but we are just "ordinary Joes" here, so perhaps you had better tell us again.

**The Chairman:** Let us take an example and follow it through.

**Mr. McAlduff:** An example would be a person who would like to set up a registered retirement savings plan. Say he would like this money to be invested in shares of one of our mutual funds. We will use as an example Investors Growth Fund in Canada. A special registered retirement savings plan trust will be instituted or will be set up, and all the moneys paid into that trust will be invested in shares of Investors Growth Fund. The point here is that, as part of this arrangement, all dividends that will be paid in future on those Investors Growth Fund shares must be re-invested automatically in additional shares. This is the



base problem that we have here. According to the legislation, the money that is already invested by that registered retirement savings plan in those growth fund shares is all right, but any re-invested dividends will be subject to the tax penalty.

There is no way administratively whereby these dividends that will be paid next year or the year after, and every year until this person retires, can be invested elsewhere; they must be re-invested in shares of Investors Growth Fund.

**Senator Connolly:** Because that was the original stipulation.

**Mr. McAlduff:** Yes, that was the original stipulation.

**Senator Molson:** It is in the contract.

**Mr. McAlduff:** It is the only way. Therefore, in order to avoid this tax penalty, all of the moneys in this registered retirement savings plan that are currently invested in shares of Investors Growth Fund must be transferred to some other investment vehicle.

**Senator Connolly:** Under the new bill.

**Mr. McAlduff:** Under the new bill.

**Senator Connolly:** What you want is the right to continue the investment for that portfolio as it was originally contracted.

**Mr. McAlduff:** That is right.

**The Chairman:** To continue in respect of the production or earnings in the fund.

**Senator Connolly:** Yes.

**The Chairman:** From what they have when this act becomes operative.

**Mr. McAlduff:** That is right. We have asked for a grandfather clause to provide that where moneys on June 18 were invested in shares of this mutual fund that any dividends which must be reinvested automatically in additional shares of that mutual fund will be deemed to be foreign property acquired before June 18, 1971. That was the first grandfather clause we asked for. We asked for one other grandfather clause, and that dealt with contractual share purchase plans. These are plans whereby a person agrees to invest anywhere from \$15 a month up to \$200 a month in shares of a mutual fund. They can register that. In other words, this can be shares owned by their registered retirement savings plan trust. The acquisition fee in the first year in these plans is high. It is 30 to 50 per cent of the amount invested. In subsequent years it is much lower. It is somewhere in the neighbourhood of 5 per cent to 7 per cent.

**Senator Connolly:** Would you explain that term, the acquisition fee?

**Mr. McAlduff:** That is the sales charge.

**Senator Benidickson:** It is like the commission a salesman receives for selling an insurance policy.

**Mr. McAlduff:** That is right. The great bulk of it is paid by the investor in the first year. We estimate that there are somewhere in the neighbourhood of 15,000 to 20,000 of these contractual share purchase plans right at the present time. These people have paid the heavy sales charge at the front end and they would like to recoup or get the benefit of this by carrying the contract through to completion, which will usually be a 10- or 15-year period. Most of these contractual plans, or the great majority of them, are using funds which will be classified as foreign property under Bill C-259. What we have asked is for a grandfather clause that will again say that any future contributions to these contractual share purchase plans entered into before June 18, 1971—any future contributions that we must accept according to the terms of these plans—will be considered to be foreign property acquired before June 18, 1971. In other words, if people had entered into contracts before this new law was announced, they will be able to complete their contracts.

**Senator Connolly:** You have counsel with you. Is there a form of words that you are going to suggest to us by way of an amendment to this section?

**Senator Beaubien:** Or if not, could you send such a form of words to us?

**The Chairman:** Do you have a draft?

**Mr. C. T. Grant, Vice-Chairman, Taxation Committee, The Canadian Mutual Funds Association:** The minister announced on October 13 that the Government was going to propose certain changes to deal on a temporary basis with the contractual plan problem which Mr. McAlduff has outlined. I think it would be premature for us to suggest any change in wording until we hear those proposals.

**Senator Connolly:** On the contrary. It would be helpful if you could get those changes to us as quickly as possible.

**Mr. McAlduff:** I believe we could do this, Senator Connolly.

**The Chairman:** Senator Connolly, I think you are right in saying that, because if this is a duplication between what the minister proposes and what we may propose as a result of information we obtain, then no harm has been done. If there are differences we will see which way they go on the matter.

**Mr. McAlduff:** We have had dialogue with the Department of Finance on this matter and they were sympathetic to our problem. However, instead of giving us these two grandfather clauses which we were asking for, they gave us until the end of 1973 in order to regularize the situation.

**Senator Connolly:** That will not solve the problem.

**Mr. McAlduff:** No, that will not solve the problem. Our feeling is that even having this extra two years it will be an enormous problem transferring 70,000 existing plan holders out of the investments they are presently in and into a new investment. And we think it is unreasonable to ask them to do this because the amounts involved are not that significant in relation to the problem the Government is trying to solve.



**Senator Macnaughton:** May I ask a question, Mr. Chairman? What is your average industry charge on the purchase of these plans?

**Mr. Johnstone:** The industry average would be approximately somewhere between 8-1/2 per cent and 9 per cent, let us say, for example, 8-3/4 per cent.

**Senator Connolly:** Has that varied?

**Mr. Johnstone:** Yes, in its history it has, but the increase has been slight. In 1950 the average would have been 7 to 7-1/2 per cent.

**Senator Gélinas:** Mr. McAlduff, what would be the penalty if 20,000 of the 70,000 people in the plan did not change?

**Mr. McAlduff:** There would be two penalties. The new moneys invested in these plans would be subject to this tax of one per cent per month. Also, if they invest in a mutual fund which is not an investment corporation mutual fund there is an additional penalty in that these amounts invested would be added to the plan-holders' income and his contribution would be disallowed.

**The Chairman:** He could avoid the second one, could he not? He would have a right of election which would not expose him to the second penalty.

**Mr. W. R. Miller, Chairman, Administrative Committee, The Canadian Mutual Funds Association:** If he did not invest he would not expose himself, and he would merely lose some of the sales charges which may have been paid in advance. But in respect to dividends paid into the fund...

**The Chairman:** Is there any investment he could make at that stage that would not subject him to this second penalty?

**Mr. McAlduff:** Yes, he could transfer all of the moneys presently existing in that registered retirement savings plan into another fund, in which event additions can be made to the new fund. But in order to avoid these taxes he has two choices: either he has to stop making additional contributions to the plan; or, alternatively, he can transfer his existing money into another mutual fund. All our companies will have mutual funds by the end of this year which will comply with this new regulation.

**Senator Gélinas:** Then he will have another commission to pay?

**Mr. McAlduff:** No, we would allow them a roll-over. But the problem is we cannot force him to do this unilaterally. And to approach 70,000 people, many of whom are not sophisticated...

**Senator Connolly:** And many of them are in the low-income bracket.

**Mr. McAlduff:** Yes, very much so, because the people who invest in mutual funds are not, by and large, wealthy. This is an investment medium for the average person. It is extremely difficult to explain to them why they must cash in their investment and transfer it to another mutual fund. After all, some years back they were encouraged to select this particular fund. We will have enough trouble persuading them to direct their future moneys to the other fund.

However, to tell them that they must cash in their existing investment and transfer it will be difficult, if not impossible.

**Senator Burchill:** Would "cashing in" mean the disposal of foreign securities?

**Mr. McAlduff:** Yes; in most instances the underlying securities owned by these mutual funds, which are not really foreign securities, but just deemed to be so under this bill, are 75 per cent Canadian.

**Senator Desruisseaux:** What would be the situation if some refused to change?

**Mr. McAlduff:** This will definitely happen. In respect of every one of those we will have to file an income tax return each year for each registered retirement savings plan trust and calculate the tax for each month of each year on the excess holdings in foreign securities at each month end, which would be the investments made after this act comes into force.

**Senator Burchill:** That is in excess of 10 per cent.

**Mr. McAlduff:** They would all be in excess of 10 per cent because all the funds presently existing would be deemed to be foreign securities. Therefore, any addition will be in excess of 10 per cent.

We will have to calculate tax at 1 per cent per month, file the return and pay the tax. We made a calculation for the Department of Finance and determined that at the outset the only tax payable would be about \$5 per return. It would not pay the Department of National Revenue to process it and it would be very, very expensive for us to handle. The tax is negligible and we hoped, for these reasons, that we would obtain the grandfather clauses we requested. However, instead of that we were given until 1974 which, in our considered opinion, is not sufficient.

**Senator Connolly:** Has the amendment to extend the period to 1974 been introduced?

**Mr. McAlduff:** No, it was announced by the Minister of Finance when he tabled the 96 amendments, but none of these amendments covered the transitional provisions.

**Senator Connolly:** Will you suggest a draft amendment?

**Mr. McAlduff:** Yes.

**Senator Connolly:** Will the increase in the amount that can be contributed to a retirement savings plan make an appreciable difference?

**Mr. McAlduff:** Yes, we believe it will make quite a big difference.

**Senator Connolly:** Therefore, the industry in respect of retirement savings plans is bound to become bigger and more important to many more people. Does that not accentuate your problem?

**Mr. McAlduff:** No, not this particular problem; this is concerned only with existing plans. Additions in the future are not involved here. I believe that all our member companies by the end of this year will have set up special

mutual funds which conform and are specifically for registered retirement savings plans.

**Senator Benidickson:** You said that supposing somebody prior to June 18 had a retirement savings plan. You would like that undisturbed. But for the future, because of this new law, you would have a fund other than investor's growth that would comply with the law and make it attractive.

**Mr. McAlduff:** That is correct. I should make one other point. Someone might question it and say, "Why don't you adjust the investment portfolio of investor's growth so it complies with this?"

**Senator Benidickson:** It might be the wrong time to divest yourself of some foreign securities.

**Mr. McAlduff:** Yes. The main reason why we feel that we cannot do so is that some 92 per cent of the assets of Investors Growth Fund are earned not by registered retirement savings plans but by ordinary investors. We have to operate that fund in the best interests of all the people in it. For a small minority, we cannot work in a structuring-off of the investment portfolio which would, in our estimation, be detrimental to the majority.

**The Chairman:** You would have to divorce this element from the general operations of your business.

**Mr. McAlduff:** That is right. We would set up special funds for registered clients. We have no quarrel with that. All we are asking is that this be done with the least possible disruption to these who have invested their money with us in the past.

**Senator Benidickson:** You would have to consider the many who are not in a fund, like investor's growth, for retirement plan purposes.

**Mr. McAlduff:** That is correct.

**Hon. Mr. Phillips:** Would you not be subject to breach of contract if the dissident shareholder refused to consent, as Senator Desruisseaux mentioned? You would still have the problem that under the existing contract you agreed to proceed along certain lines. Is there not a breach of civil rights involved?

**The Chairman:** They do not guarantee them against taxes and increases.

**Hon. Mr. Phillips:** I am not saying that they are guaranteeing them against taxes or increases. Clearly, the consequent penalties are related to the individual dissident, but nevertheless you have breached the contract and you affect the investors at large.

**Mr. McAlduff:** That is right. We cannot change these contracts unilaterally. In other words, we cannot go to the 70,000 investors, even if we wanted to, and say "You have to switch from Investors Growth Fund into our new investor's registered mutual fund."

**The Chairman:** That is the real point. You are stuck with a contract. If there is not a switch, or something done, the holder of that contract suffers a severe penalty.

**Mr. McAlduff:** That is correct.

**Senator Benidickson:** Retroactive.

**The Chairman:** Yes. What is your next point?

**Mr. McAlduff:** The next point deals with the taxation of death benefits from registered retirement savings plans. Under the present legislation a refund or payment to a person's estate upon the death of a registered retirement savings plan holder is subject to a flat 15 per cent tax. It is a very generous provision, and it is one that is now being changed. That 15 per cent tax is now being removed. In future, where the proceeds of a registered retirement savings plan are paid to an estate, it is subject to tax at ordinary rates.

There was one saving provision proposed in the Tax Reform Bill, namely, that where the widow of a deceased plan holder receives such a refund she could roll this money into another registered retirement savings plan tax-free, or into a forward averaging annuity.

However, because of the fact that registered retirement savings plans invested in mutual funds cannot designate a beneficiary, the proceeds must be paid to the estate, and because of the way in which the proposed act is worded this benefit would be lost to the widow.

**The Chairman:** Would it be? If the beneficiary is the estate and the testator, before he dies, designates the disposition of this in his will—

**Mr. McAlduff:** He could do that, but, nonetheless, the payment will still be made to his estate. It will be included in the income of the estate under section 146(8). The estate, if it pays this money to the beneficiary, can deduct it, and it would then be taxable to the beneficiary, but not under section 146(8); it would be taxable under section 104, and the way in which the proposed Income Tax Act is worded, it is only amounts included in the recipient's income pursuant to section 146(8) of the tax reform bill that are eligible for this roll-over.

**The Chairman:** Perhaps that is where we should attack the question. Is that what you are suggesting?

**Mr. McAlduff:** Yes. We have a suggestion which we could put into writing, Mr. Chairman.

**The Chairman:** How quickly could it be done?

**Mr. McAlduff:** I would say within one week.

**Senator Beaubien:** It would have to be; we could not wait any longer than one week.

**The Chairman:** Yes, we cannot afford any longer than a week because we are going to stop hearings on November 10. We have already commenced writing our report, and we hope to be through with all this by the end of November.

**Mr. McAlduff:** Just to give you some idea of the seriousness of this, I worked out an illustration, and it is this: If a plan holder who dies has \$90,000 invested in his registered retirement savings plan there would be a tax of 15 per cent, which is \$13,500 under the present law, and the



proceeds to the widow would be \$76,500; if the widow is 60 years of age she could probably buy an annuity for life of approximately \$500 a month. Under the revised bill this \$90,000 would be taxable in her income or in the income of the estate at the normal rate. For example, the tax on that \$90,000 in the Province of Manitoba would be \$51,795, and the net proceeds available to the widow would be only \$38,205, and with this she could purchase an annuity for life which would give her approximately \$250 a month. This illustration gives you some idea of the severity of the proposed law. This would be the immediate effect. It would not only affect people who die after January 1, but it could well affect people who die before January 1 but in respect of whom payments could not be made until after December 31, 1971, which is often the case because we cannot make a payment out until we get estate tax and succession duty releases.

**Hon. Mr. Phillips:** You are worried about the beneficiary.

**Mr. McAlduff:** Yes.

**Senator Molson:** The rate of tax you just quoted is higher than is contemplated under the proposed act, is it not?

**Mr. McAlduff:** No, senator, that is exactly what is contemplated.

**Mr. Molson:** It seems extraordinarily high; what was the figure again?

**Mr. McAlduff:** On \$90,000 of taxable income the amount of tax, without provincial taxes added on, would be \$46,663. The example I gave was a Manitoba example where the tax is 11 per cent greater than that thereby bringing the total tax up to \$51,795.

**Senator Molson:** It is a very impressive figure.

**Senator Benidickson:** We have been talking about the death of a spouse, Mr. Chairman, and I thought that was exempt from estate tax. I can imagine that if the beneficiary of the retirement plan was someone other than a spouse there would be a tax, but I thought we had eliminated the tax if the beneficiary was the spouse.

**The Chairman:** The problem might occur, Senator Benidickson, if the money goes from the plan to the estate, but if the testator makes a will and makes a grant or confers a benefit on his spouse, on the movement of that the wife would take that without tax.

**Mr. Grant:** It loses its character.

**The Chairman:** This is the problem, whether there is a change in character between the time the money leaves the fund and gets to the spouse, and whether the fact that it has to go to the estate first takes away that benefit.

**Hon. Mr. Phillips:** I am puzzled in the same way Senator Benidickson is. If on January 1, 1972 we have no federal estate taxes, and if there is no deemed to be capital gain realization on the death of the investor, where does the element of tax liability come for the widow?

**Senator Burchill:** That is it.

**Senator Molson:** The suggestion was that it was treated as income. That was your suggestion.

**Hon. Mr. Phillips:** Generally speaking we have the roll-over provision on the death of the testator.

**The Chairman:** The point is that the money on the death of the investor goes to his estate, whether it is estate tax, succession duties or anything else.

**Senator Molson:** It is not income, surely.

**The Chairman:** No.

**Senator Molson:** The rate he gave us was the income tax rate.

**The Chairman:** It becomes income when the estate pays it to the widow, for instance. This, I understand Mr. Grant to say, is the effect of these sections in the bill.

**Hon. Mr. Phillips:** But we have no federal estate taxes on January 1, 1972.

**The Chairman:** It is not an estate tax.

**Mr. McAlduff:** This is income tax really; it is not an estate tax.

**Senator Molson:** But surely it is not income.

**Mr. McAlduff:** It is deemed to be income under the Income Tax Act.

**Mr. Grant:** We have something similar at the moment. If an individual dies with a retirement savings plan, by taking out all the money in that plan and passing it to the widow there is a 15 per cent income tax imposed on the withdrawal of those moneys. That concept has been abandoned under the new system. Under the new system either his estate will end up with the liability for income tax, or the person who actually receives, in Mr. McAlduff's example, \$90,000 will end up with a liability for income tax. There is an exception made when those moneys are passed directly from the retirement savings plan to the spouse.

**Senator Benidickson:** That is the point I wanted to clear up.

**Mr. Grant:** In those circumstances the spouse is not required to include that \$90,000 in her income. The point we are endeavouring to make, which I think is the weakness in the act, about which we have had some discussions with the department, is that it is impossible legally for a person to designate a beneficiary of retirement savings plan money as he can in insurance, because the civil laws of the provinces do not permit that. Therefore, what happens when an individual dies is that the money of his R.S.P. goes technically through his executors, and even though he may have designated in his will that it should go to his wife, it loses its character within the meaning of the bill as money coming from an R.S.P. The technical point we would like to have clarified by the Government is that it should not do that; that even if it goes through the will and ends up in the hands of the widow it should be still possible for her to benefit from the roll-over. I think it is an oversight.

**The Chairman:** Oversight or not, it looks as though something should be corrected. Your job is to give us the language. If we like it we may act.



**Senator Desruisseaux:** The Canadian investors in a mutual fund have a position. A Canadian investor in a mutual fund can also buy an offshore mutual fund. What is the position with this new taxation system? They can buy into, let us say, an American or an English fund, and they can, if they wish, invest their money fully there. Is that correct?

**Mr. McAlduff:** Yes. If we are talking about registered retirement savings plans, in future a registered retirement savings plan would be precluded from investing more than 10 per cent of its assets in such a form of offshore mutual fund. Offshore mutual funds, to the best of my knowledge, have never been an important media of investment for Canadian registered retirement savings plans. Certainly they will be even less so in the future.

**The Chairman:** Can we move along, because our time is moving along.

**Mr. McAlduff:** The next point is conduit treatment for mutual funds. I should probably start by defining what we mean by "conduit treatment". "Conduit treatment" simply means that a person who invests in the media of a mutual fund would pay no more and no less tax than they would pay if they had owned the underlying securities directly.

The principle of conduit treatment seems to be accepted by everyone. In the summary of the tax reform legislation it is stated that the main objective of the new legislation is to treat mutual funds and investment corporations essentially as conduits between the shareholders or investors and the sources from which their income is derived.

The Senate committee concluded, on the subject of mutual funds, that the present conduit treatment of mutual funds should be continued by one method or another.

The Commons committee said something essentially the same when they were studying the White Paper. They said:

The committee therefore states only that it supports the common views of the Government and the funds that the tax results should be as close as possible to being identical with the results it would obtain if members had held the assets of the funds directly.

So the principle seems to be well established. Unfortunately, it did not work out in practice, in the case of mutual fund corporations that do not qualify as investment fund corporations.

In the case of those companies, there is a very substantial tax penalty to the shareholder who invests through the media of such a mutual fund. One way of illustrating it is in the Institute of Chartered Accountants' book called "Tomorrow's Taxes" in which they show, on page 138, an illustration of the conduit principle for an open end mutual fund corporation not qualifying as an investment corporation. They use as an example a shareholder in a 40 per cent tax bracket, and they show that in respect of the income from invest, rents or foreign dividends that he receives through the medium of such a mutual fund, he pays not a 40 per cent tax but rather a 60 per cent tax. That is quite a tax penalty.

**Senator Benidickson:** Would you give me the title of the publication again?

**Mr. McAlduff:** It is called "Tomorrow's Taxes" a book put out by the Canadian Institute of Chartered Accountants. It is a very good one.

**Senator Molson:** Would you give the page or section?

**Mr. McAlduff:** It is page 138, and it is part of section G-20, an illustration of the conduit principle.

We also put an illustration in the brief that we sent to you, which shows that one-third of such income is taken away through this tax penalty; that if a person who received \$300 interest or foreign dividends, as a direct investor, invested in that same security through the media of a mutual fund that is not an investment corporation he would have that income scaled down to \$200 through this additional tax.

**Senator Molson:** That is at the bottom of page 4 of your brief?

**Mr. McAlduff:** That is correct, sir.

**The Chairman:** Are you going to give us some language on that?

**Mr. McAlduff:** Yes, we can. We have had a dialogue with the Department of Finance on this and we have made suggestions to them, but we have been told that there are, as they called it, "systems problems". We do not agree. If there are systems problems, we have not been able to see them. We believe that we could suggest language which is workable and which would result in equitable conduit treatment.

**The Chairman:** If you give it to us, we will assess it.

**Mr. Grant:** One of the simple things we suggested is to allow mutual fund corporations to elect to be taxed in the same manner as mutual funds trusts, which the Government does recognize. This would, in fact, work.

**The Chairman:** What else?

**Mr. McAlduff:** The next item has to do with income averaging annuities. These are the new forward averaging annuities. This is a new concept, a very novel one, under the Income Tax Act, one that we think will be valuable and very popular with the taxpayers of this country. It is a means whereby certain types of income—such as capital gains and lump sum payments out of pension plans or retirement plans, or incomes of athletes or performers—can be deferred to future years by purchasing one of these forward-averaging annuity contracts. Our complaint here is that under the legislation as it is presently written the issuance of these forward averaging annuity contracts is limited to all intents and purposes to life insurance companies, the people with whom we compete very vigorously for this particular type of savings dollar. We believe that the act should be broadened to permit a similar type of vehicle to be issued by mutual fund corporations.

**The Chairman:** All right. We have that.

**Senator Benidickson:** Notwithstanding that, many mutual funds have close relationships in their sales forces with insurance companies?

**Mr. McAlduff:** That is correct. We are appearing here not just on behalf of our corporations but, we believe, also on behalf of the shareholders. We know for a fact that a great many of the people who are presently clients with us would much rather enter into a forward averaging annuity contract invested in a mutual fund, than one invested in an insurance company contract.

**The Chairman:** You suggest that an amendment is needed to section 61(4)(b).

**Mr. McAlduff:** That is correct.

**Mr. Grant:** It is my responsibility to deal with the next two points which are really fairly short and of rather a technical nature. The first point relates to the capital gains credited to non-residents by a mutual fund trust. It appears to us in our examination of the bill that section 212(1)(c) could have an unintentional effect, because although that section deals with the imposition of withholding tax on payment to non-residents, since the section exempts from the application of withholding tax taxable capital gains paid to non-residents, and since taxable capital gains by definition are equal to one-half of capital gains, we are concerned that the other half might be subject to withholding tax, and we do not think that that was the intention. We raise this as a technical matter.

**The Chairman:** You think the part exempt from tax should have a free ride.

**Mr. Grant:** Yes. The last point is that in the case of mutual funds the use of loss carry-back in the case of capital losses is not particularly suitable since mutual funds traditionally, and certainly in these circumstances, contribute their capital gains annually. You could have the anomalous situation arise where, for example, in 1972 a mutual fund corporation has made substantial capital gains, all of which it has distributed to its shareholders. In 1973 it suffers a capital loss. The present provisions of the bill provide that the mutual fund corporation in 1973 should carry back its loss to 1972. Well, the fact is that in 1972 the mutual fund corporation would not have paid any capital gains tax, effectively, since it would have distributed those gains to its shareholders.

Here we again point out the anomaly and suggest that the requirement to carry back the loss first before you carry it forward, should be limited to the amount of the capital gains reported by the mutual fund corporation in the previous year. So that if, in my example, the mutual fund corporation had no net capital gains in 1972 because it distributed them to its shareholders, then it would not carry back at all but would carry the loss forward from that time on. If it had \$100,000 which it had retained undistributed to its shareholders, then in those circumstances it would be required to carry back \$100,000. We think it is a technical problem and we think the Department of Finance is sympathetic. But we also think we should record it here since we have already made submissions on it.

**The Chairman:** What section do you think should be amended?

**Mr. Grant:** It is really section 111(1)(b) which deals with the loss carry-back. Once again, sir, we would be quite pleased to submit language.

**The Chairman:** There is one limitation on that; we must get it very promptly.

That would appear to conclude your presentation this morning.

**Mr. Grant:** I think so, sir.

**The Chairman:** Thank you. We have another hearing at 2.15 p.m.

The Committee adjourned until 2.15 p.m.

Upon resuming at 2.15 p.m.

**The Chairman:** Honourable senators, I call the meeting to order.

We have the submission of the Canadian Pulp and Paper Association this afternoon, and their presentation will be introduced by Mr. Hamilton who is President of Domtar Limited.

**Mr. A. Hamilton, President, Domtar Limited:** Mr. Chairman, it is a pleasure for us to appear before you again this afternoon. Before continuing, I would like to introduce the members of the Canadian Pulp and Paper Association who are participating in today's presentation. On my right is Mr. Howard Hart, Executive Vice-President. Next to him is Mr. Tom Bell, President of Abitibi Paper Company. Behind him is Mr. Colin Brooke of Domtar Limited; Mr. D. A. Wilson, Director of Canadian Pulp and Paper Association; and in front of Mr. Wilson, another Mr. Wilson, Mr. R. W. Wilson of Consolidated Bathurst Limited. Next is Mr. D. Ford of Northwood Pulp.

Before we get down to the nitty-gritty of our presentation, I would like to say a few words about the Canadian pulp and paper industry. I think that everyone in this room is very much aware that we are having our problems; and we consider that some of these problems are of a severity which the industry has not had to face in the last four or five decades. To keep the problem in perspective we should not that the pulp and paper industry throughout the world is in a rather poor state. When I say this, I am referring to the industry in Japan, the United States, Italy, France, Germany, the United Kingdom, and Scandinavia. We are all facing the kind of problem, that of over-capacity for what has been, in the short run, a slump demand, and the problem of rapidly rising costs. It is only natural that we have to address ourselves to these problems if we are to establish a profitable industry which in the long run is good for the country or countries concerned.

**Senator Connolly:** Has the demand or the drop in demand a direct bearing on costs?

**Mr. Hamilton:** No, we consider a drop in demand is more a result of the general slowdown that has occurred in the economic activity. All of our statistics indicate that the demand for pulp and paper products in general follows population growth and economic growth. There are other shortterm conditions as well; but if these two major fac-



tors occur there is a fall-off in the demand for the industry. We would be the first to admit that some of the reductions in demand, particularly in the United States market and some parts of Europe, is of a nature which would indicate that it is more than proportional to the drop-off in economic activity. The analysis is apparently under way, but we have not an answer to the problem.

**Senator Connolly:** Might it be costs?

**Mr. Hamilton:** It certainly could be costs.

**Senator Connolly:** Costs could a factor?

**Mr. Hamilton:** Costs do cause an increase in price, and an increase in price makes paper less competitive with other competing materials. So this chain of events can happen. There have been some people in Canada who have publicly questioned whether or not there is a long-run future for the Canadian pulp and paper industry. We would greatly like to debate this point, because those of us in the industry are completely convinced that the long-run balance will tip in our favour.

We have disadvantages and we also have advantages. Some of the advantages we enjoyed in the past have been eroded away or have become less of an advantage through technological changes and advances in other parts of the world. We do have a strong position in world markets. We do have a wide range of manufacturing know-how for a wide range of products. We also have a highly skilled working force. We think we have a reasonably skilled management, but we are not going to talk very much about that.

We think there are disadvantages in particular in the transportation line. Transportation is one of our major disadvantages that is inherent in the Canadian picture. Fifty or sixty years ago the trees were much closer to the mills than they are today. Now we are cutting farther away and the costs rise. Then a well-known fact is that transportation costs of all finished products, whether by rail or by ship, have increased at an alarming rate; and this is one of the disadvantages inherent in our geographic location.

We come to the particular reason for being before you today, and that is to talk about another disadvantage we have, that is basically associated with the tax structure that this industry faces, compared to the tax structures faced by our major competitors in the world market, the United States and Scandinavia. We are producing in a Canadian environment but we are selling in a world environment. And this is a fact we have to keep in front of us at all times.

To repeat what I have said earlier, we welcome this opportunity to come before you and talk with you in some detail, or at your wish, Mr. Chairman, about this tax reform bill. I would like at this point to ask Mr. Howard Hart to take over the presentation of our position.

**The Chairman:** Mr. Hart, I notice that some of the comments in your brief deal with general tax provisions in Bill C-259, such as corporate tax instalments and things of that kind. If it does not disrupt your presentation, what are your basic concerns that arise out of the provisions of Bill C-259 that bear on the operations of your industry? We would like to get at them first.

**Mr. Howard Hart, Executive Vice-President, Canadian Pulp and Paper Association:** Mr. Chairman and honorable senators, as Mr. Hamilton has said, we are addressing ourselves to one of the major disadvantages that we see facing the Canadian pulp and paper industry, and indeed, that forest product industries of Canada are facing. Certainly tax reform bears directly on this, either by omission or commission. We have listed in our presentation to the Government—copies of which are before each of you—13 or 14 very specific items which we feel would be detrimental to this industry, but possibly also to other industries. But in the overall context of tax reform, which has been going on longer than any of us would care to think about, we feel our basic disadvantage flows from the tax burden that falls on Canadian forest products as compared with the major bulk producing forest product companies that operate in the United States and Scandinavia. There are some basic principles that we feel are very important, and we have proposed to the Government that they be encompassed in the tax reform. I would like if I may, Mr. Chairman, to touch on one or two of these areas.

**The Chairman:** Very well.

**Mr. Hart:** First and foremost, Mr. Chairman, we believe that the tax burden that any particular Canadian company has to face must be in reasonable proportion to the tax burden that its major competitors face if it is selling in the world markets. We think this is absolutely critical. The forest products industry in Canada has for many years borne a substantially higher corporate tax burden than its competitors in the United States and Scandinavia. We have set out in our submissions to the Government,—which were also reviewed with this committee about a year ago—some figures relative to the tax burdens on forest products here as compared to the United States. At that time we pointed out that, on the average, forest products in Canada had a corporate tax burden of about 49 per cent. On the other hand, our competitors in the United States—the big bulk producers—will have, on the average, a corporate tax burden of about 34 per cent.

We have had some difficulty, quite frankly, convincing people that this difference does, in fact, exist, and only yesterday we spent some time with Department of Finance officials trying to demonstrate, by extracting material from the financial statements of major companies, that this difference in corporate tax burden does, in fact, exist.

**Hon. Mr. Phillips:** Mr. Chairman, may I put a question to the witness?

**The Chairman:** Yes.

**Hon. Mr. Phillips:** This is a point which I was going to put to you in due course.

You make a case against the United States and Sweden in relationship to your tax burdens. Do you not think it would be helpful if you were to give us *ad hoc*, in addition to this, proof of this by way of a schedule in relationship to the actual taxable income? Are you ready to give us that as quickly as possible, instead of dealing with generalities?

**Mr. Hart:** We would be quite anxious and willing to provide you with that material if you would like to have it. It was provided in considerable detail to Department of



Finance officials. It is a complicated schedule, but we would be delighted to provide you with it.

**Hon. Mr. Phillips:** The second part of my question is this: When you say "submission to", is this submission similar to the one presently before the Department of Finance?

**Mr. Hart:** You asked for schedules, I take it, sir.

**Hon. Mr. Phillips:** I am speaking of the document now before us. You say you have submitted material to the Department of Finance. We are dealing now with the document that is presently before the Department of Finance, are we?

**Mr. Hart:** Yes, sir.

**Hon. Mr. Phillips:** So we need not specifically draw it to their attention?

**Mr. Hart:** That is correct, sir.

**Hon. Mr. Phillips:** I would like to suggest, sir, that you provide us with a sample of an average American company, an average Canadian company and an average Swedish company for the same fiscal year, say, 1970—and if you cannot get 1970, then, 1969—and let us see, chapter and verse, what the results are.

**Senator Benidickson:** I was about to make a similar suggestion, Mr. Chairman, and I feel it is all the more desirable that we get examples of particular comparable cases. Unlike our proceedings on the White Paper, we are not appending to the proceedings of these hearings the briefs submitted, but I feel in a matter of this type that a motion probably could be made that the particular papers filed, giving specific examples of comparable tax rates, should be made an exception to our policy and be made an appendix to the record. If this was done, the readers of our proceedings would get the benefit of seeing what the witnesses are talking about.

**The Chairman:** There is no question about that. The only question is: How soon can we get these examples?

**Mr. Hart:** Within one or two days.

**The Chairman:** That is fine. We will close our hearings on November 10, and we hope to have our report submitted by the end of November.

**Mr. Hart:** We will have specific examples in your hands by Monday or Tuesday next.

**The Chairman:** That is fine.

**Mr. Hart:** Mr. Chairman, if I may continue in that same context, it may interest you that in the paper you have before you—that is, the one printed on its side—we have endeavoured to make a similar calculation for the year 1972. When I mentioned to you earlier the differential we were talking, more or less, historically, 49 per cent in Canada and 34 per cent in the United States. If you will look at this example which takes into account the tax changes that have been announced in Canada and in the United States—and I should mention this is a hypothetical case—you will see the average tax rate in Ontario, Quebec, and British Columbia might be about 48 per cent and in

the United States it might be about 37 per cent. The purpose of the example is merely to indicate that, despite the announcements that have been made about reductions in corporate tax loads, these have had a rather minimal effect, although a useful one, on this particular differential that we are talking about.

If you look at the second-last factor, Mr. Chairman, which is "Funds retained by company", it will make the point even more clearly. This is money that is on hand to pay dividends or to revitalize or rebuild the company, and just looking at the averages in the two sets of columns you will see that in this example there is about \$5.2 million left in the case of a Canadian company as against about \$6.3 million left in the case of a United States company. The United States company has about 20 per cent higher retention of earnings with which to keep the company going.

**Hon. Mr. Phillips:** The reason I did not pay too much attention to that is, among other things, that the location, capital employed, and other factors would have a bearing on this comparison. Aside from the fact that there is still an estimate for 1972, it would be much more impressive if this committee were given specific instances so that the comparisons could be made and the opinions of honourable senators could be determined as to whether they are effective or not. Knowing your industry and your representation here, I believe you will give us a fair comparison.

**Senator Benidickson:** Nonetheless, Mr. Chairman, as it is only a two-page document, I wonder if the committee would entertain a motion that this be made an appendix to our proceedings?

**The Chairman:** Could I have a motion to adopt this as part of this hearing?

**Senator Connolly:** At this juncture?

**The Chairman:** Yes, at this juncture; not as an appendix.

**Hon. Senators:** Agreed.

*Text of document follows on next page.*

**Senator Connolly:** Just scanning this page that we are now discussing, I note that the average rate for the Canadian company is 47 per cent as against 36 per cent in the United States.

Would you say, Mr. Hart, that the difference in the tax rate is due to the general American tax laws, or is it due to specific arrangements made for this industry?

**Mr. Hart:** The differential arises out of the technical feature that pertains particularly to the forest products industry in the United States. Under the tax laws of the United States a forest products industry is able to classify a substantial portion of its profits into a category that is subject to a capital gains tax rather than to the normal corporate tax levels. What this hypothetical illustration is meant to indicate is the impact of this margin of difference.

**Senator Connolly:** So it is a matter of a reduced tax on a wasted asset—the return from a wasted asset?

**Mr. Hamilton:** A renewable asset.

## PULP AND PAPER INDUSTRY

COMPARISON OF CANADIAN AND UNITED STATES TAXES ON INCOME—1972  
'000 \$

	Ontario and Quebec	British Columbia		Washing- ton and Florida	Georgia, Oregon, South Carolina
Provincial Tax—					
Income.....	12%	10%	State Tax Rate.....	0%	6%
Logging.....	10%	15%			
Sales.....	\$ 100,000	\$ 100,000	Sales.....	\$ 100,000	\$ 100,000
Capital Expenditures.....	10,000	10,000	Capital Expenditures.....	10,000	10,000
Income before tax.....	10,000	10,000	Income before tax.....	10,000	10,000
Augmented Capital Cost Allowance (5).....	225	225	Income from timber (30% - 3).....	3,000	3,000
			State Income Tax.....	0	600
Taxable Income.....	9,775	9,775	Income taxable at corporate rate.....	7,000	6,400
Federal Tax at 46.5%.....	4,545	4,545	Federal Tax—48%.....	3,360	3,072
Less—			Less—Investment Tax Credit (7%).....	700	700
Abatement for Prov. Income Tax.....	977	977		2,660	2,372
Abatement for Prov. Logging Tax.....	433	433	Plus—Tax on Timber Income (30%).....	900	900
Federal Tax Payable.....	3,135	3,135	Federal Tax Payable.....	3,560	3,272
Provincial Income Tax.....	1,173	977			
Less—Abatement for Logging Tax.....	217	210			
Logging Tax (4).....	956	767			
	650	975			
Total Provincial Tax.....	1,606	1,742	State Tax.....	0	600
Total Federal and Provincial Tax.....	4,741	4,877	Total Federal and State Tax.....	3,560	3,872
Funds retained by Company.....	5,259	5,123	Funds retained by Company.....	6,440	6,128
Rate of Tax—					
on Taxable Income.....	48.5%	49.9%	Rate of Tax on \$10,000.....	35.6%	38.7%
on \$10,000.....	47.4%	48.8%			

25 October 1971  
CPPA

## NOTES

1. It is assumed that the company operates entirely within the boundaries of the particular state or province.
2. The federal tax rates are those that will be applicable, according to present information, to public corporations in Canada and to income over \$25,000 in the United States. It is assumed that the proposed investment tax credit of 7% will be in force in the United States.
3. Income from timber represents the capital gains treatment (for tax purposes) of the excess of current market value of standing timber over original cost. Wood cut is charged off at current market value

in determining income subject to taxation with the excess over original cost taxed as a capital gain. The percentage of total income represented by income from timber ranges from quite low to close to 100%. For purposes of this comparison it is assumed 30 per cent of income is represented by the gain in the value of timber.

4. Income subject to logging tax after processing allowance is assumed to be 65% of income.
5. Capital cost allowance increased by 15 per cent, charged at 15 per cent per year.

**Senator Connolly:** A renewable asset, perhaps, in your case is a more apt description.

**Mr. Hart:** The key point, senator, is that the technique does exist, and it is the resultant impact rather than the technique used to get there that is of critical importance.

**Senator Connolly:** In other words, there is a special tax situation applicable to the forest products industry in the United States which is different from the general tax laws?

**Mr. Hart:** Yes.

**Mr. Hamilton:** One of the other features in this calculation is the investment tax credit, but that applies to all industries. The point you just mentioned is unique to the forest industry.

**Senator Burchill:** Does that hold true with respect to Scandinavian countries too?

**Mr. Hart:** They have a different approach, sir. They are allowed to set aside, as retained earnings, capital for

future use without paying any tax on it. In other words, the retained earnings part that they do not distribute in dividends does not attract any tax at all; it is deposited into the national bank; it gets interest; they then come forward and request permission to utilize this, which introduces some part of state control, if you like, on the rate of expenditure and when it is spent, but they have that credit which is non-taxed to bring back and spend in their business.

**The Chairman:** Whatever method is used, the net result is that you turn out to be at a competitive disadvantage.

**Mr. Hart:** I think this is the point we are trying to establish.

**The Chairman:** I take it you are not trying to suggest to us that we should recommend the Swedish or the United States system?

**Mr. Hart:** No.

**The Chairman:** I take it you have proposals of your own.

**Mr. Hart:** We do have a proposal. You have come right to the heart of our problem. The competitive disadvantage with respect to tax structures does exist. I might point out again with respect to this example, this may not even be the whole story, because this particular example for 1972 does not take account of any advantage the United States firm may get from the DISC proposal, which they seem about to adopt, which would further widen the differential to the American companies advantage. On the other side, while this statement does include the recently announced 7 per cent reduction in Canada, we must keep in mind that that is only in effect for one year as currently announced. I would say this hypothetical case is a fairly modest statement of the difference.

**Senator Burchill:** Does what you are saying now apply to other forest products, such as logs, lumber and plywood?

**Mr. Hamilton:** Yes, sir.

**Mr. Hart:** Yes. We think, quite frankly, that this differential in the tax burden on the industry in Canada compared with its major competitors is historically the major factor that is applied to the industry today. This has affected our ability to be competitive, to have lots of muscle in export markets and rebuild our plant in this country. Having reached our present situation, which is anything but admirable, we are pretty concerned about the future, because we know that the demand for wood fibre is growing; it has a modest rate of growth. We know that plants will be built somewhere in the world to supply that fibre, and in the present state we are very concerned that these plants will not be built in Canada. We have resources in terms of people and fibre, but so do other people, and with more favourable tax rates they will grow and we will not.

**The Chairman:** To what extent, if at all, does the 10 per cent United States surcharge affect your operation?

**Mr. Hart:** It has a very substantial impact on those portions of our operation that supply paperboard, linerboard, fine paper, wrapping paper, the so-called specialty grades of paper.

**Senator Connolly:** Finished products generally.

**Mr. Hamilton:** There are only two major classifications of paper products which do not attract the 10 per cent surcharge. One is market pulp and the other is newsprint. All others attract the 10 per cent surcharge.

**Mr. Hart:** I am sure the point you are most interested in is what we would propose to correct the situation.

**The Chairman:** That is right.

**Mr. Hart:** We have recommended as a part of tax reform that the forest products industry be allowed to earn a tax-free investment allowance up to one-third of its income subject to taxation. This is in a proposal made to government very early this year. We propose that it be earned by expenditures in qualifying fields, such as organization, plant improvement, improvement in woodlands operation, pollution abatement, and plant expansion where justified. This is merely our offsetting technique to try to get ourselves on side with the basic corporation tax burden that the Americans and Scandinavians have. They arrive at that lower base by their own methods. We are proposing what we consider a uniquely Canadian approach to it. It is very much a carrot and stick operation, which would force the companies to modernize in order to qualify for income tax reduction. We think it should give us the muscle in the export markets that we so badly need, to modernize.

**The Chairman:** Is that developed in the brief?

**Mr. Hart:** It is developed in the brief we submitted earlier in the year and discussed with your committee, I think it was about March of this year. We would be happy to supply additional copies if you would like to have them.

**The Chairman:** No, I think we have copies.

**Mr. Hart:** The document I am referring to is called "Corporation taxes and growth in the pulp and paper industry". It was a submission to federal and provincial governments in February, 1971. Mr. Bell is just pointing out to me that there are two statements before you which indicate the means of application of this investment tax allowance.

**The Chairman:** One has the heading "Logging tax abatement"?

**Mr. Hart:** No. I am referring to the document headed, "EXample of application of forest industries investment allowance."

**Senator Benidickson:** Does anybody have the record of the date that was presented? I assume you are talking about your presentation in respect of the White Paper.

**Mr. Hart:** It was submitted in February 1971, and was discussed with this committee, I believe, in about March.

**Senator Desruisseaux:** It was discussed with the department?

**Mr. Hart:** Yes, sir.

**Senator Benidickson:** It was part of your submission on the White Paper. I am merely pointing out it has already been printed and is available.



**Mr. Hart:** I perhaps stand corrected, Mr. Chairman. One of my colleagues says we discussed the matter in general terms with this committee, but we did not discuss our submission in March. If I may, I would like, if senators would be willing to receive it, to supply you with copies of the document "Corporation taxes and growth of the pulp and paper industry", which does outline in considerable detail our proposals for correction.

**The Chairman:** Very well.

**Mr. Hart:** On the matter of the general rate of corporation tax, we pointed out the need for competitive reasons to have a rate lower than that in the United States. The reduction of 7 per cent for the period July 1, 1971 to December 31, 1972, is a step in the right direction, but it did take a long time to accomplish and it is only a temporary measure.

**Senator Benidickson:** It applies to all industries.

**Mr. Hart:** Correct.

**Hon. Mr. Phillips:** What is the justification for any position that this particular formula should be applicable to the forest industries inclusive of logging, as Senator Burchill mentioned, and not to other industries that engage in the marketing of natural products on world markets?

Do you justify your position specifically because of the nature of your industry, or do we have to make an explanation, if we accept your view, that you should not be assimilated to mining or any other world industry based in Canada that sells on world markets? That is the obvious reaction to any recommendation we may make.

**Mr. Hart:** We have been asked several times by Department of Finance officials, in making this presentation to them, that if the proposal we have made were granted on behalf of forest products industries would not the department receive similar requests from other industries. I think in all honestly our answer has to be that of course you are likely to. But a government has to govern and has to make decisions to justify the case. I opened my statement by saying the factor we feel is of absolutely critical importance is that industries that sell in international markets must have corporation tax burdens that are competitive with their competitors, unless perhaps in the rare circumstance that we had an industry in Canada that could be so prosperous that it could stand any kind of a tax rate. But in the real world in which we live, I feel that international industries have to have corporate tax burdens which are roughly equitable to those of their competitors.

**The Chairman:** That is acknowledged in the White Paper. I can recall a statement made in the White Paper that fiscal policies in relation to multinational companies in the foreign field, meeting competition in the foreign field, must be such that there will be no competitive disadvantage vis-à-vis those competitors.

**Mr. Hart:** I think we had better find that portion of the White Paper.

**The Chairman:** It is in the White Paper because I turned it up yesterday.

**Mr. Hamilton:** Unfortunately, it has not been translated into action.

**The Chairman:** That is why I looked it up.

**Senator Desruisseaux:** What is the percentage of the total production now?

**Mr. Hart:** About 75 to 80 per cent, I think.

Mr. Chairman, if I may return to your earlier question, I think we would argue that the differential taxation for different industries, depending on the competition they face in the world markets and the contribution they are likely to be able to make to Canadian economic growth, is a key factor in determining the level of tax burden. We see no justification in setting a level equal for all industries but which will not permit some of them to compete.

**Hon. Mr. Phillips:** The mining industry and the petroleum industry are not going as far as you go in your brief.

**Mr. Hart:** Perhaps they do not have as good a case as we have, sir.

**Senator Benidickson:** The mining industry does have peculiar tax consequences in other ways.

**Hon. Mr. Phillips:** I am trying to emphasize a point that a request has been made because of the peculiar nature of your industry, as distinguished from other natural resource industries, quite apart from the competitive aspect in Sweden and the United States.

**Mr. Hart:** We have not based our case on the fact that the mining industry already has preferential tax treatment within the Canadian scene. In other words, we are not "me too-ing".

**Senator Connolly:** Mr. Hart, at the present time your industry is in a very unfortunate position, I understand. Is that so?

**Mr. Hart:** I beg your pardon.

**Senator Connolly:** The Canadian pulp and paper industry is in a very depressed condition, a terribly depressed condition in fact. Now, it was not that way perhaps three or four years ago. Then you were in a very prosperous condition, I gather.

**Mr. Hart:** I think that is relative, sir. I think we would argue that we have been subject to this trend for something in the area of 10 or 12 years. Perhaps we have been a little slow in realizing what has happened to us.

**Senator Connolly:** That is what I am coming to, because it seems to me that at one stage, even though you had these excessive rates of taxation, if you want to describe them that way, you were still able to sell your products, because the world demand was very great. But once the world demand falls off in any way, as a result of what you have said earlier, namely, that economic conditions deteriorate abroad, then weaknesses in the tax system put you in an unfair position in competition with other world producers. Is that a fair statement to make?

**Mr. Hart:** Yes.

**Mr. Hamilton:** I think what you have said, sir, is fair. I might just go a little further in this. Most of us in the industry would be of the opinion that the trend began to become unfavourable at the beginning of the 1960s, and the devaluation of the Canadian dollar was a good paint job over some cracks. It amassed some of the basic underlying trends such as taxation and the increase in the capacity of the industry, not only in this country but in other parts of the world as well, which have greatly distorted the operating rates in the industry. And this puts a severe strain on the profits. The trend was set back then, but the prime factor was the devaluation of the Canadian dollar. The trend was unfavourable before we ran into the revaluation upwards of the Canadian dollar when it was allowed to float. But this was the single most serious step when the problems began to occur.

**Senator Connolly:** The change in the valuation of the Canadian dollar is obviously a factor that affected the situation in your industry both positively and negatively; and this is a situation which we have not yet discussed here. I do not know that we really need to, but it is good to have this pointed out to us.

**Mr. Hamilton:** The industry has to be so structured that it can take this kind of variation in its stride. If it cannot do that, it does not hold a strong position.

**The Chairman:** I think we should put into the record at this point two examples of applications of Forest Industries Investment Allowance.

*Text of Examples follows.*

#### EXAMPLE OF APPLICATION OF FOREST INDUSTRIES INVESTMENT ALLOWANCE

Assumes income of 100, of which 60 is from logging

Current Situation	Tax Rate	Logging Tax Abatement	Net Tax	
Federal Tax.....	40	4	36	
Provincial Tax.....	12	2	10	
Logging Tax.....	6		6	
		6	52	
Proposed Situation	Tax Rate	Logging Tax Abatement	Earned Reduction	Net Tax
Federal Tax.....	40	4	13	23
Provincial Tax.....	12	2	4	6
Logging Tax.....	6			6
		6	17	35

NOTE: Taxes in the current situation have been calculated on the basis of a pulp and paper company operating in Ontario or Quebec. For such a company operating in British Columbia the net tax would be higher because of higher logging tax. Rate is as given in Reform Bill for 1972.

#### EXAMPLE OF APPLICATION OF FOREST INDUSTRIES INVESTMENT ALLOWANCE

Assumes income of 100, of which 60 is from logging

Current Situation	Tax Rate	Logging Tax Abatement	Net Tax	
Federal Tax.....	36.5	4	32.5	
Provincial Tax.....	12.0	2	10.0	
Logging Tax.....	6.0		6.0	
		6	48.5	
Proposed Situation	Tax Rate	Logging Tax Abatement	Earned Reduction	Net Tax
Federal Tax.....	36.5	4	12.2	20.3
Provincial Tax.....	12.0	2	4.0	6.0
Logging Tax.....	6.0			6.0
		6	16.2	32.3

NOTE: Taxes in the current situation have been calculated on the basis of a pulp and paper company operating in Ontario or Quebec. For such a company operating in British Columbia the net tax would be higher because of higher logging tax. The rate of federal tax is that applicable in 1972. For 1973, the 7 per cent reduction would no longer apply and federal rate would be 49 per cent.

**The Chairman:** This is the substance of the request you are making?

**Mr. Hart:** That is correct sir.

**The Chairman:** It will be published. You say that the exchange situation in the devaluation of the Canadian dollar, together with your other operations, distorted the picture regarding the operating profits of the industry?

**Mr. Hamilton:** Similar to a drastic price increase, in effect.

**Mr. Hart:** Mr. Chairman, if the suggestion is being made that an upward trend in demand is going to correct this fundamental problem, I think we are misleading ourselves.

**Senator Connolly:** I did not suggest that. That might result, but you still have the underlying inequity that plagues your industry.

**Mr. Hart:** Yes, we will not participate in the upward trend in demand unless we have a better base from which to operate.

**Hon. Mr. Phillips:** Suppose the dollar was pegged at 92½ cents, would you need this relief?

**Mr. Hart:** Yes, because naturally it would be unrealistic to peg it at 92½ cents.

**The Chairman:** Tell me, Mr. Hart, is there any way, other than giving tax abatements and reduction in corporate



rates, by which the problems of the industry could be dealt with? In the mining industry, and the oil and gas industries it is dealt with in a variety of ways, by write-offs, by accelerated write-offs, by factors of earned depletion, all of which have the effect of substantially reducing the amount of earnings. Is there anything along that line that would accomplish the result that you are seeking, or which you feel is necessary?

**Mr. Hart:** Mr. Chairman, we have in effect recommended a procedure which does reduce the volume of earnings that are subject to tax. I am certainly not informed enough to recommend other procedures. We have made one specific proposal which we feel would be a satisfactory solution to the problem. If there is sufficient understanding that the problem does exist, then, it seems to me that man's imagination in this area can be almost limitless, and, to me, the technique is secondary to the recognition of the problem and the intent to correct it.

**Senator Gélinas:** Have your submission to the Government actually been turned down, or is it just being held in abeyance?

**Mr. Hart:** It is hard to say, senator. We have not been told that it is going to be adopted. On the other hand, it has not been adopted and it is not mentioned in the Tax Reform Bill, nor has it come up in any hearing. We are still pressing for it.

**Senator Benidickson:** You say the real presentation was subsequent to the floating of the dollar.

**Mr. Hart:** It was earlier this year, and our recommendation was that it be adopted either as a measure of tax reform or sooner by other means, if possible.

**Mr. T. Bell, President, Abitibi Paper Company:** We have had no sympathy from the Department of Finance whatsoever.

**Mr. Hamilton:** Not that we have been able to detect. If there is sympathy, it is not evident.

**Senator Macnaughton:** Would you say you have been ignored?

**Mr. Hamilton:** No, I would not. I do not think that would be fair to the department.

**Mr. D. A. Wilson, Director, Canadian Pulp and Paper Association:** We have come close to being ignored.

**Mr. Hamilton:** Let us say we have certainly had the opportunity to meet with them and discuss it with them.

**The Chairman:** There may be some feeling against granting a favourable reduced tax rate to a particular industry if there is some other way of giving the benefit, by reason of peculiarities in the operation of that industry.

Do you have any suggestions in that regard?

**Mr. Hamilton:** I gather, Mr. Chairman, you are staying within the tax structure?

**The Chairman:** Yes. Do you want to move into another area?

**Mr. Hamilton:** There are many other areas. For example, you run into transportation problems, the combines legislation, the competition act, and so forth. There is a whole range of other areas, all of which in total could have a significant impact on the ability of the pulp and paper industry to be competitive.

**The Chairman:** The only one that is immediately before us is Bill C-259. We are not proposing to bring before us the so-called "competition bill." It has a long road to move along before it gets to this committee.

**Senator Connolly:** I hope I am not putting my head or my hand into a hornet's nest here, but what percentage of this industry is Canadian-owned and what percentage is foreign-owned?

**Mr. Hamilton:** The best guess, senator, is that between 55 and 60 per cent is Canadian owned.

**Mr. Hart:** That has not changed significantly in the last seven or eight years.

**Senator Connolly:** Do you sense any feeling that because there is a large percentage of foreign ownership perhaps special tax treatment for the industry is not forthcoming?

**Mr. Hart:** I have not felt that, sir. Quite frankly, I believe the basic road-block is that it may be unrealistic to expect the Department of Finance, which obviously has to take in enough money to pay the Government's bills, to propose a major reduction in its tax revenue. It seems to me the impetus has to come from other areas of the Government which recognize the economic problems and the social problems involved, as well as the opportunities for growth. This is where the pressure on the Department of Finance has to come from.

**Senator Connolly:** But surely we are not discovering for the first time that the forest is a depleting asset in our country. It is renewable, if you will, but at a cost, and if there are aspects of the tax laws that apply, for example, in the mining industry and the petroleum industry, they should also apply to the forest products industry. Has any suggestion ever been made as to how this could be done?

**Mr. Hamilton:** I think this point is covered in our original submission on the tax structure.

**Senator Connolly:** Was this the first time that it had been put before the Government?

**Mr. Hamilton:** I would say that last year was the first time.

**Mr. Bell:** That is right.

**Senator Connolly:** But this is a basic condition which has persisted since the beginning.

**Mr. Hamilton:** It has persisted for a long time.

**Senator Connolly:** I wonder why the tax laws did not recognize this fact.

**The Chairman:** The problem did not become acute.



**Mr. Hamilton:** I believe you could rightly challenge the industry in that the industry did not in fact make it their business to bring this situation to the attention of the Government.

**Senator Benidickson:** Were you not inspired to look somewhat more carefully at these matters as a result of the floating dollar?

**Mr. Hamilton:** We were inspired to look at these matters as the result of a whole series of circumstances, senator.

**Senator Connolly:** I remember, Mr. Chairman, when we had a committee of this house on land use one of the most important submissions was made by this industry and that was with respect to the replenishment of the forest. This is not new. Surely, at that time the tax implications should have been triggered by the work of the committee and by the submission made by the industry?

**The Chairman:** It is a pertinent point, senator, but it seems to me that we should not look back at this time.

**Senator Connolly:** No, Mr. Chairman, but the answer to your question obviously is that this approach has not been made.

**The Chairman:** When you renew or you have a reforestation program, how would the cost of that be dealt with for tax purposes?

**Mr. Hamilton:** It varies widely across the country because it is a provincial matter.

**The Chairman:** But do you write it off as an expense or do you treat it as a capital item?

**Mr. Hamilton:** It is an expense, to the extent we incur expenses.

**The Chairman:** It may well be that it is not sufficient to treat it as an expense. It may be that you need something on top of that that might be parallel to earned depletion in the mining, oil and gas industries. Those expenses would also qualify as a deduction from your earnings.

**Mr. Hamilton:** Yes.

**Mr. Hart:** This could be an alternative technique that you are proposing.

**The Chairman:** I am just trying to search and reach out. It seems to me this is the politically-wise preferred area as opposed to a tax reduction.

**Mr. Hamilton:** We have structured our suggestion here, Mr. Chairman, in a manner which is parallel to the mining industry; but we have based our reasoning for suggesting that consideration be given to it, not on the fact we want to be the same as the mining industry, but as a road to parity in the tax structures, with our competitors.

**The Chairman:** The overall answer, of course, is that if you are not making money these allowances do not do you any good.

**Mr. Hamilton:** That is correct, and there would be an onus on the companies to get themselves in a position where they could take advantage. This, we felt, answered the valid criticism that grants and other special types of deals can, in fact, be supportive, but it is not socially or economically desirable for them to do that.

**Senator Benidickson:** We cannot only concern ourselves with the matter of taxation and the corporate features. You are a tremendously important industry in Canada from the point of view of the number of people you employ. Have you anything to say as to where you stand as an employer of labour in Canada?

**Mr. Hamilton:** In manufacturing, I believe, we are "number one".

**Senator Benidickson:** I would think so.

**Mr. Hamilton:** This, I might add, with the chairman's permission, places a tremendous responsibility on the management of these companies because we are like the mining industry in that, if a mine closes down, the town closes down; if a mill shuts down the area goes down.

**Senator Benidickson:** In the area I have represented for 20 years the mill is a major source of employment.

**Mr. Hamilton:** It is a fact that today there are many mills in this country which are running just because of the social responsibilities of the company concerned, but the arithmetic of it says they should be shut down.

**Senator Burchill:** Do you get any tax relief on account of the money you spend on pollution control?

**Mr. Hamilton:** Not as yet.

**Senator Burchill:** That would be a point to hammer home.

**Mr. Hamilton:** We have been hammering that point home at the federal level and also at the provincial level. Some of the provinces have rescinded in one way or another their sales taxes. Some provinces have kept pollution abatement facilities out of real estate tax rolls, which is an advantage. But in terms of the federal Government we have got a 50 per cent straight line write-off on these facilities, but that is the extent so far.

**The Chairman:** It may be that something akin to DSIC would be a help, because there on export sales you get really an abatement in your taxes.

**Mr. Bell:** That is on new facilities for export. We are already in the export business and to add new facilities in an already glutted market does not make sense.

**The Chairman:** That is why I said "similar to". I was thinking in terms of to the extent of the proportion of your income from export sales to your total income; if that was segregated and treated specially by a reduced corporate rate, there would be lots of justification for that, because Canada to live must have export sales and you cannot have export sales unless you can sell and make money on them. To do that you must be competitive, so you could find justification, I would think, and politically justified considerations at this time, because we certainly have to be export conscious.

**Mr. Hart:** I detected from a point you mentioned earlier that you are concerned about the acceptability of our tax proposal, which we are going to send you in detail, because I think you characterized it as simply a tax reduction. When you see the detail of the proposal I think it may commend itself to you, because it is in fact an earning process. This is not a reduction in taxes which the companies will come by easily; they will have to earn it through our proposal by expenditures in expansion or modernization or pollution control.

**Senator Macnaughton:** I am under the impression that under the new Department of the Environment there is a fund that has been set up fairly recently to which you can apply for aid and assistance in the building of pollution control measures or works.

**The Chairman:** I do not think it is within the scope of what we are looking at now. I was going to suggest that this was a very interesting and provocative discussion; it is not going to resolve anything today, because we are waiting for some more material. We may get some ideas as to an area of approach that would be different from just a straight tax reduction, and maybe you will too, now that you know what our thinking is. Could we move on to the next heading?

**Mr. Hart:** Turning to the more technical aspects of the bill, we have listed in our submission with respect to Bill C-259, after the general introductory comments about the level of taxation, a number of points with respect to clauses about which we are concerned. My colleagues would be prepared to try to answer any detailed questions you might have on these, but I should point out that we are not sure we have listed all the changes; in fact, we are almost sure we have not listed all the clauses that we will ultimately be concerned about. We think this is one of the very serious problems about this bill, namely, how you get to understand it.

I would like to give three examples that we discussed this morning in preparation for this meeting this afternoon. In our submission to government last February, in this document we are going to send you, we urged that techniques be found through federal-provincial negotiation to provide for full abatement of logging taxes so that

the forest products firms would not pay a greater corporation tax than the rate that normally applies to the corporations generally. I do not want to go into the details of the logging tax structure now, but it does have the effect that in certain provinces the abatement for the logging tax is not complete and companies wind up paying a higher rate of corporation tax than companies generally.

At the very least, we have been under the impression from discussions we have had with government officials that the present incomplete abatement would not be reduced. However we now find from a careful reading of Bill C-259 that under certain circumstances the provisions of the bill will in fact reduce the already less than complete offset for that logging tax.

We have prepared a special statement on this point, a copy of which is before you, which is called "Logging tax abatement". I merely mention that to indicate two points. First, we are concerned that logging tax abatement, even though now not complete, has a possibility in certain circumstances of being less complete in the future. Also it illustrates that we are almost shooting at a moving target on this bill, which seems to be moving faster than we can keep up with on the clauses and the changes.

**The Chairman:** On that point, I would suggest that we print this memorandum, "Logging tax abatement", as part of our proceedings today at this point. Is that agreed?

**Hon. Senators:** Agreed.

*Text of memorandum follows.*

#### LOGGING TAX ABATEMENT

The intention of the present Income Tax Act (Section 41A) was to provide full abatement to the taxpayer for logging taxes imposed by the Provinces, provided the rate of logging tax did not exceed 10% and the Province concerned abated one-third of the logging tax against its Corporation Tax. A measure of logging tax has, however, always been disallowed for Federal tax purposes on technicalities.

Bill C-259 now proposes to ensure that there will be further and potentially serious double taxation due to logging taxes: this will be particularly severe whenever the company as a whole has a tax loss in a year or whenever the non-logging operations suffer a loss. These provisions are particularly harmful as the double taxation arises when the company can least afford it.

Another anomaly occurs as the half of the capital gain on the sale of a timber limit that has to be brought into income is excluded from the taxable income available for a logging tax credit, even though the whole gain may be subject to logging tax.

The most suitable solution to the problem of logging taxes is that proposed for mining taxes in Bill C-259—as proposed in an earlier CPPA Brief.

A sample calculation of the effects of this extra tax is set out in Appendix A.

October 25 1971

C. A. BROOKE.



ILLUSTRATION OF DOUBLE TAXATION  
DUE TO SECTION 127 OF BILL C259

Year	1	2	3	4
Logging Income.....	100	100	(100)	100
Mining Income.....	100	—	—	100
Half Capital Gain on Sale of Timber Limit (Sec. 129(4)).....	—	—	—	100
Other Business Income.....	100	(50)	(50)	—
Income.....	300	50	(150)	300
Losses Forward.....	—	—	—	(150)
Taxable Income.....	300	50	(150)	150
Logging Tax**.....	6	6	—	18
Federal Tax Net of Provincial Abatement.....	120	20	—	60
Less Mining Income Adj.....	(15)	—	—	(15)
Logging Tax Adj.....	(4)	(3)	—	(3)*
Net Federal Tax.....	101	17	—	42
Provincial Corporation Tax.....	36	6	—	18
Less Logging Tax Adj.....	(2)	(2)	—	(6)
	34	4	—	12
Provincial Logging Tax.....	6	6	—	18
Provincial Mining Tax.....	15	—	—	15
Total Tax.....	156	27	—	87
Rate.....	52%	54%	—	54%

\*6.2/3% of taxable income less mining income or investment income, i.e.,  $6.2/3 \times (150 - 100)/100$ .

\*\*Assuming 40% processing allowance and 10% rate.

**Mr. Hart:** There is a second point I might use by way of example. Clause 192(13) of the bill, dealing with designated surplus, has already been amended in one of the 95 changes, and I understand amended primarily to correct a defect in drafting. It is our view again on what inspection we have been able to make of that clause that it creates an even worse situation than the unamended clause, and that it could give rise to very serious cases of retroactive taxation.

**The Chairman:** When you say a worse situation, I take it you do not deal specifically with that point in your brief as to what is the worse situation?

**Mr. Hart:** No, sir. It is not even in our brief.

**The Chairman:** Then we would like you to point that out to us, because we are all operating in that field, for 95 amendments is a lot of amendments to digest and correlate.

**Senator Benidickson:** On a 1000-page book.

**The Chairman:** You, with a special problem, would be looking at that special thing, and therefore would detect the defects maybe a little faster than we would. Would you give us a short memo on that point, then we do not need to take any time in discussing that point now.

**Mr. Hart:** We will send you a memo.

**Hon. Mr. Phillips:** In connection with designated surplus, it has been suggested from certain quarters that the bill would be substantially simplified if designated surpluses were eliminated from the statute completely, and that we would be dealing solely with undistributed earned income and capital surpluses. Do you see any particular reason why the statute should be burdened with designated surpluses, in view of the introduction of the capital gains tax?

**Mr. Hart:** Mr. Chairman, may I ask Mr. Brooke to respond to that, because he can do so much more effectively than I can.

**Mr. Colin Brooke, Manager, Tax Division, Domtar Limited:** I agree, sir, on the introduction of the capital gains tax. I would have thought this provision on designated surpluses was absolutely redundant.

**Hon. Mr. Phillips:** I would like to put a halo over your head.

**Mr. Hamilton:** Don't bother. That would cost us more money.

**The Chairman:** You may not realize it, but Senator Phillips was riding a pet view of his and now he has your support. Shall we move on?

**Mr. Hart:** Mr. Chairman, I was trying to give examples of the difficulty of keeping up with this bill. Another one is, of course, that the Minister of Finance has announced still further revisions will be forthcoming. Quite frankly, I do not know quite how we are supposed to keep up with those and make comments on them before the bill is due for enactment.

**The Chairman:** We will do the best we can.

**Mr. Hart:** Generally, Bill C-259 introduces considerable rigidity into business operations, in our opinion. We do not support this, primarily because we have been exposed through our competitors to corporate tax structures in other countries which are based on giving corporations as much flexibility as possible. So this is a point about which we are concerned. To give you some examples, the bill goes to great lengths to close some minor loopholes, but in the process it sets up conditions that we feel will just hamper business development. For instance, some corporations will suffer tax penalties in accomplishing much needed reorganizations for purposes of efficiency. It is our belief that tax-free reorganizations should be permitted.

The bill requires payment of corporation taxes very often months before the receipt of the cash upon which those profits—or in our industry hopefully those profits—will be based. We think that the reverse should be true.

In the case of a company making an incorrect election, the penalty imposed in some cases can be confiscatory.

**The Chairman:** You do not need to develop that at all, because I would think that there is a pretty firm view in the committee on the penalties. If you are out one cent in your calculation of undistributed income, they can invoke the full penalty of the law 100 per cent. Of course, this just does not make sense. We have had submissions on that.



**Mr. Hart:** I suspect that you are much more knowledgeable in this area than we are, Mr. Chairman. We are really leading up to the point that we believe that the adoption of the reform bill in January, if this is the schedule, does not provide for adequate discussion of the bill. There are a great many things wrong with it. Meanings are obscure. There are punitive sections and there are the 95 amendments. And there is more to come I suspect.

I think a real element of which we can all be concerned here, too, is that there has to be some co-ordination between the federal and provincial governments.

**Senator Benidickson:** Particularly with respect to a natural resource industry.

**Mr. Hart:** Precisely.

**The Chairman:** We are conscious of those things, and we are going to do the best we can.

**Mr. Hamilton:** I might suggest, Mr. Hart, that if you were just to go down the list of the particular points, the Chairman might indicate which ones he would like to have us amplify. Although most of them are particular to the paper industry, generally they are applicable to the whole of industry.

**The Chairman:** On some of the points on your list we have already had discussions. For example, your nothings, your consolidated returns and the corporate tax instalments and tax-free reorganizations.

**Mr. Hart:** No. 6 has been partially taken care of, I believe, in amendment.

**The Chairman:** So that takes us down to No. 7. I can tell you that on dividends received from foreign affiliates we have had excellent submissions from Massey-Ferguson and from Alcan. We had almost a catechizing from them, and, as they are very knowledgeable in that field, they were very helpful to us in the information we received. Actually, we are doing some writing on this now so that I cannot take it any further than that. With all due respect to your paragraph 7, I do not think it will add anything to our fund of knowledge or will effect a change in the view with which we are approaching the subject at the present time.

You have already spoken about the additional tax on excessive election and you have heard what I had to say about that. I take it there is nothing further you want to add. The question is how a penalty of that kind could possibly be justified, if you make a mistake in the calculation of your undistributed income. Is there anything further you wish to add?

**Mr. Hamilton:** No, sir. Many of these subjects have been brought up by many others who have appeared before you.

**The Chairman:** We are always open to hearing anything additional that you wish to say. Now, on the dividend tax credit is there anything special you wanted to add there?

**Mr. Hart:** Just what is in the statement, Mr. Chairman.

**Mr. Hamilton:** I do not think there is anything we would add to what is said there, Mr. Chairman.

**The Chairman:** Now, allowances for automobiles and club dues. This looks pretty much like a policy decision by the Government. I think we did express views on that in our report. Is there anything further you would like to point out?

**Mr. Hart:** No, Mr. Chairman. We came prepared on these detailed points to respond to questions, if that was your wish, but we have nothing to add to the brief statement we have made on each point.

**The Chairman:** All right. We now come down to taxation and stock option benefits. We have had some submissions on that. Have you a point that you would like to make? We would certainly like to hear it.

**Mr. Hamilton:** The only point we make, Mr. Chairman, is that we consider this as a mechanism by means of which we can compete in the North American market for talent in the management ranks of this industry. Some people think we need more talent so this would be one thing that would help us.

**The Chairman:** Stock option benefits are a well recognized way of competing. This reduces the attraction.

**Mr. Hamilton:** That is correct.

**Mr. Bell:** Mr. Chairman, I should like to add one point. In our company, with American operations it is almost impossible to entice an employee of ours working in the United States back to Canada. There is no way we can get him to come back to Canada because of the difference in the tax structure. The employee option is only one way which you can add to this enticement, and there really is no enticement. So far as pulp and paper people talking of stock options is concerned, well, that is pretty redundant.

**The Chairman:** Right now there is not much attraction.

**Mr. Hamilton:** It is a good time to get them.

**The Chairman:** With respect to the deemed disposition on ceasing to be a resident of Canada, we have had some submissions. I think there have been views expressed by some of our members that there are some circumstances in which, at the discretion of the minister, a departure of residents from Canada should not be subject to the penalties that are provided for in the bill; for instance—health reasons, age, change of job. We have looked very seriously at these things. I notice the heading "Capital Gains—Valuation Day" which is found on page 14. Have you anything to say about that?

**Mr. Hart:** I believe a part of that has been corrected by an amendment, sir.

**Mr. R. W. Wilson, Tax Specialist, Consolidated Bathurst Limited:** Yes, the area of capital gains respecting fluctuation has been altered to our satisfaction by the amendment; and there has been a minor alteration amending section 2 resulting from the purchase of bonds for sinking fund purposes. But I feel this is very nominal.

**The Chairman:** You mean, if you go into the market and are able to pick up some of your bonds for redemption

purposes at, let us say, 80, with a resulting capital gain, you would have to pay tax on that gain.

**Mr. R. W. Wilson:** Yes.

**The Chairman:** You say they have done something about that situation?

**Mr. R. W. Wilson:** They have done a little on that.

**The Chairman:** What do you mean by "a little"?

**Mr. R. W. Wilson:** A gain of, let us say, 20, in the case you were suggesting, will be treated as capital gain and, if we were to go through a refunding issue and settle the entire debt, I think it would be taxed on the income. I do not know whether that is a correct interpretation, but it is a possibility.

**The Chairman:** I question the rules, and I think it is a good idea to make that notation in our report. But there are physical problems, I would think, in getting a ruling sooner than that. A ruling is certainly desirable, and there should be rulings available quickly, but how are you going to get them?

**Mr. Hart:** Our single recommendation, Mr. Chairman, is that whatever provision can be made to enlarge the ruling and to make it more effective and more prompt is the only thing that we can do. There is a need for this to happen.

**The Chairman:** The answer that has been given is that this will be a question the courts will have to decide, and this is not very satisfactory. It would interfere with the completion of normal business operations.

**Mr. Hart:** The kind of discussion that you have promoted on this individual clause and the kind of response which we can give, which is at best incomplete, is like taking a shot at a moving target. We are very concerned about the implementation date of this bill. We feel it will not be done until such time as the federal and provincial governments have developed a system that truly and effectively meets our Canadian needs. We feel it would be very dangerous to try to solve some of these basic policy problems.

**The Chairman:** This is exactly what we said in our report. We thought they were putting the cart before the horse in many ways; and to build a structure with the complexity that we have—and I am not criticizing those complexities as such at the present time because a lot of them arose from the fact they were trying to do some very beneficial things, they were trying to write provisions into the bill in relation to small businesses, and so on—you may find yourself going up and down the same street and not recognizing the street, but in most cases they are trying to benefit the situation. There is nothing we can do about this at present, except to draw their attention to as many things as we think need to be

Are there any other points?

**Mr. Bell:** The main point in our submission is tax relief. Because we are competing in world markets, would it be more appropriate for us to base the main thrust of our request for relief on the export segment of our income?

**The Chairman:** My own view, having heard many submissions and given careful consideration to it, is that that is an

area in which the Government, the public and everyone is really conscious of the problem. The US 10 per cent surcharge brought that into prominence.

**Senator Benidickson:** We know they are an important export industry; everyone knows that.

**The Chairman:** Yes; Canada has to export to live and these exports do bring money to Canada. However, all that will be finished if they are not in a position to compete in those markets and it is important to Canada that they should be in that position.

**Mr. Hamilton:** This becomes a very complex problem, as I think you gentlemen all know, because of the commitments to GATT as to what is permissible.

**Hon. Mr. Phillips:** Yes, plus the bookkeeping involved to segregate the export segment.

**Mr. Hamilton:** We all know what is going on in the common market, where because of their value-added taxation principles they are able to rebate the tax on exports, which very neatly solves the problem.

**The Chairman:** I gather that Mr. Bell is referring to a solution directed to supporting the export industry in some way in the bringing home of its earnings. They operate in other countries, which have tax credits and incentives. The corporate tax rate as a result is much lower, but the benefits received in other countries are then taxed away to the extent of the difference between the rate of tax paid abroad and the Canadian rate. The net result is to create a disadvantage for the exporter and remove a competitive advantage that he may have had under the earlier system, where he could bring these dividends home with a certain percentage of voting shares without paying income tax.

It might not be too difficult to illustrate in a presentation how invaluable that is.

**Hon. Mr. Phillips:** Mr. Bell's point is interesting; it is good sense, but difficult of application. For example, if a company makes \$5 million and, segregating it, over a million of that \$5 million is made up of export trade, there you have the justification for a special rate of taxation, because it relates to the competitive features as we discussed them with regard to the United States. The question of treatment of expenses such as interest on funded debt and other items arises. Should they be related to sales, and so forth, and administratively would it work out? I think, with respect Mr. Chairman, that we might consider that, because it is the one basic justification that I have heard today, aside from the broad application of protecting the competition of world markets, that would justify a special rate.

**The Chairman:** The Chamber of Commerce made a submission the other day and I asked them to rate the priorities in looking at the bill with respect to the order of changes, and they gave us a rating in which they placed foreign source income as number 2. I told Mr. Crawford, who was explaining it, that to our way of thinking the most important item was multinational or foreign income because it cuts across our whole trade.

**Mr. Hart:** Mr. Chairman, as Mr. Bell suggested, if it could be achieved it is seven-eighths of a loaf, which is considerably better than half a loaf or no loaf at all, but it also defies the principle, if it is an accepted principle, that industries that are competing and subject to international competition should not bear a corporate tax burden higher than their competitors; and there is 20 per cent of our industry where international competition exists right here in Canada.

**Senator Benidickson:** And that is the first argument you put forth this afternoon.

**Mr. Hart:** That is right.

**The Chairman:** If you go back and read a couple of paragraphs in the White Paper, and I suggest you do, you will see that that is enunciated there quite clearly and quite distinctly, and if I were asked to make a presentation as to the value of the export industry and how it should be treated, these are the first quotes I would use.

**Mr. Bell:** It has not come out in the proposed legislation though, has it?

**The Chairman:** No. Some inhibiting source came along.

Thank you very much, gentlemen.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 46

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WEDNESDAY, NOVEMBER 3, 1971

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Tenth Proceedings on:

“Summary of 1971 Tax Reform Legislation”

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(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Lynn and Martin

(Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, November 3, 1971.  
(58)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further examine:

"Summary of 1971 Tax Reform Legislation"

*Present:* The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Haig, Hays, Isnor, Macnaughton, Molson, Smith, Sullivan and Welch—(16).

*Present, but not of the Committee:* The Honourable Senators Heath and Laird—(2).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *Hollinger Mines Limited:*

Mr. A. L. Fairley, Jr., President;  
Mr. Percy C. Finlay, Q.C., Vice President and General Counsel;  
Mr. Wendell F. White, Treasurer, Labrador Mining and Exploration Company Limited.

### *The Canadian Life Insurance Association:*

Mr. A. H. Lemmon, Past President and President, The Canada Life Assurance Company, Toronto;  
Mr. Hervé Belzile, Past President and President, Alliance Mutual Life Insurance Company, Montreal;  
Mr. T. M. Galt, Chairman, Committee on Taxation and Executive Vice-President, Sun Life Assurance Company of Canada;  
Mr. J. A. Tuck, Managing Director;  
Mr. F. Kimantas, Tax Officer.

### *Dominion Foundries and Steel Limited:*

Mr. J. Plumptre, Comptroller;  
Mr. A. D. Laing, Assistant Comptroller and Assistant to the Executive Vice President—Financial.

At 12:00 o'clock Noon the Committee adjourned.

2:15 p.m.  
(59)

At 2:15 p.m. the Committee resumed.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly

(*Ottawa West*), Haig, Hays, Isnor, Macnaughton, Molson and Welch—(13).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *The Canadian Institute of Chartered Accountants:*

Mr. R. D. Brown, F.C.A., Chairman, Tax Committee;  
Mr. Michael Carr, C.A., Member, Tax Committee;  
Mr. R. C. White, C.A., Director of Communications.

At 3:35 p.m. the Committee adjourned until 8:00 p.m. this day.

8:00 p.m.  
(60)

At 8:00 p.m. the Committee resumed *in camera*.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Cook, Gelinas, Haig, Hays, Isnor, Molson and Smith—(13).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

The Committee proceeded to the consideration of the Preliminary Report respecting the Summary of 1971 Tax Reform Legislation.

It was Agreed that typographical and other minor revisions and additions be left for the consideration of the Chairman.

At 10:15 p.m. the Committee adjourned until Thursday, November 4, 1971 at 9:30 a.m.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, November 3, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have four submissions this morning by: Hollinger Mines Limited; The Canadian Life Insurance Association; The Canadian Institute of Chartered Accountants; and Dominion Foundries and Steel Limited.

The first is Hollinger Mines Limited, represented by: Mr. A. L. Fairley, Jr., President; Mr. Percy C. Finlay, Q.C., Vice-President, Treasurer and General Counsel; and Mr. Wendell F. White, Treasurer, Labrador Mining and Exploration Company Limited. I understand that Mr. Fairley will make the opening statement.

**Mr. A. L. Fairley, Jr., President, Hollinger Mines Limited:** Mr. Chairman and honourable senators, I would like to express our appreciation for your courtesy in allowing my colleagues and me to appear before you, and to emphasize to you the very serious problems which will confront the mineral industry in Canada generally, and, particularly, two of Hollinger's subsidiary companies—Labrador Mining and Exploration Company Limited and Hollinger North Shore Exploration Company, Limited—if Bill C-259 is enacted in its present form.

I have with me this morning, Mr. P. C. Finlay, Vice-President, Treasurer and General Counsel of Hollinger Mines Limited, and also Mr. Wendell White, Treasurer of Labrador Mining and Exploration Company Limited and Hollinger North Shore Exploration Company, Limited.

We have appeared before your committee previously, when hearings were being held on the White Paper on Taxation, and, at that time, we opposed in principle, with broad philosophical arguments, certain segments of this paper, as they affected the mining and mineral industry. Since that time, certain modifications have been made in this proposed legislation, which would have the effect of somewhat, not nearly enough, but somewhat, mitigating the burden on operating mining companies. Nothing has been done, however, to relieve its onerous impositions on Canadian mineral exploration companies—companies which represent the very basis of the future growth of the mineral industry in Canada. Labrador Mining and Hollinger North Shore are in this category of mineral exploration companies.

Therefore, in the brief we are presenting today, we have addressed ourselves in some detail to two specific points:

(1) That the mineral exploration companies, under the terms of Bill C-259, will not be able to earn any significant depletion, as would a large mine-operating company; and,

(2) Due to the specific wording of the bill, the mineral exploration companies will not even qualify for the federal abatement to the provinces of the additional 15 percentage points, which mine-operating companies would be allowed.

The ultimate result of these two regulations would be that, after 1976, the mineral exploration companies would pay approximately 50 per cent of earnings in taxes. When provincial taxes are taken into account—and they will probably vary from province to province—the total would probably exceed this amount. This means that the mineral exploration companies would be taxed at a substantially higher rate than mine-operating companies and, depending on what the provinces do with their taxes, possibly at a higher rate than general manufacturing companies.

This prospect represents a complete reversal of the laws which have governed mineral exploration in Canada, for many years—a movement from a basis of encouragement of this very necessary industry to one of punitive taxation which would have a most discouraging effect on it.

Furthermore, as we point out in our brief, there is a strong element of retroactivity in Bill C-259, as it affects the mineral exploration companies. Income from contracts and leases which were entered into in good faith by all parties, previous to 1965, under the tax laws then existing, will, under the new law, be subjected to unanticipated taxation, which will seriously penalize those companies which made royalty arrangements at that time or earlier.

This situation bears particularly heavily on Labrador Mining and Hollinger North Shore, and the royalty contracts made between these companies and Iron Ore Company of Canada prior to 1965. It is not practical, and probably impossible, to revise these royalty contracts at this time, because our negotiating position is eroded.

We would, therefore, respectfully urge that this committee either:

- (i) recommend the restoration of the capital status of such royalties as they existed prior to 1965; or,
- (ii) at least reiterate the recommendation of your committee with reference to the White Paper and which is referred to in our brief, relating to non-operators percentage depletion. You will recall that your committee's recommendation was:

"that paragraph 5.43 White Paper be implemented to eliminate the percentage depletion available to non-operators, but only to the extent that the interests of such non-operators are acquired after the date of the White Paper or commitments to acquire have been made after



such date. Failing this in the opinion of your Committee, such non-operators would be made subject to tax on the proceeds received under existing agreements which were concluded under the present rules of percentage depletion which may have been a factor in the price accepted."

The underlining is ours.

This, we would hope, you would again recommend.

The predicament in which the proposals of Bill C-259 would place Hollinger and its exploration subsidiaries, Labrador Mining and Hollinger North Shore, has been outlined in submissions which we have made in the past, and are reiterated and brought up to date in this present brief. It is hoped that after further study of this situation your committee will recommend to the Government that it take the necessary steps to rectify the serious and unjust wrongs which have been and will continue to be imposed on us and our many shareholders as a result of the changes made and proposed in income tax legislation since our commitments to Iron Ore Company of Canada were first made.

Thank you, Mr. Chairman and honourable senators. If there are any questions you wish to ask, either I or my colleagues will attempt to answer them.

**The Chairman:** Mr. Fairley, I take it that you are familiar with what has been called the proposed regulations which were issued in July of 1971. In your view, do you find that those proposed regulations restrict the plain intent of the minister's letter of August, 1970, or are you satisfied that they follow and do not restrict that intent?

**Mr. Fairley:** Mr. Chairman, I will ask our general counsel to speak to that. I see what you are getting at, and I will ask Mr. Finlay to reply to that.

**Senator Benidickson:** Mr. Chairman, has the evidence of Noranda been printed yet and, if so, have these gentlemen read that evidence?

**The Chairman:** Well, the newspapers have published every word of the briefs that this committee has had submitted to it, along with quite a few headings as well.

**Mr. Fairley:** I did read the Noranda evidence in one newspaper, but I do not believe it was complete. At any rate, I would ask Mr. Finlay to speak to that.

**Mr. Percy C. Finlay, Q.C., Vice-President, Treasurer and General Counsel, Hollinger Mines Limited:** Mr. Chairman, I believe you are referring to the regulations in regard to the amount that can be taken for depletion for buildings, and so on.

**The Chairman:** Yes.

**Mr. Finlay:** I am quite prepared to speak to that. Incidentally, it has little, if anything, to do with this presentation today because we are speaking particularly on behalf of non-operators. The question you have raised is something that affects a company in which we have a substantial interest: Iron Ore Company of Canada. It would also affect Noranda, in which we have a substantial interest as well.

The real basis of it is that, if they are giving something as a substitution for a fixed depletion, like 33 1/3 per cent, and if the first part of their theory is correct that they should allow it for mine and mill expansion, to which they limit it, then they should allow it completely; but they refer it to one and not to the other.

The other point is that in these mines that are brought out there are many expenditures which are not included, like expenditures for social services or for railroads which are off the property but which nevertheless have to be built. These expenditures are for things that are part of the risk, danger and expense of bringing a mine into production.

**The Chairman:** There are three elements, really: the capital cost allowance, which is more general in its application; accelerated depreciation; and earned depletion. Those are the three phases of entitlement to new mines and major expansions of existing mines. The mix may not suit very well.

**Mr. Finlay:** Well, the first two are items which ordinarily you get in due course anyhow.

**The Chairman:** Except that you may get accelerated depreciation and you may get capital cost allowances, but you may find that in some instances those expenditures do not qualify for earned depletion.

**Mr. Finlay:** That is right. That is why I say that the first two may be and are quite good for the mining industry. It is always nice to get your money back as fast as you can, dealing with the question of accelerated depreciation. Nevertheless, when you come down to the basic principle of earned depletion, it is not fair to eliminate a great number of items that, in my opinion, are part of the category that should be included in earned depletion. I think that is the basis of the Noranda contention; the earned depletion only went so far. I believe that they understood that the generalities—and I do not know how direct the statements were—were to include these other items to which I have referred.

**The Chairman:** If the purpose is to encourage exploration and development, it is difficult to understand why there is a limitation. There is a limitation even in time. If your development goes along at a certain rate and then certain things are contracted for, et cetera, before the mine comes into production, you then qualify. If, however, there are delays in delivery of machinery and equipment so that the mine is actually in production, then you lose your entitlement.

**Mr. Finlay:** Yes.

**The Chairman:** As an observer with some experience, it strikes me that that is defeating the purpose for which it was originally intended. It certainly is not under the new rulings putting mining companies in the position where they can get back all their money, as the minister said, almost as fast as they spend it. If you put time limitations in and if you deal with it at certain times, fine, you get it. If there are delays—and delays may not be controllable either—you do not qualify.

**Senator Molson:** Mr. Chairman, as I recall it, when you get to the 60 per cent rate of production you are in. After

that, if there are any deliveries delayed you get no benefit whatsoever.

**The Chairman:** That is right.

**Mr. Fairley:** Mr. Chairman, I have tried to pull all of this together in general terms—and it has to be in general terms, because I have not gone into all the details of all the testimony. Speaking of general terms, the first statement of the Minister of Finance which you referred to was quite general, as to what would be allowed as a base for depletion. The second statement was much more specific. It was a disappointment to almost everybody in the mining industry.

**Senator Benidickson:** Are you referring to the 1970 statements, Mr. Fairley?

**Mr. Fairley:** I am saying that the last statement was somewhat more restrictive than the first statement.

**The Chairman:** The 1970 statement was in general, clear language. The 1971 statement is the one that contains the proposed regulations.

**Senator Benidickson:** That is a distinction I wish to get at. The 1970 statement referred to the White Paper, and the 1971 statement had to do with the regulations which might follow the new Income Tax Act.

**Mr. Fairley:** They were somewhat more restrictive in what would be allowed as a base for depletion than most of the mining companies had anticipated.

**Senator Connolly:** Mr. Fairley, what specific exclusions do you think are most damaging?

**Mr. Fairley:** I would refer that question to Mr. Finlay.

**Mr. Finlay:** The most damaging one, so far as anything we are associated with is concerned, would be the construction of railroads.

**Senator Benidickson:** I am not aware whether any official documents were issued to the press as a result of the federal-provincial finance ministers' meetings of the last two days, but the *Globe and Mail* this morning says that as a response, particularly to a request from the finance minister of Quebec, the federal Minister of Finance announced a concession yesterday that, for example, railroad construction expense from prior to the date of the issuing of the White Paper statement would be entitled to earn depletion. I repeat that I do not know what was officially given to the press yesterday at the conclusion of that meeting.

**The Chairman:** Of course, Senator Benidickson, that may suffer the same attrition as the 1970 statement suffered when we looked at the proposed regulations in 1971. Certainly, we can note it, but it is not in any very official form at the moment.

**Senator Connolly:** Mr. Chairman, may I pursue what I started a moment ago? I shall not be long. What about infrastructure? You did mention the construction of towns and town sites which included, of course, roads, sewers, water mains and that sort of thing. Is that a big factor?

**Mr. Fairley:** Yes, it is a factor, particularly in the opening of a brand new operation.

**Senator Connolly:** We have been told that the mining companies, after the announcement was made in the summer of 1970, at the instance of the provinces who were mainly concerned, originally thought that the cost of such infrastructure would in fact qualify for earned depletion, and then subsequently it was excluded and apparently is to be excluded in the regulations. Have the provinces complained about this refinement?

**Mr. Fairley:** I would not know what the provincial finance ministers or premiers may have done on this. I honestly do not know the answer to that. But certainly from the original statement that the Minister of Finance made, we felt that the infrastructure, housing, social services and this kind of thing, were included. It was our understanding originally that it was to be included as a base for depletion.

**Senator Connolly:** Is it not fair to assume that if they do not qualify—and here I do not know about your company, but I am speaking of mining companies generally faced with this kind of problem—they might very well find themselves rapping on the door of the provincial authorities for help in this area? Up to a certain point it may be necessary for a mining company to provide these social services that we talk about, which is more than a service really.

**Mr. Fairley:** It is a necessity.

**Senator Connolly:** But surely there is a public responsibility there too, particularly in respect of the province, so would it not be natural for companies to go to the province to ask for help as they do for roads?

**Mr. Fairley:** This is conceivable. It depends how it works out, of course, but it is conceivable.

**Senator Connolly:** It seems to me, Mr. Chairman, that the proposal to exclude them from the regulations so that they do not qualify for depletion will probably ultimately come back upon the federal authority's desk, perhaps not through the direct route of the mining companies complaining, but through the provincial authorities who may have to step in to the breach in some cases where, for example, a mine is more or less marginal and the provision of a two site might make the difference. It would then be back on the doorstep of the federal authorities. Why cannot these qualify for depletion?

**Senator Benidickson:** Mr. Chairman, that is why I made reference to the meetings of the finance ministers. Members will recall that a week or so ago, when we were hearing from members of the Canadian Mining Association, I asked a few questions with respect to the attitude of the provinces, and I think it could be surmised that I was hinting that as a result of representations from the mining industry, or by invitation of this committee, we should perhaps hear from the provincial governments as to their attitude to this tax bill and public press releases respecting prospective regulations thereunder, because there is certainly a dual responsibility in this field of natural resources. I still wonder if this committee should not make known, perhaps, that we would be glad to hear from interested provinces, just as we heard from them when we were examining the White Paper.



**Senator Beaubien:** Mr. Chairman, I should like to start on a new subject if this one is finished with. Mr. Fairley, if this bill were law now, what difference would it make in the taxes paid by Hollinger Mines Limited?

**Mr. Fairley:** Well, since Hollinger is a holding company, I should rather take Labrador Mining, for example, because that gets closer to the basis of the thing. Labrador Mining also has some income from sources other than royalties, and has some investment income and some dividend income.

Now, to answer your question, as of this minute, in 1971 our estimated earnings before taxes are going to be somewhere around \$13.2 million, with estimated taxes of \$4.1 million. The after-tax earnings will be somewhere around \$9 million. On the basis of the new law, as we know it now, our taxes will be up \$1.1 million and our earnings, instead of being \$9.1 million, will be \$8 million. Therefore, our taxes this year would be increased by about 25 per cent in one year. Those are more or less exact figures, but we are of course estimating what our earnings will be for the full year, since we do not yet know exactly what they will be.

On page 9 of our brief you will find an example which is really better because it sets the thing up purely on royalty income. This is not diluted or confused in any way with investment income or anything else like that. In that example, if a company was earning \$5 million pre-1965 less all the prospectors', grubstake exemptions, and so forth, there would have been no tax on it at all; it was treated as a capital gain. So you would have had after-tax income of \$5 million. This is the type of situation we had in mind when we made our deal with the Iron Ore Company back in the early 1950s. There was no tax on royalties, and that is why we made a royalty agreement with them. What we did, as is pointed out in this brief, is that we took royalties and then we took a small interest in the Iron Ore Company. If we had known this was coming of course, we would have foregone the royalties completely and taken everything we were going to take as a shareholder of the Iron Ore Company, because under the new law dividends will still be tax free.

So, we could say we made a mistake, and in fact we did make a mistake if this new law goes into effect. From the early 1950s until 1965 this worked fine and these were the conditions under which we operated, and for 10 or 12 years or so this is the way we operated. Then in the 1965 taxation year the situation changed; it was no longer considered a capital gain; but we still did get a non-operators' depletion allowance of 25 per cent. So, beginning after that period—and let us take, for example, the taxation year of 1970, which is before the White Paper came into effect, we would have had a \$5 million income with a non-operative depletion allowance of \$1,250,000 which would leave taxable income of \$3,750,000. Then allowing for taxes and so forth, we would have ended up with a net income of \$3 million instead of \$5 million. Now, if the present law goes into effect as it is now worded, we will be subject to a full 49 per cent tax.

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** When you say, "if the present law goes into effect," Mr. Fairley, when do you mean?

**Mr. Fairley:** Right now, the first of the year.

**Senator Beaubien:** It is effective in 1976.

**Mr. Fairley:** It is fully effective in 1976, yes. Then our net income will be \$2,550,000 or down about half-a-million dollars from what it is now, and down \$2½ million from what it was when we originally made our deal. So, without our doing anything one way or the other, good, bad or indifferent, the income of this hypothetical company, which earned \$5 million a year, has been cut in half.

**The Chairman:** Is it possible to re-write your deal?

**Mr. Fairley:** As I have said in my statement, it is not practical. I will not say it is impossible to re-write it, because you can always re-write a deal. But all our partners and shareholders know the tax situation we are in; and we are in an untenable bargaining position. So we cannot re-write our deal on any kind of practical basis and end up with as much—

**Hon. Mr. Phillips:** We must consider this from the point of view of making a recommendation which would be simply administrative in nature. We are dealing with a grievous royalty situation. We will come to the abatement problem later, but if we can deal for a moment with the royalty problem; suppose royalties received on agreements entered into prior to the White Paper were deemed to be dividend income, you would, of course, be very happy.

**Mr. Fairley:** Yes, sir.

**Hon. Mr. Phillips:** If these royalties received were deemed to be capital gains which were taxable at the 50 per cent rate, would that bring the essential relief which you are seeking without the necessity of seriously restructuring the proposed act?

**Mr. Fairley:** Yes, sir, give or take a little, it would just about bring the necessary relief.

**Senator Connolly:** Would Mr. Phillips repeat that, please?

**Hon. Mr. Phillips:** We must be careful, because we have been dealing with operating mining companies and we must now redirect our minds to this particular brief which deals with a serious problem for exploration companies. In this particular instance, the two basic problems of grave concern to this company are the royalty, which at one time was non-taxable, and the abatement with respect to the provinces, which are contemplated by the proposed new bill.

Confining myself at the present moment to the royalty problem, we took the position on the White Paper that special consideration be given to cases where royalty agreements were entered into prior to the submission of the White Paper. Since that time we have a capital gains tax on our hands. Hollinger Mines Limited are speaking on behalf of operating companies who have royalty moneys coming in from pre-White Paper agreements.

I put the question to Mr. Fairley, and through him to Mr. Finlay, that within the framework of the present law, on the assumption we felt they had a proper case, a solution might be to recommend that royalty income to which an exploration company is entitled, identifying the type of



company, be deemed to be exempt income. That would be a real Christmas gift.

**Mr. Fairley:** That is one we would like very much.

**Hon. Mr. Phillips:** Yes, I know, that would be delightful—or, alternatively, that exempt income deemed to be capital gains income would be taxable only to the extent of 50 per cent of the royalties received. I am told by Mr. Fairley that dollar-wise that would essentially give them what they ought to be getting. But you would use the simple formula to bring this about.

**Mr. Fairley:** Perhaps Mr. Finlay would like to say something further.

**Mr. Finlay:** The problem with the royalty situation, when you look at it from the ambit of the whole field, is not quite as simple. Dealing with our individual case, while all our agreements preceded 1969, the fact remains that when we look at the wording of your previous recommendation we are not quite certain where we stand. With this \$300 million expansion of the Iron Ore Company of Canada we had to make certain concessions with respect to those royalty agreements. They are still considered royalty agreements, but we had to give up additional ore. In the north there was not enough ore to warrant the type of expansion we had done there. We had reserved one-third of that ore, but we had not used it since 1959. That was for a period of three years, and it was not salable. Our agreement dates back from 1951 to 1954 and during that time they have made certain amendments; and one of the amendments was that we had to give additional ore to support this complex which is now being built. There are certain other minor adjustments.

**Hon. Mr. Phillips:** When you speak of royalty agreements being regarded as exempt income or, alternatively, capital gains income, we do not restrict it to arrangements made prior to the introduction of the White Paper?

**Mr. Finlay:** Yes, as far as we are concerned.

**Hon. Mr. Phillips:** Does that cover the point you are making now?

**Mr. Finlay:** Yes, in respect to dividends, the White Paper originally said that all dividends from Iron Ore Company of Canada to Hollinger Mines Limited were fully taxable. Then Mr. Benson came along and added the words "any company incorporated after 1971." Dealing with the royalty situation, it would seem to me it would have to be after the passing of the bill.

**Hon. Mr. Phillips:** Let me ask you this question. I am not sufficiently knowledgeable in this area. If you were to get exempt income or, alternatively, capital gains treatment, would you be in a better position than operating companies in the mining industry generally? It is one thing to grant relief and quite another to get an advantage over the operating companies.

**Mr. Finlay:** I might answer that by saying that historically an exploration company starts with no income and spends all of its money trying to discover something. They have always been in a better position than operating companies. Unless there is some encouragement given, there will

never be other exploration companies like Hollinger Mines Limited.

**Hon. Mr. Phillips:** That is a very helpful answer.

**Mr. Fairley:** To go one step further: yes, if our royalties were considered tax-exempt as dividends, then we would be better off. However, if they were considered to be capital gains, on which we would pay tax, we would be in just about the same position as the operating company, depending on the company, of course.

**Mr. Finlay:** They were treated as capital gains prior to 1965.

**Hon. Mr. Phillips:** Yes, I know; capital gains, but no tax.

**Mr. Finlay:** Yes.

**Senator Hays:** Mr. Fairley, I am not very knowledgeable in the mining field, but if your firm were in the United States rather than Canada, with the arithmetic that you have projected would you experience a disadvantage or an advantage?

**Mr. Fairley:** It would be a very large advantage, very large.

**Senator Hays:** Have you projected it in dollars?

**Mr. Fairley:** Yes, I can elaborate on that. Here, even under the present law, we only receive 25 per cent of our profits as depletion allowance. In the United States at the present time, depending on the mineral produced, the allowance is anywhere from 10 to 15 per cent of the gross amount of income, or 50 per cent of profits. Although the lesser figure applies, in 90 per cent of the cases the 50 per cent of profits is the governing figure.

The present law provides for 25 per cent in the case of non-operating and 33 per cent in the case of operating companies, as opposed to 50 per cent in the United States. Under the present law the depletion allowance is going completely by the board. We have to earn whatever depletion we can by taking it on the new money we spend, for which we get one-third of every dollar.

On the basis of depletion, the American law is even today far superior to that of Canada from the standpoint of the mining company. Under the new law it will be eminently more superior than it is today.

You may ask why, if the American law today is so much better than that of Canada, are we in Canadian mines, which is a perfectly logical question. However, the answer is that under the present Canadian law, before the White Paper was introduced, in addition to the 25 or 33 per cent automatic depletion, we had other advantages which the United States does not give such as the three-year exemption on a new mine, which was a great advantage.

The average mining company in Canada under the present law, before the White Paper, in comparison with its counterpart in the United States paid an almost similar tax.

**The Chairman:** The loss of the tax holiday and automatic depletion will change that.

**Mr. Fairley:** We will be in a very much poorer position than the equivalent American mining company.

**Senator Hays:** Have you made a comparison between the United States and Canada in relation to your projection of earnings and tax? I am referring to your figure of \$2-1/2 million, and so on.

**Mr. Fairley:** I have not done it for the purpose of this brief. We have calculated it many times in specific cases. In the case of \$5 million income, 50 per cent being depletion, there would be \$2.5 million depletion and tax would be paid only on the \$2.5 million, which would cut us well below what we have today in this theoretical case. We will no longer have the three-year exemption and other considerations, which are very important.

**Senator Hays:** Is it very difficult to project a set of figures to apply exactly to the situation in the United States and to that which will occur new bill?

It would be helpful for this committee to have figures which would illustrate the disadvantages our mining industry faces in comparison with that of the United States.

**Mr. Fairley:** Yes.

**The Chairman:** We are pressed for time and would like to receive these figures as soon as possible.

**Mr. Fairley:** We could do it probably this afternoon and send them up to you. It will be a hypothesis, of course, but we will calculate on the basis of the same income in each case.

**The Chairman:** For what period would you like the comparison made, Senator Hays? Before and after?

**Senator Hays:** Before 1965, from 1965 on and under the new bill.

**Mr. Fairley:** Three periods: before 1965; 1965 to the White Paper; and post-White Paper?

**Mr. Hays:** Yes.

**Mr. Fairley:** Then post-1976, of course.

**Mr. Finlay:** Post-1976 is the important one.

**The Chairman:** You will have to speculate as to what the allowances and rates will be in the United States.

**Mr. Fairley:** That is right; we can only calculate on the basis of the present rates and allowances in the United States.

**The Chairman:** Mr. Finlay, is it possible, under your royalty agreements, that the royalty payments might be regarded as instalment payments for making available certain ore bodies—in other words, the sale of ore?

**Mr. Finlay:** That has not been possible under our law since 1965.

**The Chairman:** Disregarding the law, because perhaps the law could be changed more easily than your agreements.

**Mr. Finlay:** I am sure that we are at a great disadvantage in attempting to change our agreements. I do not like to use the word "force", because everything we do to expand ultimately helps us. However, we had to give up certain rights subsequent to the White Paper, which has altered our royalty agreements.

**Senator Connolly:** Contractual rights?

**Mr. Finlay:** Yes. We had to give them up in order to make this expansion possible. A great deal more ore will be used, and it was insisted that certain tonnages be included in the royalty agreements. You will understand that with expansion from 19 million or 20 million to 32 million a great deal more ore must be provided. However, basically our agreements were not changed. Tonnages were changed and the computation was altered to keep up with the times. These changes provided for royalties on pellets, as contrasted to natural ore. When we entered into these agreements there was only royalty on natural ore; there were no such things as pellets. Some time ago they applied with respect to concentrates, then pellets became the main factor.

If any of those changes were made, as far as anyone could estimate it would leave us in the same position, or worse.

**The Chairman:** Mr. Finlay, have you any language to suggest which would relieve the situation with respect to the matter of royalties as far as you are concerned?

**Hon. Mr. Phillips:** Lawyers always bear the burden.

**Mr. Finlay:** The first thing which occurs to me, which is not a good solution for the future, is that it should be the same as dividends, as in 1971 rather than when the White Paper was introduced.

**Hon. Mr. Phillips:** Or, alternatively, capital gains tax.

**Mr. Finlay:** Yes. From what I know of it, in the long run I would think that the capital gains would be the easiest one to write. The problem then becomes: When would that come into effect?

**Mr. Fairley:** I think Mr. Finlay has answered the question. If we are not going to get the royalties handled as capital gain, we would like to have them handled like your committee recommended in the White Paper, except make the effective date not the date of the White Paper but the effective date of the law.

**Hon. Mr. Phillips:** Would you not have to include the amendments that were made to existing agreements since they are not referred to in that White Paper report?

**Mr. Fairley:** That is right.

**Senator Connolly:** Mr. Fairley indicated that in the proposed new bill the tax that the company pays will be substantially higher than it is under the existing law.

Assuming that the Government wants to obtain as much revenue as possible, I suppose the change has been made to increase revenue. If you were operating entirely in Canada, and if the markets for the product that we are concerned with are entirely in Canada, it might not matter



very much. But how much are you depending upon foreign markets, and how much foreign competition are you subject to?

**Mr. Fairley:** In the case of the iron ore operations which we are talking about, we export something better than 90 per cent of everything that we make, and we will continue to do so. We have at times a maximum of three customers in Canada, and at times we have only one. It varies from year to year. We have never gone below the figure of 90 per cent for exports, and as we go into the future the figure will probably go up, because with our new expansion virtually every ton of ore that we produce will be exported all over the world.

**Senator Connolly:** Will you be subject to competition that arises from companies operating under more beneficial laws?

**Mr. Fairley:** Yes, sir, we certainly will. That is a very important point, because there is no shortage of iron ore in the world. Also, there is no shortage of iron ore productive capacity. Right now the mines that are in operation in the world can produce millions of tons more ore every year than they can sell. Of course, this has a depressing effect on the price. Therefore, we are competing with those operators.

Our biggest tonnage moves to the United States, where we are competing mainly with American mines operating in the Lake Superior region. With the ore that we are shipping to sea-coast steel plants in the United States, we are competing with foreign ore producers in Africa, Australia, South America, and many others. With the ore that we ship to Europe—and it is substantial, since we ship to Holland, Belgium, Germany, all of the British Isles, France, Spain and Italy—we are competing directly with local ore industries; and in the case of France that is quite substantial. They produce a large amount of ore in the Alsace-Lorraine region.

**Senator Connolly:** Under more beneficial tax laws?

**Mr. Fairley:** Equally as beneficial, and probably more so. But in their case they are right next to the steel plants, and we have to ship the ore nearly 4,000 miles.

With ores which we ship to Japan, we are under very heavy competition from Australia, India and South Africa. Therefore, to answer your question, the great majority of our ore is exported—at least 90 per cent of it, and probably more in most years. We are under very heavy competitive pressure from all producers in the rest of the world.

**Senator Connolly:** Would you say that the law of diminishing returns could be set up in respect of the tax-take from a company like yours?

**Mr. Fairley:** It is possible. It makes it less attractive as you go on into the future. The Iron Ore Company of Canada has been well run and is highly successful. One problem is that many of our major customers—and well over 50 per cent of the ore moves to the American steel industry—are partners in the Iron Ore Company of Canada. They have big operations, which they either own or in which they are partners, in the Lake Superior region.

So they can go either way to supply their mills; they can expand in Canada or in the United States.

**The Chairman:** Referring to Hollinger, which is a holding company, and with particular reference to its royalty income, let us look at the direction in which you would apply that money. You would, of course, pay dividends. What about exploration and development? Is some of that royalty income used by Hollinger directly or indirectly for exploration and development?

**Mr. Fairley:** Yes, sir. About 10 per cent of our net tax income every year is used for exploration; that is, for completely new exploration. It is not development of something which we already have, but it is spent on looking for new mineral deposits. Over the last many years we have spent every bit of this money in Canada, with the exception that in one or two years we spent a little in Ireland.

**Senator Connolly:** Good for you.

**Mr. Fairley:** Canada has been good to us, and we think that this country represents just as good an opportunity as any other. Therefore, we have stuck with it. However, if this law comes into effect in its present form, I can assure you that the percentage of exploration in mining which we undertake in Canada will be cut substantially, and the money will be spent in a number of other places, including the United States and Australia. That should answer your question.

**The Chairman:** Yes; but to the extent that you expend earnings on exploration and development, you do get a write-off, do you not?

**Mr. Fairley:** That is right.

**The Chairman:** If you spent 10 per cent of your net royalty income on exploration and development, what part of that would you recover in allowances?

**Mr. Fairley:** That would depend on what the new law says.

**Mr. Finlay:** We would be in the same position as we are now.

**The Chairman:** You would get \$1 for every \$3 that you spent.

**Mr. Finlay:** Yes. Let us take a company that has \$9 million. Under the present law they would get a \$3 million exemption.

**The Chairman:** I am trying to keep away from operations. I am looking at Hollinger, the holding company, which receives a royalty income.

**Mr. Finlay:** The money that Hollinger expends, since it does not have any taxable income, goes down the drain. It is no good to us at all. The result is that we have tried to concentrate our exploration work in the two subsidiaries that have royalty income. If they had \$9 million-worth of royalty income and spent 10 per cent, which would be \$900,000, then you would get \$300,000 of non-taxable income.



**The Chairman:** The answer to my first question, then, may have to be revised. I suggested that Hollinger, the holding company, has royalty income. Is that right?

**Mr. Finlay:** No.

**The Chairman:** When you speak of 10 per cent of the net income from royalties you are not talking about Hollinger, the holding company?

**Mr. Finlay:** It is just a holding company.

**The Chairman:** Therefore, the only type of income that Hollinger, the holding company, would have would be dividend income. Is that right?

**Mr. Finlay:** Dividend income and interest income.

**The Chairman:** In that event the right to write off something would not benefit you because you would not have taxable income against which to use it up.

**Mr. Finlay:** Yes, and that is why we try to concentrate as much of our exploration as we can in the two subsidiaries.

**The Chairman:** What, then, are you proposing to us? It would appear that you are asking us to do nothing in relation to Hollinger Mines Limited.

**Mr. Finlay:** That is right.

**The Chairman:** Your representations are in relation to Labrador Mining and Exploration Company Limited and Hollinger North Shore.

**Mr. Finlay:** Yes, with one qualification, and that is to the extent that if, at some time in the future, Hollinger Mines Limited decide to use some of its money, which it has been doing, to form another exploration company or something. We cannot see any point in it. We have two such companies at the present time, and these two companies have no other income except the royalties from the results of their explorations. They are not operating companies. That is where we are really looking for relief right now.

**Hon. Mr. Phillips:** If you have consolidation in the future, that would more or less answer the Chairman's question.

**Mr. Finlay:** Yes, but how are you going to consolidate the Labrador Mining and Exploration Company Limited, based in Quebec, and Hollinger North Shore Mining, based in Ontario?

**Hon. Mr. Phillips:** Well, you have a common sense approach to it.

**Senator Beaubien:** In so far as Hollinger Mines Limited is concerned, there is not much change in its tax situation as a result of Bill C-259, is that right?

**Mr. Finlay:** I would just like to say something by way of explanation. The schedule which is attached to this brief was written when integration was before us. I think it presents the picture fairly fully.

In regard to Hollinger itself, we were in serious trouble under the White Paper, but they have now made dividend income from iron ore flowing to us from a company incorporated prior to 1971 tax exempt. Any company incor-

porated outside Canada after 1971 will be in serious difficulty.

The result is that any royalties from the two subsidiaries will eventually flow tax free because the only way Hollinger North Shore Mining and Labrador Mining and Exploration Company Limited can get money into Hollinger Mines Limited is to declare dividends and those dividends are tax free, as well as dividends from our other share investments, so Hollinger has no taxable income.

**Senator Beaubien:** And no problem with respect to Bill C-259?

**Mr. Finlay:** No, except we are going to be in the mining business in the future.

**Mr. Fairley:** I might say that Hollinger does have one small operation; it is just a stand-off coal mine and it does not make any money, but at least to that extent we do come under this new situation.

**The Chairman:** I repeat my question again, then, Mr. Fairley: In the light of this development in the evidence—and we will put Hollinger aside for the moment, because it is not really affected in any substantial way by what Bill C-259 says—anything that we might consider doing should be in the direction of Labrador Mining and Hollinger North Shore?

**Mr. Fairley:** Yes.

**The Chairman:** So what type of language do you suggest would give relief in that area?

**Mr. Finlay:** What we are saying is with relation to all agreements entered into prior to 1972. In other words, down to the end of 1971.

**The Chairman:** That was the burden of our report, was it not?

**Mr. Finlay:** Yes, that is exactly what your recommendation was, Mr. Chairman, except you had 1969.

**Hon. Mr. Phillips:** And inclusive of amendments thereto.

**Mr. Finlay:** Yes, inclusive of amendments thereto. Then the other one which has been suggested by your committee, Mr. Chairman, was the question of capital gains. This has a lot of merit, but when you look at it historically, the country did treat those as capital gains up until 1965, and then they were treated as income with a depreciable allowance; but they have never been treated as production income, using the word "production" in the way it is used in this bill.

**The Chairman:** What you are saying is that if you go back along the chain to the source of this income, its source is production?

**Mr. Fairley:** That is right.

**The Chairman:** And then it flows out?

**Mr. Finlay:** Yes.

**Senator Carter:** Could I ask a question concerning these royalties, Mr. Chairman?

**The Chairman:** Yes.

**Senator Carter:** Are these royalties computed on a common, uniform basis, or do you have different rates for ore concentrates as opposed to, say, processed ore?

**Mr. Fairley:** They are slightly different. It is a rather complicated formula, but basically they are figured on the basis of the market value of the material loaded into the boats at Seven Islands, Quebec. Regarding what we call direct shipping ore—which is ore that you just take out, crush, screen and ship—7 per cent of the value of it at Seven Islands is the royalty. Regarding concentrates—which is ore we dig out, grind down and concentrate, which is 2.2 tons for every ton of concentrate—that also is 7 per cent of the market value of the ore loaded into the boats at Seven Islands. Pallets, which are a much higher grade product and much more costly, carry a higher price. The royalty is 5 per cent on the market value of the pallets loaded into the boat at Seven Islands.

**Senator Carter:** Senator Connolly made the point earlier that one of the objectives of Bill C-259 was to encourage revenue, and perhaps to make the mining industry carry a larger share than previously, but I am under the impression that a second objective might be to encourage processing.

Is there anything in Bill C-259 to encourage processing? Are there any incentives towards greater processing or a higher degree of processing of minerals?

**Mr. Fairley:** I cannot see very much.

Can you, Mr. Finlay?

**Mr. Finlay:** No, I cannot.

**Mr. Fairley:** The only thing along those lines might be, when this bill is finally worked out, if they allow processing plants as part of the base for depletion. That would make it look a little better. You would consider processing, but basically the thing that determines processing is the markets around the world—what can we sell?

We have processing and we have steadily increased the amount of processing we are doing in Canada since we started. The first ore we shipped out in 1954 was raw ore. When we finish this present program, there will probably only be three or four tons of raw ore shipped out of a total of 30-odd million tons shipped. We went to processing because we had to meet the markets.

**Senator Carter:** Is there anything in the bill that would encourage fabrication?

**Mr. Fairley:** Not to my knowledge.

**Mr. Finlay:** One thing that must be remembered with respect to fabrication is that this company, alone, with its expansion will produce practically three times the ore that is consumed in Canada, regardless of all the other iron ore companies in Canada. There is just no market except by shipping it out. There is a 10-million or 12-million ton market; it depends whether you are talking about pellets or raw ore, but there is a market. I remember in 1954, when we made these first contracts, Canadian consumption was about four million tons.

**The Chairman:** Do you regard the production of pellets as being a processing operation?

**Mr. Fairley:** Yes.

**The Chairman:** Under the regulations that are supposed to come in under this bill, if the present equipment, plant and so on qualified for earned depletion—and we have had many submissions indicating some restrictions that are difficult to understand, but I will not develop that at the moment—assuming the processing plant and the money spent on that would qualify for earned depletion, the company spending that money would have income that would otherwise be taxable, against which you could write that off?

**Mr. Fairley:** Yes.

**The Chairman:** That would be a benefit, and a substantial benefit.

**Mr. Fairley:** Very much so.

**The Chairman:** The problem in the example I like to use, which we got the other day, to show how far astray some of these proposed regulations have gone, is this. If I had three small mines in an area some distance apart, having good readily marketable ore, but not in substantial quantities, by constructing a smelter at each mine before it came into production I could earn depletion. The difficulty would be that there would not be enough income, because the smelter costs would be so great. However, if I decided to do custom smelting and located a smelter in an area where it could be fed into from these three mines, I would not be entitled to earned depletion under the proposed regulations.

**Mr. Fairley:** That is right.

**The Chairman:** That just does not add up. It makes one wonder what is the purpose of earned depletion if it is not to encourage more production as economically as possible.

**Hon. Mr. Phillips:** You get depletion in one sense, as the chairman puts it, and you have no income. If you have your income, you get no depletion.

**The Chairman:** It depends which way you wheel your toe, I guess. Your second point is the abatement. Your difficulty there is that taxable production profits are defined in the regulations as being an amount that would be determined under the basis of the automatic depletion.

**Mr. Finlay:** That is 33 1/3 per cent.

**The Chairman:** Now you are not entitled to that as non-operators; you are not entitled presently to that 33 1/3 per cent, and your limitation would be 25 per cent.

**Mr. Fairley:** That is it.

**The Chairman:** If this is an obstacle to you, what do you suggest?

**Mr. Finlay:** The federal 15 per cent, which is the reduction from some 40 to 25, was intended to say to the provinces, "You do what you like." Maybe the theory was that they were presently being allowed by Ottawa to deduct 10



per cent, but they were credited that. The bank was charging 12 per cent; the foundry was charging 13 per cent on those rates. We do not know where they will go.

**The Chairman:** Just let us stay in the federal field and address ourselves to the abatement proposed under the present legislation. That is 15 per cent. What language would we have to use in order that you might get the benefit of that?

**Mr. Finlay:** Let us take the 25 per cent as well as the 33 1/3 per cent.

**Mr. Fairley:** We would like to be included in not just, say, the operating companies; we would like to have the 25 per cent. We would like to have an abatement on our 25 per cent depletion.

**The Chairman:** So if we add "and in the case of non-operators", this calculation would be on the basis of 25 per cent.

**Mr. Fairley:** That is exactly right.

**The Chairman:** I think we understand the problem. Those are the two points you have?

**Mr. Fairley:** Yes, sir.

**The Chairman:** Are there any other questions senators wish to ask?

**Senator Carter:** I would like to put forward an idea. I am not very well versed in the operation of mining companies, but we seem to have a general objective of increasing employment in Canada. Some people have said that perhaps the mining companies are not doing as much as they could in this respect. What kind of incentives would the mining industry require to encourage increased employment rather than, say, increasing dollars earned?

**Mr. Fairley:** I think I would have to answer that in broad, general terms. The incentives under the present tax laws are quite good, and they have resulted in a massive increase in production and employment in the mining industry since World War II. Those incentives were prospectors' allowances, automatic depletion, percentage depletion, and the three-year exemption. Those three incentives have been most successful. We would like to see the present law continue for the mining industry, as we have said over and over again. However, the Minister of Finance and the Government have indicated that they are going to make certain changes. Any changes they make which reduce the attractiveness of the mining industry in Canada will tend to slow it down rather than speed it up. The proposed law reduces the attractiveness of the mining industry, compared with the present law, so we would be very happy if you keep the law you presently have.

**The Chairman:** It reduces the attractiveness in Canada for non-resident investors?

**Mr. Fairley:** Compared with other places.

**The Chairman:** And non-resident capital.

**Mr. Fairley:** Yes.

**The Chairman:** And it makes the road a little heavier in the export market?

**Mr. Fairley:** That is right.

**Mr. Finlay:** I would like to say a few words on employment. In the past year we have heard a number of speeches to the effect that the mining industry's employment is not what it should be. There is no point in hiring people you have no use for. I want to draw your attention to how much indirect employment comes from mining through all the supplies and services. Let us consider the iron ore project we have referred to with a 360-mile railroad into the wilderness and all the services and buildings that go with it. The town of Seven Islands, with 15,000 people, has grown up; there is another one half that size or more at Labrador City; another one of about 5,000 or 6,000, Schefferville. Millions of dollars are spent indirectly on employment.

**The Chairman:** From the two companies for which you are speaking, what would you say would be the sum total of direct employment?

**Mr. Fairley:** It would be very small. You mean Labrador North Shore?

**The Chairman:** Yes.

**Mr. Fairley:** We just have very highly trained exploration crews, who are highly trained experts, geologists and engineers, and we probably would not be employing more than 60 or 70 men. The Iron Ore Company would probably employ 5,000 or 6,000.

**The Chairman:** We were told the other day by one of the mining companies that, for indirect employment, it takes at least six people to service one employee working in the mines.

**Mr. Fairley:** That is right; and by the time you consider all of them, about 12 per cent of the working population of Canada is employed, in one way or another, serving the mining industry.

**Senator Connolly:** Of the entire working force of Canada?

**Mr. Fairley:** In one way or another. That includes the secondary employees who are building trucks, shovels, railroads, houses.

**Senator Connolly:** They would not have employment if there were no mining industry?

**Mr. Fairley:** That is it. Well, excuse me. In all honesty, I would not say quite that, because a company that is building trucks for the mining industry also builds trucks for construction, so they would have some employment there. I would not wish to give a false impression.

**Senator Molson:** The Iron Ore Company is incorporated in the United States, in Delaware, is that right?

**Mr. Fairley:** Yes.

**Senator Molson:** Is it the owner of any of the properties, or are they vested in Labrador Mining, North Shore, and so on?



**Mr. Fairley:** The mineral properties are all vested in Labrador Mining and North Shore, and they are leased to the Iron Ore Company of Canada.

**Senator Molson:** What about the pelletising plants and railroads?

**Mr. Fairley:** Those are owned by the Iron Ore Company or by subsidiaries of the Iron Ore Company. The railroad is a subsidiary. It is a common carrier.

**Senator Molson:** But these other facilities, grading and so on, are owned by Iron Ore?

**Mr. Fairley:** That is right.

**Senator Molson:** Why was it incorporated in Delaware? There must have been a very good reason.

**Mr. Fairley:** There was a very good reason. Mr. Finlay will explain it.

**Mr. Finlay:** This was the subject of a number of amendments to the reciprocal arrangements between Canada and the United States of 1951 or 1952. The Americans would not put their money in here unless they got certain arrangements at that time. One of them was that they have an American company, because when dividends go from the Iron Ore Company to their corporate shareholders they are only taxed on the full tax rate on 15 per cent of their income, or roughly 7½ per cent.

**Mr. Fairley:** When they divide the dividends between American companies, it is taxed at 7½ per cent.

**Mr. Finlay:** It is a tax rate on 15 per cent. Nevertheless that would be an entirely different situation as far as Canadian dividends to American companies are concerned.

**The Chairman:** You have the 15 per cent withholding tax?

**Mr. Finlay:** Yes.

**Mr. Fairley:** Let me just put this in a few words, Senator Molson. The Americans own the major part of the Iron Ore Company. They have put up most of the money and have taken most of the ore too, by the way, which is the most important part of it, as they are the customer. They would not go into this unless the Iron Ore Company were an American company so that they could get a tax advantage to them on dividends. We, being the only Canadian owners of this company—that is, Hollinger Mines and Labrador Mining—we could not have it as an American company because we got caught up here in the same way, working the other way. So what the Government did, with Mr. Finlay, Mr. Howe, and a whole lot of other people, working on it—

**Senator Connolly:** And Mr. Humphries.

**Mr. Fairley:** Yes, he was very much in on it.

**Senator Connolly:** Mr. Abbott the Minister of Finance.

**Mr. Finlay:** It was long after that.

**Mr. Fairley:** They said, "You set up the Iron Ore Company of Canada and make it an American company, but we,

in turn,"—and this was all put into the tax treaty, by the way, between the two countries—"we, in turn, in order to make Hollinger and Labrador Mining whole, will, for dividend purposes, consider the Iron Ore Company of Canada a Canadian company, provided it operates only in Canada and provided it pays all of its taxes in Canada."

It has always done this. Even when the Iron Ore Company has short-term investments—six months, or something like that—even though it may be earned in the United States, taxes are paid on it in Canada.

**The Chairman:** Mr. Fairley, it seems that if, as a matter of law, you can deem an American-owned company to be a Canadian company for certain purposes, it would not be stretching your imagination too far to deem that royalty payments are capital.

**Mr. Finlay:** It would stretch my imagination.

**Senator Connolly:** There are other "deems" in the bill, too.

**The Chairman:** Thank you, Mr. Fairley.

**Mr. Fairley:** Thank you, gentlemen.

**The Chairman:** Honourable senators, the next submission is from the Canadian Life Insurance Association. Appearing for the Canadian Life Insurance Association is Mr. Lemmon, the president of the Canada Life Assurance Company.

**Mr. J. A. Tuck, Managing Director, The Canadian Life Insurance Association:** Mr. Chairman and honourable senators, the president of the association this year is Mr. Hicks, the president of Sun Life Assurance Company of Canada. He asked me to express his regret that a prior engagement has kept him away. Another officer of the association, Mr. Hervé Belzile, president of Alliance Mutual Life Insurance Company, also its immediate past president, is here. We have also with us: Mr. A. H. Lemmon, president of The Canada Life Assurance Company; Mr. T. M. Galt, vice-president, Sun Life Assurance Company; Mr. F. Kimantas, the tax officer; and myself.

**The Chairman:** And, of course, we all know Mr. Tuck.

**Mr. Hervé Belzile, Past President, The Canadian Life Insurance Association, and President, Alliance Mutual Life Insurance Company:** Mr. Chairman and honourable senators, on behalf of our association, the Canadian Life Insurance Association, we wish to thank you for the opportunity to appear before this committee on the statutes in question.

We prepared a brief which was sent to the members of this committee, and I would ask a member of our taxation committee, Mr. Lemmon, who is president of Canada Life, to make the presentation and to make some comments to your committee.

**Mr. A. H. Lemmon, Past President, The Canadian Life Insurance Association, and President, The Canada Life Assurance Company:** Mr. Chairman and honourable senators, I beg the indulgence of this committee. This is really the third time that we have had the privilege of appearing before you.

The point we would like to discuss with you this morning was discussed on each of those previous occasions. About two years ago, in June 1969, we appeared before you to discuss the bill that was introduced in October, 1968, establishing new methods of taxing life insurance companies in Canada. This point was made at that time.

In June, 1970 we again appeared before this committee, subsequent to the publication of the White Paper. At that time it was proposed that a measure of integration be introduced into the income tax law of this country for the first time, which would have seriously aggravated the situation that we would like to discuss with you this morning. That proposal of integration was not proceeded with in the bill introduced this spring, but we are still backing substantially the position that we were in when we appeared a little over two years ago, when the life insurance bill was passed into law.

The matter we would like to discuss with you is the effect of that tax bill on the investment of life insurance companies in Canada in ordinary shares or common stocks in this country. We understand that it is, and has been for some years, Government policy to encourage individuals and Canadian institutions to invest to a greater extent in common stocks in this country, to retain control of some of our major companies in this country and, generally, to provide more equity capital. We suggest, Mr. Chairman, that because of the way in which the Income Tax Act works with regard to Canadian life insurance it does not encourage the investment of those companies' income in stocks, but in fact discourages it.

Prior to the Income Tax Act being introduced in October, 1968, life insurance companies did enjoy a measure of tax advantage. This tax advantage was substantially eliminated by the tax bill of 1969. As a matter of fact, in this particular area, and perhaps in one other area, it has gone over to the other side, to the extent of discriminating against the life insurance industry.

When Mr. Benson appeared before this committee in June, 1969, he recognized that the treatment of common stock dividends in, at that time, the proposed life insurance taxation was different than for other financial institutions such as banks and trust companies. He justified it on the ground that the amount of stocks owned by such banks and trust companies was so small that it did not really make any difference to them. He stated an odd position that, if it did get big enough to make any difference, he would remove the incentive that there was for them to invest in common stocks. This appeared to us a little odd when we believed, and had been led to believe, that it was the object of the Government to encourage investment in Canadian common stocks.

We have carried on negotiations with the officials of the tax department, the Department of National Revenue and the Department of Finance over that period. We have never received a flat turn-down on this particular point. On the other hand, nothing has been done. Certainly, in the bill that has been proposed, or in the amendments that we have seen so far, nothing has been done to correct what we believe is unfair discrimination against life insurance companies investing in common stocks in Canada.

If you like, Mr. Chairman, I would be glad to read the brief, but I believe it was furnished to all the members. I

would just like to point out to the members of the committee that Appendix A shows that, in fact, because of the way this tax act works for life insurance companies, and additional \$100, or an additional \$100,000 or whatever figure you like to take, of dividend income added to the business income of a life insurance company attracts tax of the order of 34 per cent. This is much greater than in the hands of an individual, and, in fact, it attracts no tax in the hands of a bank or trust company. These small institutions happen to be the ones with whom we compete, which makes life a little difficult.

**Hon. Mr. Phillips:** May I put a question, Mr. Chairman?

**The Chairman:** Yes.

**Hon. Mr. Phillips:** Have you collated the sections of the bill which have a direct bearing on the subject matter you are about to discuss, and have you related those sections to the Insurance Act of 1969, so that in the study of this particular question that you are about to go into we could look at the sections of this bill as well as those of the 1969 act?

**Mr. Lemmon:** I am not sure exactly what you mean, sir. This is not referred to in the new bill at all.

**Hon. Mr. Phillips:** So you are complaining about your treatment in the 1969 bill.

**Mr. Lemmon:** That is right.

**Hon. Mr. Phillips:** And that you are not getting relief under the new bill.

**Mr. Lemmon:** That is it exactly.

**Hon. Mr. Phillips:** So it is a negative of my affirmative. What are the sections in the new bill which do not give you the exemptions that are given to others?

**Mr. Lemmon:** I do not think I can quite answer that question in a direct manner, sir. I feel another section would have to be added to the bill to change the 1969 act.

**Hon. Mr. Phillips:** Then we have clarified the situation. You are complaining that you do not have affirmative relief in the proposed act.

**Mr. Lemmon:** That is right.

**Hon. Mr. Phillips:** You are not complaining of any sections in the proposed act that hurt you.

**Mr. Lemmon:** We are not, sir.

**Hon. Mr. Phillips:** On the other hand, you want relief in the proposed act to tie in with your 1969 bill?

**Mr. Lemmon:** That is right, sir.

**The Chairman:** Do you want relief because other corporations are getting relief in this bill or because they have always had it?

**Mr. Lemmon:** Because they have always had it, sir.

**The Chairman:** That is the question.

**Senator Connolly:** I take it that the provisions of the 1969 act are repeated in this bill.



**Mr. Lemmon:** They are carried forward.

**Senator Connolly:** They are carried forward into the new bill?

**Mr. Lemmon:** Yes. There is no change arising out of the new bill at all.

**Senator Connolly:** Quite so. Just for the sake of the record at this point, could you identify the sections?

**Mr. F. Kimantas, Tax Officer, The Canadian Life Insurance Association:** Yes, sir. In the new bill it is section 138(6). In the present act it is section 68A(6).

**Senator Connolly:** Is that section 68A(6) of the Income Tax Act as amended in 1969?

**Mr. Lemmon:** Yes.

**The Chairman:** Mr. Lemmon, what do you suggest would do what you think should be done?

**Mr. Lemmon:** To answer that I would have to explain fairly briefly how the act works.

**The Chairman:** All right.

**Mr. Lemmon:** When a Canadian life insurance company receives dividends on common shares, as is explained in Appendix B, that income, together with all other interest income is prorated between various sections of the company's activities.

**The Chairman:** That is internal practice.

**Mr. Lemmon:** No, this is by requirement of the Income Tax Act.

**Senator Connolly:** There is a formula in the act to prorate?

**Mr. Lemmon:** Yes.

**Hon. Mr. Phillips:** When you speak of "the" act, are you speaking of the Insurance Act?

**Mr. Lemmon:** I am referring to the amendments to the Income Tax Act that were passed in 1969 and carried forward into the proposed bill now.

**Hon. Mr. Phillips:** All right.

**Mr. Lemmon:** The first section that is mentioned in Appendix B is what is known as tax exempt policyholders. These are policyholders who own policies of life companies that are registered under the Department of National Revenue as retirement income vehicles. As such they accumulate interest without paying any tax.

**Senator Connolly:** In other words, the tax on the money that is in this fund is paid by the beneficiaries when they take their retirement.

**Mr. Lemmon:** Yes. It is accumulated. The payments that go into it are tax-exempt. The interest accumulation during the accumulation period is tax-exempt.

**The Chairman:** It is really a deferral.

**Mr. Lemmon:** Yes, it is a deferral. The taxation arises when the money is paid out.

The second section is known as the company funds. In the case of a mutual company, that is substantially the reserves that the company retains for whatever purposes it sees fit. The third section is the other policyholders. In the case of a mutual life insurance company this is substantially the participating policyholders of the company. Under the second section might also be considered the shareholders of a stock life insurance company, which are in the same position. The effect of allocating to the first section of policyholders a portion of the common stock dividends we receive means that we get no tax relief on those common stock dividends because there is no tax payable in that fund.

**Senator Connolly:** I am sorry, I just do not follow that. You are talking now about the tax-exempt policyholders?

**Mr. Lemmon:** We are talking about the tax-exempt policyholders. A certain portion of our common stock dividends are allocated by the Income Tax Department by formula and there should be a tax credit to the people in that fund, but since there is no tax payable, nobody gets it.

**Senator Connolly:** So you seek a tax credit for those payments?

**Mr. Lemmon:** No. We suggest that type of policy should be exempt from the prorating formula and that the common stocks owned by a life insurance company should be considered as being owned by the company or by the participating policyholders who can through dividends from the company benefit or otherwise from the common stock investments. In the first type we feel that these are very parallel to the so-called guaranteed funds of trust companies. Trust companies are required by law to segregate their assets and this group of assets, identifiable, is allocated to their guaranteed funds while the other group of assets, identifiable, is allocated as belonging to the company, and the trust companies in fact do not allocate any of their common stock investments to the guaranteed fund account, so that the problem does not arise with them. But the income tax law arbitrarily assigns some of the common stocks that the companies own into this fund where in fact no tax relief can be obtained.

**Mr. Tuck:** Is it right to say, Mr. Lemmon, that we mean that because of the tax deferral regarding Group I the benefit of the tax-free dividend procedure is lost?

**Mr. Lemmon:** It is lost.

**Mr. Tuck:** Therefore none of the company's dividend income should be regarded by the tax act as going in that direction, because if it is so regarded, there is a meaningless result.

**Senator Beaubien:** Are you saying really that if the company were left to its own devices, it would not buy any common stocks for that portion of the fund deemed to be belonging to tax-exempt policyholders?

**Mr. Lemmon:** When a life insurance company makes its investment decisions—and here I cannot answer for every company and so I will have to speak very generally on



this—life insurance companies have been accused over the years of not putting a sufficiently high percentage of their assets in common stocks. These particular policyholders cannot benefit from the investment in common stocks. Their rates are guaranteed as are guaranteed investment certificates of trust companies, and in their investment policy generally the companies regard these funds as invested in fixed interest securities, and the rates we offer on them have to be competitive with the rates the trust companies offer or we just do not attract the funds, and they are based substantially on the rates available in the fixed interest market.

**Senator Beaubien:** So what is wrong really is that the act deems that part of your income accrues to the tax-exempt policyholders and it should not do that.

**Mr. Lemmon:** That is right, sir.

**Mr. T. M. Galt, Chairman, Committee on Taxation, The Canadian Life Insurance Association:** If I may confirm that. In our company we definitely do calculate rates assuming entirely that there are no common stocks. The rates are based on fixed interest investments at the current levels. I cannot speak for other companies, but that is the case with us. We assume there are no common stocks in these funds for our purposes.

**Senator Beaubien:** Could you give us the language then that would amend the right part of the act so that dividend income would not be deemed to accrue to the policyholder?

**Mr. Lemmon:** I do not know that we are in a position this morning actually to put words in there. The intent of the words would be to exclude from the prorating formula these particular types of policies. We would be very glad to furnish this committee, later today, if you like, with the particular wording. We do not have a lawyer with us this morning who can do this.

**Senator Carter:** If I remember correctly, Mr. Chairman, the change in the act in 1969 was a deliberate policy movement on the part of the Federal Government. I think it was based on the premise that the funds, the life insurance funds, were invested mainly in blue chips in foreign countries particularly south of the border, and not sufficient funds were available for the capitalization of Canadian companies. I may not be stating it 100 per cent accurately, but that was the broad intent. Now assuming that was the policy objective, how successful has it been? What percentage now of life insurance funds are used to finance Canadian enterprises as compared with pre-1969?

**Mr. Lemmon:** If I can speak generally to that, without quoting any figures which I do not have with me, I do not think there has been any real change since 1969. Prior to that time the Canadian life insurance industry had more money invested in Canada than its liabilities to Canadian policyholders. That has continued to be the case. A great many Canadian life insurance companies including my own and Mr. Galt's do a substantial amount of business outside of Canada. In our own company our business is divided approximately 50 per cent in Canada and 50 per cent outside. Mr. Galt's company I think would be slightly more than 50 per cent outside.

**The Chairman:** You operate in the United States?

**Mr. Lemmon:** We operate in the United States. My own company operates in 35 states of the United States. We also operate in the British Isles.

**The Chairman:** Well when you talk about 50 per cent investment in Canada and 50 per cent outside, what is the 50 per cent that goes outside? It is 50 per cent of what?

**Mr. Lemmon:** It is 50 per cent of our total assets. But that is not quite the simple answer. We are required by law in the United States to invest in the United States the liabilities accumulated for our United States policyholders. Our company and I believe most of the companies accumulate in sterling assets payable in sterling sufficient to pay their liabilities to their policyholders in that currency and the same general policy with minor variations is followed by the various companies and has been for years. Now the surplus funds of the company, the excess reserves, may be invested here or there or around and about in the judgment of the management of the companies, but the statement still stands that we have invested in Canada over the years and still do more than our liabilities to Canadian policyholders.

**The Chairman:** I am interested in that 50 per cent, Mr. Lemmon. If you have 50 per cent invested in Canada and 50 per cent invested outside of Canada, does that result in there being more than 50 per cent invested outside of Canada, when you look at the assets which are held outside of Canada?

**Mr. Lemmon:** This would vary from company to company, Mr. Chairman. I do not know whether this is of any help to you or not, but I can quote to you some figures as far as our own company is concerned. Approximately 92 or 93 per cent of our assets are held to cover liabilities which are required by the various insurance departments. Approximately 50 per cent of that amount is held in Canada, which would amount to 46 per cent of our total assets. Approximately 46 per cent would also be held outside of Canada. The other 8 per cent of our assets is the company's general surplus held for contingencies of whatever nature. They can be held in one place or the other, and can be changed from time to time at the discretion of the management of the company. A substantial portion of it is always held in Canada. Sometimes the percentage of total assets might be 49 per cent, while in other cases it might be 53 or 54 per cent. This is the area in which it varies. But our liabilities to policyholders in Canada are always covered with a varying percentage of our surplus.

**Mr. Tuck:** Mr. Chairman, I wonder if I could comment on Senator Carter's question. Mr. Lemmon has described the holdings of Canadian companies outside of Canada as essentially securities, held for business performed outside of Canada. I thought from your question that you might have had this in mind, also the fact that there might have been a desire on the part of the life insurance tax legislation of 1969 to emphasize Canadian life insurance companies purchasing more Canadian corporation shares. If that was the intention, then this pro rata formula negates the intention.

**Senator Carter:** That was my next question. What has been the net effect of the 1969 change in legislation? Has it affected your earnings, assets, dividends to policyholders?

**Mr. Tuck:** It may have affected the distribution of our assets as far as the general funds are concerned, but we do not have figures which would indicate this. As far as our total investments in Canadian stocks are concerned, there is a complication here. The investments in Canadian stocks may be up, but this may not be the result of an increase in the investment of our general funds in Canadian common stocks; but perhaps it is because many of the companies have segregated funds that are backing equity-linked products. These are invested in common stocks; so the global figures which we do have may well show an increase, but the reason for the increase may be the segregated funds. Is that right, Mr. Lemmon?

**Mr. Lemmon:** You are quite right.

**The Chairman:** You will give us that wording a little later on today?

**Mr. Tuck:** We will try to do that Mr. Chairman, yes.

**Hon. Mr. Phillips:** Am I right in saying that the only section to which you have directed yourself is section 138(6), because of the special treatment which is given there, as distinguished from the normal treatment for corporations under section 112? Does it reduce itself to that?

**Mr. Kimantas:** And also to section 208(2).

**Hon. Mr. Phillips:** Section 208(2). Will you wait a moment while I take a look at that? Oh yes, I see.

**The Chairman:** Any material that you will give to us for our consideration in making a recommendation will deal with section 208—

**Mr. Lemmon:** With both of these sections.

**The Chairman:** Section 208 and also section 138.

**Mr. Lemmon:** Both of those sections.

**Hon. Mr. Phillips:** Section 138(6) and section 208(2). In effect, you are saying that these two sections give you the type of treatment which you prefer over section 112 dealing with exempt income?

**Mr. Lemmon:** Yes.

**Hon. Mr. Phillips:** I think we need a new wording here, Mr. Chairman.

**The Chairman:** While we have experts here, we might as well make use of them. If there is any suggestion that we have missed the point, we can say that we were badly instructed. It could never be said that we made a mistake!

**Mr. Lemmon:** Mr. Chairman, we did have an interview with the Minister of Finance prior to the introduction of the bill this spring, and we raised this point with him. He did not say "no"; but nothing was done.

**The Chairman:** How many dollars would be involved if the change were to be made?

**Mr. Lemmon:** It is rather difficult to calculate, because as an industry we do not have block figures for exempt funds. If the total amount of pro rating were removed—and we are not suggesting this—it would amount to about \$9 million. If the exempt funds were eliminated what would it be, Mr. Kimantas—two-thirds of that amount?

**Mr. Kimantas:** Oh no, it would be much smaller than that.

**Mr. Lemmon:** One-half of that?

**Mr. Kimantas:** I would say less than that.

**Mr. Lemmon:** It would be around \$4 million.

**The Chairman:** That would be the net result, if what you are seeking today were recognized?

**Mr. Lemmon:** Yes.

**The Chairman:** Your reduction would amount to another \$4 million?

**Mr. Lemmon:** Yes, sir.

**Hon. Mr. Phillips:** You are dealing with non-segregated funds only?

**Mr. Lemmon:** Yes, we are dealing with non-segregated funds only.

**Hon. Mr. Phillips:** In effect, you want exempt income similar to that given to investment companies and banks under section 112?

**Mr. Lemmon:** Yes, sir.

**Hon. Mr. Phillips:** And the two sections that hurt you are section 138(6) and part of section 208(2).

**Mr. Lemmon:** We are not suggesting any change in segregated funds. We feel they are reasonable.

**The Chairman:** Is there anything else you wish to say? I think we have the point you are making.

**Mr. Lemmon:** No, thank you sir. It has always been a policy of mine that if you have made a sale, stop talking.

**The Chairman:** There is a variation to that Mr. Lemmon; when you have sold something, wrap it up.

**Mr. Lemmon:** Thank you very much, sir.

**The Chairman:** Honourable senators, we have a third brief before us this morning, Dominion Foundries and Steel Limited. They were before us earlier, when we were dealing with the White Paper. Mr. Plumpton, are you going to make the opening remarks?

**Mr. J. Plumpton, Comptroller, Dominion Foundries and Steel Limited:** Yes sir; and Mr. Laing is with me.

**The Chairman:** Will you proceed, please?

**Senator Beaubien:** Mr. Chairman, could we have the names of the witnesses again?

**The Chairman:** Yes. Mr. J. Plumpton, Comptroller, and Mr. A. D. Laing, Assistant Comptroller and Assistant to the Executive Vice-President (Financial), both of Dofasco.



**Mr. J. Plumpton, Comptroller, Dominion Foundries and Steel Limited:** Mr. Chairman and honourable senators, may I first express the regrets of our President and Chief Executive Officer, Frank Sherman, for being unable to attend today. I am also requested to express the regrets of John Sheppard, our Executive Vice-President, Financial, who is out of the country. Dominion Foundries and Steel, Limited (Dofasco) is a steel mill and foundry. Our production is about 2,300,000 ingot tons of steel a year—about 19 per cent of Canadian ingot production. There are about 19,000 shareholders and 95 per cent of our shares are held in Canada.

Our steel producing facilities are located at Hamilton, Ontario. We receive all our iron ore from three Canadian mines—at Temagami and Kirkland Lake in Ontario and at Wabush Lake in Labrador.

There are about 8,000 employees in Hamilton. 77 per cent of the employees are members of the Employees' Savings and Profit Sharing Plan. There is a three year waiting period before an employee becomes a member.

The fund began in 1938 and is a pension plan based on profit sharing. In addition, we have a Deferred Profit Sharing Plan which began in 1966 and eligibility for membership in it is the same as for the pension plan.

The assets of the pension plan are about \$80 million and of the Deferred Profit Sharing Plan about \$2 million. Employees' savings paid into the pension plan were \$1,100,000 in 1970. Total profit sharing paid by the company in that year was \$5,600,000 of which \$3,400,000 was paid into the pension plan. The income earned by the Fund over and above these payments was \$4,600,000. The amount paid out of the pension plan for those who terminated employment in the year was \$4,300,000. There were 67 people who terminated employment by retirement at retirement age.

**The Chairman:** What is the total membership in this plan?

**Mr. Plumpton:** Over 6,100.

The amounts which each of them received varied from the lowest payment of \$20,300 to the highest of \$47,600. In addition, there were twenty-four employees who died whose estates or beneficiaries received the full amounts at the credit of each of these employees.

With this background, let me now try to state why we are appearing before you a second time. When we appeared the first time we were concerned about some other matters as well but our main purpose in appearing then was to explain why we, and our employees, think an average rate of tax of Section 36 type on lump sum payments out of pension and deferred profit sharing plans is fair and desirable.

**The Chairman:** Senators will remember that we have heard submissions on deferred profit-sharing plans, so we do have a familiarity. The deferred profit-sharing plans, as described to us, consist of employers' contributions, under which there is a deferral of tax until the lump sum payment is made, and the contributions of the employees, on which tax is paid.

**Mr. Plumpton:** That is not so in our case; the employee has a deduction for tax purposes.

**The Chairman:** Let me continue. Then there are the gains, which are treated as income in the administration.

**Mr. A. D. Laing Assistant Comptroller and Assistant to the Executive Vice-President, Financial, Dominion Foundries and Steel Limited:** Mr. Chairman, you are describing what I understand to be an employee's profit-sharing plan.

**The Chairman:** No, I am describing a deferred employee's profit-sharing plan. I am familiar with the employees' profit-sharing plan, such as that of Simpsons-Sears, who pay tax on everything. They wished to have certain considerations. The whole idea of the word "deferred" in the deferred profit-sharing plan is that the tax which might be attracted by the employers' contributions to the plan, which would be income to the employee, is deferred until such withdrawal is made.

**Mr. Plumpton:** That is correct.

**The Chairman:** That, I take it, is the deferred feature of your plan?

**Mr. Plumpton:** Yes.

**The Chairman:** When the deferral falls in and the tax must be paid, benefit is received under section 36 in the current act or it may be averaged over three years. This bill removes section 36.

**Mr. Plumpton:** That is right.

The sole reason for our appearing today is to comment on Bill C-259 as it applies to lump sum payments and to state our reasons for requesting retention of section 36 type averaging.

**The Chairman:** Are there lump sum payments under your pension plan in addition to those under the deferred profit-sharing plan?

**Mr. Plumpton:** Yes. The passing of Bill C-259 would, in effect, negate one of the very basic rights that Dofasco employees have enjoyed since the introduction of their profit-sharing plan in 1938. The cash withdrawal option is such a vital and important part of the program that its withdrawal would, in our view, practically destroy profit-sharing at Dofasco as an important incentive to harmonious employer-employee relations.

We have had communication with the Prime Minister and with the Minister of Finance. We have talked with the members of Parliament from our area who know some of the people who work at Dofasco, and these members know how important our employees feel the lump sum payment feature of our plan is.

Our brief describes the impact of the type of general averaging proposed in Bill C-259. It in no way compares with the section 36 type of averaging, as you can see from the page on which the results of the tax calculations are summarized.

The brief also describes the ineffective nature of the transitional provisions—that is, first, continuation of the section 36 type averaging for payments received in 1972 and 1973; and, second, continuation of section 36 type averaging indefinitely on the vested portion of the person's 1971 balance. However, once this option is exercised, any



other type of averaging must be sacrificed in that year of receipt. This means neither general averaging nor income averaging could be used for pension funds accumulated subsequent to 1971, nor for any other unusual receipts.

**The Chairman:** Let us consider the case of a person who is a member of the plan when this bill becomes law, and remains in it for ten years. He then withdraws and is entitled to a lump sum withdrawal at that time. However, some accounting has to be carried out, and I understand the bill to provide that the averaging enjoyed under section 36 of the present act would be available for that person in 1980. That is with the proviso that the amount he would have received, had he withdrawn in 1972, is ascertained. His income tax is calculated applying the averaging provision under section 36 to that amount. So he receives a substantial benefit, because the averaging provisions under section 36 are very helpful in lowering the level of tax.

**Mr. Plumptre:** That is correct.

**The Chairman:** However, he then has to pay a price for that. He remains in the plan for a further 10 years and is not entitled to any of the benefits of averaging provided in this bill, but is subject to full tax rates. In effect, it would reduce very substantially the lump sum payments.

**Mr. Plumptre:** Right.

**The Chairman:** So much so, we have been told, that it would cease to be attractive. The only offer that the bill gives to avoid the impact of taxation is that if you take your lump sum withdrawal and buy an annuity, you do not have to pay the other burden of tax, and your income would be on the income portion of the annuity in each year. But that wipes out completely the lump sum.

We were told that of the employees in the Simpsons-Sears plan, over 99 per cent—which does not give you much room to go further—of those who took lump sum payments, over all the years that the plan had been in operation—that is, for some 50 years—not one had misapplied or lost it. It had been put to a useful purpose. It looks like a sort of paternalism, fearful that the employee, when he gets the lump sum, might not know how to use it. However, the employees had used it well, paying off mortgages and acquiring small businesses after they retired; and they felt that they were entitled to that money. This is what they had built up over the years, and when something has been going for 50 years, it must be good.

**Senator Benidickson:** Is my recollection correct, that over a fairly substantial number of years your employer-employee relations record, vis-à-vis your competitors, has been quite favourable?

**Mr. Plumptre:** Yes, it has.

**The Chairman:** I think you could say "very favourable."

**Senator Benidickson:** That was my impression. Do you attribute that very fine record, in part, to the type of company plan that you have had in existence?

**Mr. Plumptre:** Yes, we do. We think it has had a direct bearing on our relationship with our employees.

**Senator Connolly:** This is not a pension; we are now talking about profit sharing.

**Senator Benidickson:** I meant profit sharing.

**Senator Connolly:** Profit sharing is a partnership between management and workers.

**Mr. Plumptre:** Right.

**Senator Connolly:** That is the purpose of it.

**The Chairman:** One way of remedying your situation might be if section 36 of the present act continued to be available up to 1972. If thereafter the general averaging provisions in the bill were available—in other words you did not have that exclusion—that would deal with part of the problem.

**Mr. Plumptre:** That would partially offset the problem. What we fail to understand is why an employee would be penalized by opting to take the 36-type averaging which he has been entitled to. If he does so, he is, in effect, then penalized by not taking advantage of the new law.

**The Chairman:** One correction would be to let them keep what the bill gives them for the time period in the bill, and then give him the right, in subsequent years that he is in the plan, to be subject to the general averaging provisions of the plan. Since we have introduced the capital gains tax, do you want the gains in the fund to be treated as gains and therefore subject to the capital gains tax rate of 50 per cent—in other words, 50 per cent of the gains would be subject to income tax? Do you want that as well, as a relief?

**Mr. Plumptre:** Even if that were applied, with the averaging provisions continued, it would be more favourable than the straight tax rate on a lump sum.

**The Chairman:** Yes; but I still cannot understand why, if you have a capital gains tax on gains, and you have gains, you pay income tax rates instead of the capital gains tax rate. Perhaps you are right, Senator Hays, when you say that we should eliminate capital gains. It is becoming too complicated.

**Senator Hays:** That is what it is all about.

**Senator Connolly:** Regarding profit-sharing plans that are being built up year by year in favour of employees, are employees taxed in that year on the amount that is credited to their account?

**Mr. Plumptre:** No, they are not. They are free of tax until the payment is made.

**Senator Connolly:** We have to be practical about the kind of thing that we face. Would it be better if the allocated amount year by year formed part of their income? Can you say whether it would be better in the long run?

**Mr. Plumptre:** That is an alternative that we have to consider.

**Mr. Laing:** We have a lot of figures, but we have not evaluated them.

**Senator Connolly:** It could be said that if you join a profit-sharing plan and receive benefits—and apparently the benefits are very substantial—the beneficiary pays no tax when the amounts are credited to his account, and he would pay no tax when it comes out. It is obviously an advantage that the average taxpayer has.

**The Chairman:** If you remember, Senator Connolly, when the representatives of Simpsons-Sears and Allstate were here, we were told something of the origin of section 36. I think it developed in 1960 or 1961. Its particular application was then in relation to deferral of tax on the employer's contribution to the fund. The tax on that would fall in only when he withdrew his lump sum and when section 36 averaging applied.

In one of the plans that we had before us, the employee was contributing tax-paid dollars as his share of the contribution to the fund, so he would not run into tax again with a lump sum payment. It would be a refund of his money. We were told that on the earnings and gains of the fund, they were subject to income tax at the normal rate, and that annual payments were made and deducted by the trustee from the employee's income.

**Senator Connolly:** I did not hear that last sentence.

**The Chairman:** I said that tax on the annual contribution by the employer was deferred until the man withdraw his money from the plan. At that time his rate of tax was determined under section 36, with averaging. What is it that you want?

**Mr. Plumpton:** Basically, we would like to see a continuation of lump sum payments, with an averaging provision similar to the section 36 type.

**The Chairman:** Let us assume you cannot get that. There are averaging provisions in the present bill that are good. If those were available to you and the averaging provisions under section 36 were available to you up to the date the new bill becomes effective, that would remove the risk of retroactivity. Would that not put you in a good position?

**Mr. Plumpton:** Not that good. We have worked out an example in our brief which shows the proposed averaging, as opposed to the former section 36 type averaging, and there is a tremendous difference in tax.

**The Chairman:** That is a strong argument for giving you the averaging going forward, and it might also be a strong argument for segregating the capital elements in the fund and saying that they attract capital gains tax only.

How are you dealt with now in that regard? It is on an income basis, is it not?

**Mr. Plumpton:** Yes.

**The Chairman:** So that would be a definite advantage. It would cut your taxable income by 50 per cent.

**Mr. Plumpton:** Yes.

**The Chairman:** Would you be satisfied if you got all those things?

**Mr. Laing:** A relatively low portion of our fund is invested in equities. The capital gains portion, we would expect

under the present investment policy, is not likely to be a significant portion.

**Hon. Mr. Phillips:** But on the proposed recommendation you would be talking only to the extent of 50 per cent of the capital gains.

**Mr. Laing:** Yes. The accumulation in our pension fund over the years represents a relatively small portion in the form of capital gains. This will be the case unless we change our investment policy, which we do not foresee doing.

**The Chairman:** You do not have the provisions in your plan that other plans have, and that is that a percentage of the fund is invested in company shares?

**Mr. Laing:** No, we do not have that provision. Our fund is invested in a broad range of investments.

To speak to your proposed suggestion just a moment ago, Mr. Chairman, Mr. Plumpton mentioned that the general averaging available under the new bill, as compared to section 36 averaging, is quite a disadvantage. On the forward averaging, which you may also have been referring to, you do not get your lump sum; and what we are saying here is that the important factor in the minds of our employees is the freedom to have a lump sum if they so choose. If you use forward averaging, you obviously do not have a lump sum.

**The Chairman:** What if you give them the option to elect to take forward averaging, or go along with the general averaging and get capital gains?

**Mr. Plumpton:** We have worked out an example of general averaging, and the employees, I am sure, would feel that this is not a great advantage to them.

If you refer to the example, honourable senators, you will see that under the present averaging method, the tax calculation on a lump sum of \$45,000 is \$6,903.00. Under the tax reform general averaging method, the tax payable on such a lump sum would be \$16,792.00, or an additional \$9,889.00. I believe that in the eyes of our employees this is a real stumbling block to lump sum benefits.

**The Chairman:** The answer, then, is you do not want general averaging provisions; you would like to have the right to take forward averaging if you so decided.

**Mr. Laing:** If it permitted a lump sum to be paid.

**The Chairman:** Yes, but the essential thing in your presentation is that you want to continue the lump sum withdrawal.

**Mr. Laing:** Yes.

**Mr. Plumpton:** I might add, Mr. Chairman, that our experience has been excellent in so far as employees taking lump sums on retirement is concerned.

**Senator Connolly:** How can you follow that after the employee leaves?

**Mr. Plumpton:** Our personnel department tries to maintain contact with retirees, and, of course, we have our 25-year club and other associations where the retirees



participate, and there is a general follow-up in that regard. I would not say it is a 100 per cent follow-up.

**Senator Connolly:** But it is sufficient to allow you to make the statement?

**Mr. Plumptre:** Yes.

**The Chairman:** Simpsons-Sears, if you recall, had a complete story on that. They stated that 99 per cent-plus of the employees did not waste their lump sum payment.

Is there anything further you would like to say? Does it appear to you that we understand your problem?

**Mr. Plumptre:** Yes, sir.

You have asked the delegations preceding us if they wanted to suggest a change in wording. We have looked at the proposed act, and we could make suggestions with respect to some of these provisions.

**The Chairman:** You may put them on the record.

We have been studying this thing and we may even have gotten to the stage where we have drafted something on this point.

**Mr. Plumptre:** We would suggest that section 38(2) be eliminated; that is the section that restricts the general averaging and the income averaging annuity subsequent to the option on the section 36 type averaging. We would also suggest that Section 40(1)(c) be amended by eliminating the words "and before 1974". Our third recommendation is in respect of Rule 40(7) of the Income Tax Application Rules which states:

The provisions of this section are applicable in respect of any payment or payments described in subparagraph (1)(a)(i) or (1)(a)(iv) made in a taxation year ending after 1973—

We suggest stopping there and eliminating the rest of that paragraph.

**Hon. Mr. Phillips:** You are now referring to section 40(7)?

**Mr. Plumptre:** Yes, sir.

**Hon. Mr. Phillips:** Are you sure it is section 40?

**Mr. Laing:** It is the application rules, sir.

**Senator Connolly:** We are not talking about the bill; we are talking about the rules.

**Hon. Mr. Phillips:** Mr. Chairman, would you allow the repetition of the suggestion?

What are you asking for in that regard?

**The Chairman:** What do you want done with subsection 7?

**Mr. Plumptre:** In the third line, after "1973" we suggest a full stop, and omit the rest.

**Mr. Laing:** That may mean the whole subsection would come out; it might have the effect of taking the whole thing out.

**Hon. Mr. Phillips:** It is equivalent to taking it out.

**The Chairman:** If you take out the limitation.

**Mr. Laing:** I think so.

**The Chairman:** Is there anything else you want to say?

**Mr. Plumptre:** Only to thank you very much, Mr. Chairman.

**Senator Isnor:** Might I put this, just before you go? Your brief is based entirely on a pension scheme?

**Mr. Plumptre:** There are two parts to our profit sharing: there is the pension part, which is really our profit sharing fund; and a deferred profit sharing plan, which has nothing to do with a pension. Both are amalgamated for the benefit of employees and can be taken out under the present law as lump sum payments, whereby the tax is averaged under section 36.

**Senator Isnor:** I ask that question because Simpsons-Sears said very definitely that theirs is not a pension scheme.

**Mr. Plumptre:** That is correct. I understand that theirs is not a pension scheme.

**The Chairman:** That is right.

Thank you very much.

We have one submission left, which is the brief of the Canadian Institute of Chartered Accountants. It is lengthy and may take a little time to deal with. As it is getting close to 12 o'clock, I suggest that we adjourn now and resume at 2.15 p.m. Is that agreed?

**Hon. Senators:** Agreed.

The committee adjourned until 2.15 p.m.

Upon resuming at 2.15 p.m.

**The Chairman:** Honourable senators, this afternoon we have before us the Canadian Institute of Chartered Accountants. To my immediate right is Mr. R. D. Brown, F.C.A., Chairman of the Tax Committee. Immediately next to him is Mr. Michael Carr, C.A., a member of the Tax Committee; and next to Mr. Carr is Mr. R. C. White, C.A., Director of Communications.

Would you care to make your opening statement now, Mr. Brown?

**Mr. R. D. Brown, F.C.A., Chairman, Tax Committee, The Canadian Institute of Chartered Accountants:** Thank you, Mr. Chairman.

Honourable senators, we welcome the opportunity to present the views of the Canadian Institute of Chartered Accountants—the representative body of 20,000 chartered accountants in Canada—on the tax reform legislation which you are considering.

Chartered accountants have, of course, been deeply involved in tax practice, in completing returns and advising clients, and our profession and the legal profession are the founding bodies of the Canadian Tax Foundation in Canada. As such, the CICA has participated fully in the debate on tax reform which has gone on for the last few years in Canada, making submissions to the Government, to the committee of the House of Commons and to this



committee on this matter. Now that a concrete proposal for tax reform legislation has been advanced, we are confining our submission this time basically to points which deal with technical matters. We are not reiterating some of the more fundamental policy points which we have made in previous submissions.

First of all, I should like to mention two or three main areas of concern which the CICA has with respect to the tax reform legislation, and then I will refer to our submission in which a great many other areas are outlined.

Some of the areas that we feel require the most attention, at least in technical terms, are, first, the area of business mergers and reorganizations. We are concerned that the new law will hamper necessary and desirable restructuring of business. There is a whole combination of factors here: first of all, the lack of roll-overs with respect to capital assets and transfer without imposition of capital gains tax; secondly, the new requirement to transfer depreciable property at fair market value, even between related persons in most circumstances; thirdly, a need to recognize goodwill on the sale or transfer of a business; and, fourthly, a strengthening of the designed surplus provisions which prevent the free-flow of surplus from one corporation to another.

**The Chairman:** Did you say the strengthening or the deletion?

**Mr. Brown:** Well, they are much more effective than they ever were before. I think that this factor, in combination with a number of other changes that I have referred to, gives you a total package by which it will be extraordinarily difficult in future to reorganize business enterprises.

**The Chairman:** I did not mean it from that point of view. I meant the designated surplus idea. Is it needed, with all the other insurance you now have?

**Mr. Brown:** We seriously question whether it is. One of our recommendations is that a very strong look should be taken at this whole area of designated surplus with the introduction of a tax on capital gains. We question whether as a long-term measure it is necessary to keep the designated surplus provisions in.

**The Chairman:** And with section 138—

**Mr. Brown:** That is correct.

**Hon. Mr. Phillips:** The Canadian Bar Association supports you in that view.

**Mr. Brown:** Yes.

**The Chairman:** And Mr. Phillips supports you.

**Mr. Brown:** Very good. I think the point we would like to make here very strongly is that the various provisions that we have mentioned with respect to reorganizations will not really raise any material amount of tax revenue. The point is that what they will do is force businesses to operate in an inefficient manner and through an inappropriate corporate structure. We seriously question whether in Canada, where there is a need to reorganize and perhaps consolidate our businesses in various areas, this is an appropriate posture. We suggest that there is a need for tax-free provisions for exchanges where there is no tax

advantage being secured by any write-up in the value of assets and where there is a continuity of economic interest.

Another area we have some concern about is the international area. Here our concern is primarily with respect to the foreign accrual property income, the so-called passive income.

**The Chairman:** FAPI.

**Mr. Brown:** FAPI, yes. That is correct. The fact is that these provisions, in a complex way, will inhibit competitive ability of Canadian companies abroad to operate in competition with the subsidiaries of other countries.

**Senator Connolly:** Apart altogether from the Competition Act.

**Mr. Brown:** Yes, sir.

**The Chairman:** How do we treat that, senator? As an aside?

**Senator Connolly:** *Obiter dicta*.

**Mr. Brown:** We have other concerns in the international area, but these are of a more technical sort. Fundamentally, we believe that tax reform has taken a very long time in Canada; it has been a long process, perhaps too long. As an institute, we welcome the conclusion of this process—or its apparent conclusion as it now appears to be—but at the same time we urge that as it proceeds through the other body and through the Senate, the most careful attention be given to the details to make sure that this legislation will be the most efficient and that it will be fair and equitable to all concerned.

In terms of our submission to you, what we have put in front of you is a document which, first of all, under the covering letter, sets out the main areas of concern that we have with respect to Bill C-259. Behind that submission is a much longer document entitled "Points for Discussion". That document was prepared by our committee working a great many hours over the summer, and it summarizes about 150 different points of comment with respect to Bill C-259 as it stood at the end of June. That memorandum was submitted to officials of the Department of Finance at the end of August, and we had a meeting with them at that time to discuss some of the points.

**The Chairman:** Are you able to indicate to what extent, if at all, any of the points that you have raised have been incorporated in the amendments that have come down?

**Mr. Brown:** We have just completed the chore of matching up the amendments with our earlier recommendations. Of course, the last set of amendments was not available until last week. I am afraid that all I have with me is one copy, with the points that have been corrected marked off. We would be pleased to leave that with you, or to send you a copy of it.

**Hon. Mr. Phillips:** What is the "track record" for the institute with the Department of Finance in respect of the August submissions and the amendments as they have come down?

**Mr. Brown:** It is very difficult to say. I think they have answered about one-third of the points we raised—one-

third at the most. I think some of the others have perhaps become a trifle redundant because of other changes that have taken place in the bill. It gets rather complicated, because if you fix one area then sometimes you fix others at the same time.

**The Chairman:** Would you say that any of the areas that would appear to have been fixed may require further amendment?

**Mr. Brown:** Yes, that is true. As a matter of fact, we specifically direct your attention to one point in the amendments that were put down last week. On page 6 of the document entitled "Areas of Major Concern with Respect to Bill C-259," we note that the amendment to clause 192(13) proposed on October 27 would have the effect of accidentally designating the surplus of all corporations which have undergone a statutory amalgamation in the last 25 years.

**Hon. Mr. Phillips:** Is that October 27 or October 13?

**Mr. Brown:** This is the amendment of October 13. This is because of a change in the definition of a designated surplus. What they have done is to define "designated surplus" in a controlled corporation as always being the total surplus less, in effect, the control period earnings, and when a corporation has gone through a statutory amalgamation it has no control period earnings and all its surplus is changed, I am sure not intentionally, into designated surplus. We believe that this is a technical point which should be corrected.

**Senator Connolly:** Do you have a specific recommendation involving the words to amend the given section?

**Mr. Brown:** In the case of section of 192(13) I do not have words with me, but we would be pleased to drop you a note to comment on them. I think the basic point is that in the case of a statutory amalgamation the control period earnings of the predecessor company should flow through to the new company so that you do not achieve any designation under that type of definition.

**The Chairman:** You have finished your presentation?

**Mr. Brown:** Yes, we have finished our presentation.

**The Chairman:** Is there anything your panel would like to add before we come to any questions we might have?

**Mr. Brown:** I do not think so, thank you.

**Senator Benidickson:** Mr. Chairman, referring to the introduction to this presentation today, there was a brief given to each member of the committee which is not by any means in the exact language given by Mr. Brown this afternoon. While it has been our policy not to print in full the entire submissions, as we did in the case of the White Paper hearings, I wonder if the first two pages of the submission could be printed as an appendix to our proceedings this afternoon. There it is explained very clearly what the Institute of Chartered Accountants is prepared to comment upon, and what it has not been able to comment upon because of some recent amendments.

Then, again, it makes it very clear, inasmuch as the institute previously expressed its views on the subject of

tax reform in a general way which would include, perhaps, comments and suggestions concerning that policy. They did so both to this committee and to the House of Commons committee when they studied the White Paper, and they made their representations to the Government. Today they have confined themselves simply to technical revisions to the bill as presented in June. I think that should be clear.

**The Chairman:** Well, Mr. Brown has said that. Do you feel that the first two pages of this letter should be printed?

**Senator Benidickson:** I am saying why I think it should form part of the evidence today.

**The Chairman:** Is it the wish of the committee to print it as part of Mr. Brown's evidence right in the record of our proceedings rather than as an appendix, because then you get a continuity of reading? Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Mr. Phillips:** May I suggest that we give it today's date and that we include all ten pages at this point in the record?

**Mr. Brown:** It really speaks as of today.

**Hon. Senators:** Agreed.

*Text of document follows:*

November 3, 1971.

Honourable Sirs:

#### INCOME TAX REFORM—BILL C-259

The Canadian Institute of Chartered Accountants is pleased to have this opportunity of presenting its views on tax reform legislation—Bill C-259—to your Committee. This presentation is being made on behalf of the Institute by its Taxation Committee which acts as the representative body of chartered accountants of Canada on taxation matters. The members of our Committee, in common with all of the members of our profession, have been deeply involved over the past few months with a review and consideration of the income tax legislation introduced into the House of Commons last June by Finance Minister Benson, and we hope our comments on this proposed legislation will be of use to your Committee.

To prepare our profession and the business community for the likely implications of this new legislation, the CICA has been active in disseminating information on the tax reform proposals. Toward this end, the Institute has prepared a special two day course on the tax reform legislation, which has been attended by over 3,500 chartered accountants and other businessmen across Canada; we expect another 1,500 to participate in this course by the end of the year. A special series of articles on tax reform has appeared in our journal, *Canadian Chartered Accountant*, and we have published an analysis of Bill C-259, "Tomorrow's Taxes".

In addition to these information programmes relating to the new legislation, the Taxation Committee met earlier in the summer on a number of occasions to review the technical aspects of Bill C-259, and was materially assisted by



submissions received from a number of the Taxation Committees of the provincial Institutes of Chartered Accountants. Because of the short time available to the CICA Committee for a review of this detailed and highly complex legislation, it did not follow its normal practice of making a formal, detailed submission to the Department of Finance on the new tax legislation. Instead, the Committee prepared a memorandum entitled "Points for Discussion on Bill C-259" which set out in summary fashion, the comments and recommendations of the Committee on the Bill as it then stood. This memorandum was reviewed with officials of the Department of Finance on August 27, and copies of this memorandum were subsequently distributed to various other interested parties.

These "Points for Discussion", a copy of which is annexed to this submission, dealt with the provisions of Bill C-259 as introduced into the House of Commons on June 30, 1971 only; it does not, regretfully, refer to the list of approximately 100 amendments to Clause 1 of this bill which the Minister of Finance tabled in the House of Commons on October 13, nor with the substantial number of additional amendments tabled on October 28. (Due to the complex nature of these amendments and the short time available between their introduction and our meeting with you, it was not possible for our Committee to revise its earlier submission to take these changes into account.) However, Mr. M. Carr and I, as representatives of the CICA Taxation Committee, are prepared to discuss informally with your Committee certain of the implications of these amendments.

To assist your Committee in evaluating the main thrust of the recommendations and comments of the CICA Taxation Committee on Bill C-259, we have also prepared, and enclose, a separate brief submission which highlights our major concerns with the tax reform legislation. This memorandum, which also of necessity had to be prepared in a relatively brief length of time, does take into account, to a degree, the amendments to Bill C-259 which were introduced on October 13, but not those contained in the amendments of October 28. In this supplementary submission, we have attempted to highlight a number of technical areas which we feel requires further consideration, of which perhaps the general lack of provisions for effective tax free business reorganizations and the adverse implications of certain proposals in the international area are amongst the most important.

We would like to emphasize that all of the comments in the attached submission and in our original "Points for Discussion on Bill C-259" are directed towards the technical implications of the new legislation, and are not concerned with the policy implications of the legislation. The CICA has previously made submissions to the Carter Commission, the Department of Finance, the Finance Committee of the House of Commons, and to this Committee of the Senate on certain of the broader aspects of tax policy and we now feel that it is appropriate to confine our remarks solely to the more technical implications of the legislation, although of necessity our comments will, in some areas, touch on policy matters. All of our comments are, however, directed towards tax reform in the context as set out in the legislation introduced by the Minister of Finance, and our observations are designed to make the legislation both more equitable and easier to administer.

If there are any areas of the legislation where you believe the particular expertise and experience of chartered accountants could assist the Committee in its study and deliberations on Bill C-259, we will endeavour to do so if you let us know.

Respectfully submitted,

R. D. Brown,

Chairman, Taxation Committee.

#### THE CANADIAN INSTITUTE OF CHARTERED ACCOUNTANTS TAXATION COMMITTEE

R. D. Brown, FCA, Toronto Chairman; J. M. Belanger, St. John's; F. J. Mair, FCA, Calgary; P. Walton, Vancouver; D. R. Huggett, Montreal Vice-chairman; M. Carr, Toronto; D. K. McNair, FCA, London; W. K. McIntyre, Toronto Secretary.

#### THE CANADIAN INSTITUTE OF CHARTERED ACCOUNTANTS

##### Areas of Major Concern with Respect to Bill C-259

This memorandum is provided as a supplement to "Points for Discussion on Bill C-259" which was prepared by the Committee in August 1971; a copy of this memorandum is attached, and is intended to summarize a number of the major areas of concern to the CICA Taxation Committee. It deals with the provisions of Bill C-259 as they stood, after giving effect to the amendments to Clause 1 of the Bill tabled by the Minister of Finance in the House of Commons on October 13, but does not take into account (due to the shortness of available time) the proposed amendments submitted to the House on October 28.

##### CAPITAL GAINS

###### *Valuation of Liabilities*

No provision exists in the legislation for the valuation of debts (except foreign currency) owing by taxpayers at the commencement of the new system. As presently drafted, the legislation would include the entire amount of any "gain" realized by taxpayers on the repayment of a debt, etc., after January 1, 1972 as giving rise to a taxable gain.

We recommend that the taxation of gains realized by taxpayers on the repayment or settlement of debts existing at the end of 1971 should not extend the amount of any "gain" which may then have accrued, having regard to the market value of debts then outstanding, at least when such debt is in marketable form. We, therefore, recommend that a taxpayer should have an "adjusted cost base" of existing debts owing by him as at December 31, 1971 equal to

—original par value (or issue price, if lower)

—fair value of debt at "valuation day"

Subsequent "gains" on the settlement of liabilities should be measured from the lower of the above two values while losses would be measured from the higher of these two amounts. These rules will be consistent with the provisions for the valuation of assets for capital gains purposes.



We also recommend that a similar recognition be given to the fair value of options outstanding at the end of 1971 so that the value of such options be included in the adjusted cost basis of property subsequently acquired through the exercise of such options.

#### *Disallowance of Non-arm's Length Losses*

There are a number of sections of the Bill dealing with the disallowance in a variety of circumstances of capital losses sustained in non-arm's length transactions. While recognizing the need to protect the revenue against artificial losses which may be created in non-arm's length transactions, we question whether severe and general restrictions of the nature of those in the present bill are necessary or desirable. In addition, we note that these provisions will have different application to a variety of different circumstances, and are unable to appreciate the reason for different treatment afforded different types of such losses.

We suggest that, in *every* case where a loss is disallowed, or a gain increased in a non-arm's situation, a corresponding carryover for adjustment of base to the non-arm's length party acquiring the asset to be provided for—the disallowance of losses in non-arm's length transactions carried out at par value should be limited to certain clearly defined circumstances where the taxpayer may be regarded as not severing his economic interest in the asset.

#### *Re-investment of Proceeds*

We are concerned that a number of provisions dealing with expropriations or other forced realizations of property do not afford adequate time for the taxpayer to re-invest the proceeds to avoid being subject to capital gains on an involuntary conversion.

#### *Charitable Donations*

We are concerned that the provisions requiring a recognition of gain or loss on the disposition of property by way of gift or bequest will have an adverse effect on the donations of appreciated property to charities. Such gifts or bequests may cause the donor a substantial tax liability in circumstances where he may not be able to utilize the deductibility of the full charitable donations. We recommend that where property has been given or bequeathed to a charity it may be valued at the option of the donor or his estate at any amount not greater than fair market value, or less than cost (except where cost exceeds fair value).

#### *Carryback of Unabsorbed Losses*

If a deceased person has unabsorbed capital losses remaining after the carryback provisions now in the Income Tax Act, we recommend that such unabsorbed losses should either be carried back to earlier taxable capital gains realized by the same taxpayer, or possibly added to the adjusted cost base of such properties transmitted in the deceased's will.

### MINING AND RESOURCE INDUSTRIES

The provisions regarding the recognition of gains or losses on the transference of mineral properties will, in our view, have an extremely detrimental effect on the development and financing of new mineral resources in

Canada. Under the Bill, as it presently stands, any transfer of mineral properties (except in the limited circumstances of a transfer from a wholly owned subsidiary to a parent) must be made at fair market value.

This will create immense problems in a number of common situations where it is essential that mineral properties be transferred from one corporation or individual to another in order to facilitate the development and financing of such properties. It will create difficulties where properties are transferred in consideration of exploration work to be done by others.

We recommend that mineral properties should be freely transferrable in non arm's length transactions at adjusted cost base, and furthermore that undeveloped mineral properties might be transferred at adjusted cost basis to a new company in circumstances where the only consideration taken back is the shares of the stock of the company in question.

We also believe that the exclusion of social capital and certain other items from the "earned depletion base" may be unfortunate.

### INTERNATIONAL

#### *Departure Tax*

We have observed that many Canadian citizens, and non-residents temporarily employed in Canada, are extremely concerned with the implications of the "deemed realization" provisions with respect to the capital assets of persons giving up Canadian residency. This happens frequently on the transfer of executive and technical personnel from Canada. The provisions, as presently drafted, would appear to impose a substantially higher tax burden on individuals who, because of their position or occupation, are required to take up and give up Canadian residency during their careers, than on individuals who remain resident in Canada.

We strongly recommend that the provisions in this regard be re-examined and have made a number of particular recommendations in our "Points for Discussion".

#### *Foreign Accrual Property Income*

The provisions respecting this concept as now drafted would appear to have extremely adverse effects on Canadian based multinational corporations operating abroad and will subject them to tax on many types of income which cannot be regarded as having been artificially diverted from Canada. These provisions will hamper Canadian companies operating abroad from achieving the best financial and tax position, and will place such companies at a disadvantage relative to those of other jurisdictions. The proposals appear not only unfair but also technically deficient in some areas. We also note that they would adversely affect Canadian beneficiaries of non-resident inter-vivos trusts. We strongly recommend this whole concept be thoroughly reviewed and have advanced a number of concrete suggestions in our more detailed memoranda.

#### *Dividends from Foreign Affiliates*

We have a number of technical observations and questions with respect to the provisions regarding the taxation of dividends from foreign affiliates. Though these provi-

sions will not be fully effective for some time, we recommend that the government clarify certain of these difficulties at the earliest possible date so that the affected taxpayers may plan their foreign operations.

#### *Reorganization of Foreign Affiliate*

Provisions should be introduced allowing tax free reorganizations and regroupings of foreign affiliates.

#### *Foreign Competition*

We believe that the taxation system should enable Canadian exporters to effectively compete with exporters of other countries. In this regard, we believe that the government should take into consideration proposals now before the United States Congress, as well as current trends in Europe and elsewhere, in deciding on an appropriate tax system for Canada in respect of international income.

### CORPORATIONS AND SHAREHOLDERS

#### *Reorganizations*

One of the principal concerns in this area, and in the related area of capital gains on business assets, is the absence of any effective provisions allowing tax free reorganizations in a number of defined circumstances. We are particularly concerned that:

- the strengthened and expanded provisions dealing with “designated surplus”
- the requirement that depreciable property be transferred at fair market value in many non-arm’s length situations
- the requirement that capital property and goodwill be transferred at fair market value in many situations

will combine to unduly hamper and impede the necessary reorganizations and consolidations of Canadian business enterprises.

The provisions, as now drafted, would impose a substantial tax cost on even the most simple consolidation of a group of enterprises under more or less common control in a number of cases, and would impose virtually intolerable complexities and costs on the reformation or reorganization of a corporate group following a major acquisition. We question whether the provisions now in the Act in this regard serve the long-run interests of Canada to obtain an efficient business community.

We are convinced that the elaborate structure built into the bill to require recognition of gains or losses on business acquisitions, and to tax the distribution of acquired (“designated”) surplus will not raise significant revenues for the government. Instead, what these provisions will do is hamper the needed consolidation and regrouping of Canadian business, and force industry and commerce into inefficient operating procedures.

Accordingly, we recommend that all of the following transactions be considered as “tax free” rollovers (transactions which do not generally give rise to taxable gain or loss):

1. All statutory mergers.
2. The acquisition by one company of the majority of the shares of another company in exchange for voting, participating shares.

3. The sale of all of the properties of one company to another in exchange for voting, participating stock.

4. Any transfer of assets between any members of a group of companies with at least 50% ultimate common ownership.

5. Any recapitalization, change in identity or place of incorporation, etc., which does not involve a capitalization of surplus or distribution of assets.

As an interim measure, we suggest that certain of the above transactions might be permitted “tax free” rollover status only in circumstances where an advance ruling had been obtained. Such a ruling might only be available in circumstances where the applicant had a continuity of economic interest in the asset; and where there was no intent to improperly avoid tax.

We also recommend that the provisions with respect to designated surplus be completely reviewed. We believe that with the advent of a tax on capital gains, the justification of a substantial tax on the distribution (or even more seriously, an artificially deemed distribution) of acquired surplus requires re-examination.

We also note that the amendment to Section 192(13) tabled by the Finance Minister on October 13 will apparently have the effect of accidentally “designating” the surplus of perhaps hundreds of Canadian corporations which have undergone statutory amalgamation in the last few years. This arises because the section, as proposed to be amended, provides that the “designated surplus” of all controlled corporations is to be computed as their current undistributed income, less their earnings in the control period: a corporation emerging from a statutory amalgamation has no earnings in the control period carried over, and hence its surplus at that time will become designated. This technical anomaly should be corrected.

### INDIVIDUALS

#### *Income Averaging*

We recommend individuals should be permitted to use both “general averaging” and the transitional specific averaging rules for pension, stock option, and other lump sum benefits in the same year.

### PARTNERSHIPS

We have expressed a general concern over the complexity of the provisions respecting the taxation of partnerships. We are concerned that many taxpayers who use this common form of business organization, may not be able to interpret the provisions of the new legislation, and that the Department of National Revenue will have difficulty in administering these new provisions. We recognize that in the context of the tax system proposed by Bill C-259 (including the taxation of capital gains and the amortization of goodwill) any proposals for the taxation of partnerships and their income must be somewhat complex but we believe that the provisions as drafted will prove difficult to have application in a number of circumstances. Some of our particular concerns with the taxation of partnerships are set out in the memorandum “Points for Discussion on Bill C-259”.

We urge that specific provisions be inserted in the legislation clarifying the right of a partnership to make deduct-



ible payments to retired partners and their spouses and dependants, with such payments being taxed as ordinary income to the recipients.

**Senator Benidickson:** In connection with that letter, Mr. Brown has indicated that since the Income Tax Reform Bill C-259 was introduced the institute has prepared a special two-day course on the tax reform legislation, and my understanding is that this is a course that consists of a travelling panel made available not only to members of your institute across the country, but also to concerned individuals who are not members of your institute but who have chosen to take advantage of the availability of this travelling panel.

**Mr. Brown:** That is correct. We hope to have this presentation shown to over 5,000 persons in Canada before the end of the year. As a matter of fact, a condensed version of that presentation will be given here tomorrow, and will be open to all members of the Senate and the House of Commons interested in attending.

**Senator Benidickson:** That is what I wanted to come to. I was at another meeting this morning and heard the Chairman of the Finance Committee of the House of Commons who referred to your making it available. I take it that, since it is a one-day sitting, you are condensing what you are doing elsewhere in two days, but I just wanted to make sure that senators have been invited as well as members of the House of Commons.

**Senator Carter:** Will the proceedings of tomorrow be printed?

**Mr. White:** The proceedings tomorrow will not be printed. There is a book which we have published entitled *Tomorrow's Taxes*, and this will be given to all those attending the presentation tomorrow. To the best of my knowledge, arrangements have been made by the Commons Finance Committee.

**Senator Connolly:** Could you circulate a copy of *Tomorrow's Taxes*?

**Senator Benidickson:** We have received it. That is referred to also in the letter which is being made part of our proceedings today. At a one of the recent sittings a witness did raise a book of which the title was the same. The colour was different, but, as I say, the title was the same—*Tomorrow's Taxes*—and it was attributed to your Institute, but the copies which were circulated to this committee say it was "prepared for the clients and staff of Clarkson, Gordon & Company." Is it the same document?

**Mr. White:** It is the same document. Clarkson, Gordon made the text of the study available to the Institute, and we published it for general distribution to the business community and our members.

**Senator Benidickson:** Basically, what will be made available in this seminar tomorrow to members of the House of Commons and of the Senate who are invited—except, I should mention, we will have some difficulty in that we will be having a meeting tomorrow—is basically contained in this fairly substantial booklet called *Tomorrow's Taxes*?

**Mr. White:** I would think so, but Mr. Brown might be better prepared or qualified to comment on it than I. I understand that the method to be used tomorrow will be to try to get a bird's-eye view of the full tax reform legislation as it now stands. *Tomorrow's Taxes* is a much more detailed examination of it, but I think the two complement each other very well.

**Senator Benidickson:** It is unfortunate that the House of Commons does not have a standing committee dealing with the bill itself, as it did with respect to the White Paper. We have a committee which is examining the bill itself. We are sitting tomorrow and probably cannot take advantage of this seminar.

**Mr. Brown:** We regret this very much. We were attempting to organize it at a time available to everyone, but it appeared that there was no such time.

**Senator Benidickson:** I understand you have made it more attractive in that, unlike the travelling panel where a fee was charged, you have made it available free of charge to parliamentarians?

**Mr. Brown:** That is correct. I might mention that the two-day course on the abbreviated version will be presented tomorrow. Our effort is to present what is a very complex subject in terms which can be understood by accountants and businessmen. It basically consists of visual presentations and a great many overhead slides of examples where the impacts of the changes have been worked out. Therefore, while it deals with the same material as the book entitled *Tomorrow's Taxes*, it is in a somewhat different format.

**The Chairman:** Let us get down to business, Mr. Brown. I note in the introductory part of your brief that your submission is addressed to technical changes and not to matters of principle.

**Mr. Brown:** Yes, these distinctions, of course, cannot be clean-cut. What I mean to say is that in all cases we have confined our comments to agreements or disagreements on the proposals in the bill. We have not attempted, in effect, to bring about a different approach to the problem. We have attempted to deal with the particular approach the Government has chosen to deal with and to suggest modifications which would make it work more effectively.

**The Chairman:** On that basis, where do you want to begin?

**Mr. Brown:** Perhaps it might be better if we went over the main areas of concern, such as the treatment of individuals, of capital gains, and so on. In our shorter seven-page memorandum, at the beginning of the material—

**The Chairman:** Yes, we have had a fair amount of background on this. There are certain items which you have indicated as areas of major concern which, quite frankly, it is our view also that they are major concerns.

**Mr. Brown:** I would like to make a correction before you go on, sir. The areas of major concern begin with capital gains, and the first area of concern is the valuation of liabilities. This was written last week, but we find that the amendments submitted to the House of Commons on



October 27 deal substantially with the problem mentioned under that heading. Therefore, I feel that our comments under that particular heading are perhaps not necessary. All of the other comments in our report remain unchanged.

**The Chairman:** Yes. Then moving on to mining and resource industries, we have had substantial submissions from major companies, and we feel that we understand their problems. Is there anything particularly that you want to direct our attention to, recognizing that your approach is one of technicalities?

**Mr. Brown:** Yes, without speaking to the burden of the total taxation on the mining industry, the first of the two points I would like to make is, that the restriction on the transferability of mining property, that is oil and gas properties, mining rights, in the particular circumstances will have a crippling impact on the establishment of new mining ventures where frequently the transfer of such assets is required in order to place them in a vehicle which can be financed and where stocks can be issued to the public. But if you have to make a transfer at the fair market value, you will have to pay a substantial amount of tax at a time when the funds available to pay the tax are not available.

The second point is the unfortunate effect of the exclusion of what might be called social capital from the earned depletion base; that is, expenditures by mining companies for townsites, transportation facilities, et cetera. These are only important in remote areas; but they are expenditures of critical importance.

**The Chairman:** You would agree that the provision in the bill relating to earned depletion appears to be too narrow?

**Mr. Brown:** Yes, were concerned about that.

**Senator Connolly:** It might be that the industry will require the provinces to contribute materially to the development of social capital in new or remote areas. It may very well increase the financial load that the provinces will have to carry.

**Mr. Brown:** That is correct. I think one other point that should be brought out is that both the federal and provincial governments are evidently prepared to subsidize other developments in remote areas, such as a number of pulp and paper projects, some of which have turned out rather unfortunately. On grounds of basic social policy there should be some question as to whether these types of mining expenditures should not not be included.

**Senator Connolly:** Might I add this point, Mr. Chairman? Perhaps you are in the same position as I am being a member of the profession you cannot judge the situation. Would you think, generally in dealing with the provision of social capital, the infrastructure can be done more efficiently and more economically by the private sector rather than by the public sector, particularly as would seem to be the case in the provinces?

**Mr. Brown:** That is a very difficult question to answer because it depends so much on the circumstances. In a number of areas I think mining companies have done quite well in the past in providing this type of structure.

But in one recent case, for example, the Sherritt Gordon development in Manitoba, they arranged to have the province do all the work, even though Sherritt Gordon later agreed to finance the project. As long as you can avoid building what used to be called company towns, the undertaking of the necessary infrastructure by the corporation has substantial advantages because you can definitely fix the responsibility for financing the work.

**Senator Connolly:** What specific objection do you wish to put on record about "company towns"?

**Mr. Brown:** In dealing with company towns I was speaking of the situation where the company owns the stores and the recreational facilities and, in effect, runs everything from the top down. For example, if you were to take a town such as Thompson, Manitoba, in effect it was organized and planned by the International Nickel Company; but all the stores and recreational facilities are independently owned and operated. In that way I think they have avoided the curse of a company town where, in effect, everything is run by one company-appointed manager.

**The Chairman:** I think you would find the same situation in Elliot Lake.

**Mr. Brown:** That is correct.

**Senator Benidickson:** And, of course, they have changed their form and their political participation quite substantially from the time of construction of the community.

**Mr. Brown:** That is correct.

**The Chairman:** We certainly agree with you with respect to the areas for concern. We have put something on paper as regards FAPI and dividends from foreign affiliates.

Have you made any comment in your brief on the situation with respect to exempt income under the new bill, and particularly with respect to the fact that the determining factor as to whether income from an active business operation abroad is exempt or not is based on whether the Government has been able to make a treaty with the country concerned? Why should there be a penalty to the company if the Government is not able to make a treaty?

**Mr. Brown:** That is the point, I believe, we made in our earlier policy submission to this committee and to the committee of the House of Commons. At that time our committee was convinced that there should be no distinction in this area, and we are still of that view, but as it is a basic policy matter it is not included in our brief at this time.

**The Chairman:** It is a rather odd situation. Whether or not you have exempt income depends on whether there is a treaty between Canada and the country involved. The company has nothing to do with that, and the qualifications for exempt income are all otherwise met by the dividends coming forth from the active business operation.

**Mr. Brown:** The implications of this are particularly severe in the case of Canadian mining companies, utilities, and insurance companies operating abroad due to the particular tax laws that affect these enterprises.

**Hon. Mr. Phillips:** So-called multinational corporations.

**Mr. Brown:** Yes. You will find in the proposals with respect to the dividend income received by manufacturing companies from abroad that there are a good many alleviating provisions. For example, in the case of dividends which would otherwise be taxable there is an election to credit such dividends against the adjusted cost base of the shares to pick up a disproportionate amount of foreign tax, and so forth. These provisions will mitigate the effect in a number of cases but not in others. In other words, I feel the change will fall rather unevenly on Canadian multinational corporations, some being virtually unaffected and others being very substantially affected.

**The Chairman:** Yes, but there would not be any difficulty, or it would be quite negligible, in relation to exempt income if you did not have that artificial tax treaty or not treaty.

**Mr. Brown:** We agree with that point.

**Senator Macnaughton:** Under the heading on page 4, "Foreign Accrual Property Income," you are quite definite in some of your wording. You state in that paragraph:

The proposals appear not only unfair but also technically deficient in some areas. We also note that they would adversely affect Canadian beneficiaries of non-resident inter-vivos trusts. We strongly recommend this whole concept be thoroughly reviewed and have advanced a number of concrete suggestions in our more detailed memoranda.

Do you care to say a few words on that?

**Mr. Brown:** Yes. The basic idea of foreign accrual property income is that Canadian individuals or corporations who have foreign affiliates will be required to include in their income immediately the passive income of such foreign affiliates as it has earned. "Passive income," for this purpose, is defined as any inactive business income together with all income from property.

The provisions are somewhat indefinite, because, as I believe you are all aware, the question of what is income from property and what is income from a business, let alone an active business, is a little imprecise. In addition to that, there are a number of technical problems. There are situations, for example, where a Canadian taxpayer could be required to include in his income, let us say, 150 per cent of the foreign passive income of a foreign affiliate simply because of the technical deficiencies in the wording. The provision that deals with the percentage of foreign income that you have to include in your income has no limiting income on it. It is the sum of a number of factors, and these factors could easily add up to more than 100 per cent. In addition, and I believe this is the clearest cut example, where you have a Canadian who has both income and is a capital beneficiary of a foreign trust, that individual could well be required to include 200 per cent of the income of the foreign trust in his income under the provisions as they now stand.

**Senator Macnaughton:** If that is true, it certainly justifies your remarks.

**Senator Connolly:** In the document we have before us, have you a suggestion for an amendment to a clause of the bill?

**Mr. Brown:** Yes. If you turn to the more detailed part of our submission, which is the memorandum of August 27—

**Hon. Mr. Phillips:** May I have a word before we go on?

**Senator Connolly:** Yes, certainly.

**Hon. Mr. Phillips:** We have detailed representations with respect to charitable donations, mining and resource industries, international companies, FAPI, dividends from foreign affiliates and reorganization of foreign affiliates, foreign competition, corporations, shareholders and partnerships.

There are two items that you have included in the highlights which I do not think the committee has had the benefit of hearing interested parties on. They are to be found on page 2, the first and second paragraphs, and at page 7, the short paragraph on income averaging. That short paragraph, to my mind, is quite pregnant to the substance, and I am wondering whether honourable senators will allow you to deal with these two items. We would then have a complete record of the highlights before we get to the details.

**Mr. Michael Carr, C.A., Member, Tax Committee, Canadian Institute of Chartered Accountants:** Mr. Chairman, perhaps I could speak to these two items. The first one is at page 2 and deals with the disallowance of non-arm's length losses. I believe this is one of the situations in the bill where, in attempting to close possible future loop-holes, there is a certain degree of over-killing, and certain situations which should not be penalized are, in fact, being penalized.

The general rule in the new bill is that when you have a non-arm's length disposition of an asset, in those circumstances, any capital loss on the transaction will not be recognized for tax purposes. This, of course, is to avoid the situation where people might artificially create capital losses for deduction against other income by disposing of assets on a non-arm's length basis. What is proposed is to put a general prohibition in the legislation preventing a deduction of capital losses in those circumstances where it is a non-arm's length disposition.

However, we feel that there are two problems here. In the first place, we feel that the general prohibition should be cut back very substantially, and that the prohibition against the deduction of capital losses should only apply when it is clear that it is not a bona fide transaction or when it is clear that some type of tax advantage is being obtained or being sought to be obtained.

In circumstances where the non-arm's length loss is prohibited because it is perfectly reasonable to do so because of the aim of the tax minimization, we feel that the amount of the loss should, in effect, always be added to the cost base of the person who acquires the asset on a non-arm's length basis. In some circumstances in the bill there are provisions for the adding of this disallowed amount to the cost base. I think it is in the superficial loss area, for example. You do get the addition to your cost base in this situation. However, this is not the case in all of the non-arm's length disposal situations, and we feel that in any



situation where you have a non-arm's length disposition which gives rise to a non-deductible capital loss, that non-deductible capital loss should be added to the cost base of the person who acquires the asset.

**Hon. Mr. Phillips:** I wonder if the Chairman and honourable senators will have patience with me on this point. The Canadian Bar Association, with you, represents the Canadian Tax Foundation, and I am obviously proud of that foundation for historic reasons. Well, the Canadian Bar Association went into this matter at greater length than you have here, and the question was put to them as to whether the greater part of the problem, or the problem itself, might be mitigated in its adverse effects if we had consolidation. We have had consolidation previously, and it had been recommended some time back by the Bar as well as by the chartered accountants. What is your view on that point?

**Mr. Carr:** I am appreciative that you asked the question, Mr. Phillips. I think we are definitely in favour of some provisions allowing for the preparation of consolidated tax returns. They certainly would mitigate a great many problems. They would not merely mitigate the one we are discussing now but others as well. However, I do not think they provide a complete solution to this particular type of problem.

**Hon. Mr. Phillips:** I said "mitigate."

**Mr. Carr:** Yes, they would mitigate it. They would not completely resolve it.

**Hon. Mr. Phillips:** In other words, you are still of the view that consolidated tax returns would mitigate the problem covered by this paragraph?

**Mr. Carr:** In certain intercompany transactions, and in other situations not even covered by this paragraph, it would definitely be an advantage.

**Hon. Mr. Phillips:** Do you think consolidated tax returns are relevant to the problems we are now facing?

**Mr. Carr:** Yes, I do.

**Senator Connolly:** Are we to understand that under the bill as it is now a consolidated tax return is prohibited?

**Hon. Mr. Phillips:** Yes, of course. It was eliminated some years ago, and it was not reintroduced in this bill.

**Senator Connolly:** With respect to a parent company and all of its affiliates and subsidiaries, then each one of them has to make a tax return separately.

**Hon. Mr. Phillips:** Yes.

**Mr. Carr:** Quite so.

**Mr. Brown:** That is correct. I should like to make the point that the new provisions make this even much more difficult than the present provisions, because in the past the existence of separate corporations and their adverse tax consequences could sometimes be avoided through the sales of assets or businesses between the companies involved. Under the new provisions this will be extraordinarily difficult in some cases.

**Hon. Mr. Phillips:** Because of the capital gains tax. Excuse me, Mr. Brown, for interrupting, but I just want to point out to Senator Connolly that the movement of capital assets between parents and subsidiaries becomes all the more complicated because of the introduction of the capital gains tax. I am sorry I interrupted you. Will you continue your thought, Mr. Brown? I was rude there.

**Mr. Brown:** Not at all. I think that was the basic point. We have always felt the lack of consolidated returns and we feel it much more under the bill's new provisions. There are a number of ways, of course, to effect consolidated returns. The most efficient is simply to allow consolidated returns. Another alternative is to go to the type of subvention payment available in the united Kingdom, where one company in a group can make a payment to another company in the same group. The payment will be deductible by the first company and taxable to the second. It has the effect of transferring the loss from the one to the other when both are members of the same group.

**Senator Benidickson:** What does that do to tax revenues?

**Mr. Brown:** I think in the long run it does not adversely affect them. The point is that if you have a corporation which carries on business with two subsidiaries, for example, and one of those subsidiaries has a profit and the other has a loss, then you have to pay taxes on the profit in the one and you do not get any deduction for the loss on the other.

I can give you one glaring example. One of my clients went into the fast food business in Canada, selling hamburgers. He was so ill advised as to have a separately incorporated company created for every stand. He wound up with 130 corporations, a good many of which had losses, although some had profits. Overall, consolidated, he had a profit before taxes, but his tax provision was 400 per cent of his net profit before taxes because he could not offset the losses in some companies against the profits in others.

**The Chairman:** Well, he was loyal to this advice, anyway.

**Mr. Brown:** It was not mine!

**Hon. Mr. Phillips:** If I may be permitted to say so, Senator Benidickson, anything that interferes with the normal, common-sense, routine operation of business, according to sound business principles, in the final analysis affects the revenue adversely.

**Senator Connolly:** That is very true.

**Senator Benidickson:** That is good philosophy.

**Senator Connolly:** Your man here may have been able to make fast foods, but he could not make a fast buck; in fact, he could not even make a buck.

**Mr. Carr:** Mr. Chairman, we were also asked to deal with an item on page 7, income averaging. This matter was mentioned this morning in the Dominion Foundries and Steel presentation. As the situation stands now, the existing section 36, and certain other provisions allowing averaging, are going to be carried forward for a year or two or three under the new act. If a taxpayer in the next two or three years, in the transitional period, elects to use the old



law, he will not at the same time be entitled to the benefit of the averaging rules which are contained in the new legislation.

**The Chairman:** I may have read incorrectly, but my understanding there is that the individual who is entitled to a lump sum withdrawal can wait until the withdrawal date and then he can make his own elections.

**Mr. Carr:** Yes, but by that time I take it that these transitional rules, Mr. Chairman, might be over, and he would no longer have the opportunity of using the old section.

**The Chairman:** I am talking about what the bill provides.

**Mr. Carr:** I think the bill merely provides for the use of these old provisions for the next two or three years.

**Mr. Brown:** It is for two years. There is the provision in the transitional amendments, however, which would allow the use indefinitely of this section 36 averaging, but only with respect to the amount of benefit accrued to the end of 1971. The basic point here is that to prevent individuals who want to take advantage of these transitional section 36 rules to the extent that they are available—and after 1973 they will not be available with respect to the whole payment—to prevent them, when they take advantage of those, from using the other averaging elections results in a very unfortunate incidence of tax.

**Mr. Carr:** Really, what we are looking for is a somewhat more liberal set of provisions in that respect.

**The Chairman:** Well, you heard the discussion here this morning. There were some suggestions—that perhaps the Chairman was rash enough to make—to the effect that if they had the best of all worlds they could have their election up to the end of 1971 and get the section 36 averaging. That would require changes in the bill, but the language of bills has been changed before, and they could be given the benefit for any obligations after 1971; they could be given the benefit of the general and forwarding averaging and the capital gain character to the gains.

**Mr. Carr:** Right.

**The Chairman:** And their position, they say, would be slightly better than it is now.

**Mr. Carr:** Oh, really? I did not catch that, but they said that, did they?

**The Chairman:** Yes. And that would appear to be fair treatment. Is that your view?

**Mr. Carr:** I think it is a reasonable compromise anyway.

**Senator Connolly:** I am going to have to read that passage because I did not hear it, but it was a summary of this morning's argument and the witnesses this afternoon agree with it.

**The Chairman:** Did I interrupt your flow, Mr. Carr?

**Mr. Carr:** I think I am finished, Mr. Chairman, on the specific matters raised by Mr. Phillips.

**The Chairman:** In some of these areas of concern we have already moved along pretty far, always looking for additional supporting ideas.

**Senator Carter:** Mr. Chairman, did not Senator Connolly request some suggestions as to draft legislation?

**Mr. Brown:** Senator Connolly asked for the provisions or more specific comments with respect to the foreign accrual property income.

**Senator Connolly:** Do you have some form of words that you would like to suggest?

**Mr. Brown:** We always like to leave that to the lawyers. I think our comments are made more specifically, if I can find them, on foreign accrual property income and are set out essentially on pages 12 and 13 of our longer brief. I am sorry for the confusion of documents, but that is the longer submission entitled, "Topics for Discussion on Bill C-259" attached at the end of the main document. On pages 12 and 13 we make some specific comments about foreign accrual property income, and make very definite recommendations as to how an approach might be made to get something which would still be within the framework of the Government's intention but which would not work too much hardship on Canadian companies.

**The Chairman:** You speak about exercising effective control?

**Mr. Brown:** That is correct.

**The Chairman:** Is that another way of saying that if the foreign affiliate is a control corporation, then it might be all right?

**Mr. Brown:** First of all, we say that the foreign accrual property income provisions should be confined to companies which are controlled from Canada, where somebody from Canada has the right to influence the activities of the foreign corporation. Secondly, they should not apply to any type of income which is related to any type of business activity carried on abroad. In some instances this might include rents and royalties and other types of income which, in a technical sense, might be considered property income. Thirdly, we look for some minimum exclusion of this type of income. We do not think the law should reach down to get the last dollar of this type of income, and should only be concerned when it exceeds a certain amount or percentage of active business income.

**The Chairman:** We have had a suggestion here—and I think it is in the U.S. law—that we should establish a permissible base, and if this type of income does not exceed that base,—and I think it is 30 per cent—it just is not looked at, but if it does exceed the 30 per cent, then you are stuck with the provisions.

**Mr. Carr:** I think it would be an excellent suggestion. That would avoid the coming into effect of these foreign income property rules in certain cases.

**The Chairman:** If you read the White Paper, you will find that time after time where the department is speaking, they assimilate passive income and diverted income, and

diverted income has the connotation of tax avoidance. I think the word "passive" income is switched about and the meaning becomes confused, and I think if we stuck to "diverted" income we might be operating in a better area.

**Mr. Carr:** At the present time, Mr. Chairman, the proposed legislation draws no distinction at all between the incorporated pocketbook in the Bahamas, which is really accumulating investment income which perhaps should be in Canada, on the one hand, and the situation, on the other hand, where for perfectly valid business reasons royalty income is being accumulated offshore from Canada. I think there should be a distinction, and I think it could be done by a definition of active business income which is more liberal than the one we have at the present time.

**Hon. Mr. Phillips:** We have struggled with a definition of active business income just as, no doubt, you have, and we have more or less ended up by saying that everything is active business income related to active business unless it is diverted income.

**Mr. Carr:** It might be well to do it that way and then to exclude certain things like dividends, certain forms of interest, and so on.

**Mr. Brown:** I think the approach followed in the language of some international tax treaties these days is to deal with income which is effectively connected with an active business. This picks up all types of capital gains from the sale of business assets, royalties from the use of business information, and so on, and puts it into business income and not into passive income.

**The Chairman:** Well, if you have a couple of affiliates abroad and one of them is owned by another subsidiary, and the first is carrying on an active business and the second is more or less a holding company, do you have a flow-through in those circumstances or is the income, when it moves from the second subsidiary over to Canada, investment income?

**Mr. Brown:** Under the provisions of the bill, the income retains its character if the bottom company is generating active business income. When that company pays its dividend to another affiliate, it retains its character as active business income. However, if the active business income was earned in a non-treaty country after 1976, the mere payment of the inter-affiliate dividend triggers another clause of the bill dealing with inter-affiliate dividends, and that becomes taxable income to the Canadian parent, but not under the passive income rules.

**Hon. Mr. Phillips:** I think that on page 13 you get a direct answer to your question on the more detailed analysis of passive income, Senator Connolly.

**Senator Benidickson:** While we are on this exercise of relating the seven-page summary to the longer document, and back to the reference in the summary to charitable donations, I wonder if Mr. Carr could direct my attention to the page in the long basic recommendations that relates to charitable donations. I am referring to page 2 of the summary, and I want to know on what pages of the big document can I find a cross-reference.

**Mr. Brown:** I invite you to look at page 4 of the long document, under section 69(1)(b). We are quite concerned that that provision, over a period of time, will lead wealthy people to be extremely reluctant to leave their works of art, and so forth, to museums and to charities on their death.

**Senator Benidickson:** Mr. Carr was invited to comment on the section in the summary respecting charitable donations, and then we got on to something else. I do not know whether or not he had anything to add to what was contained in the summary.

**Mr. Carr:** Thank you, I do not think I can add anything to Mr. Brown's comments.

**The Chairman:** Then we move along—

**Senator Hays:** Mr. Chairman, before we leave this point, Mr. Brown suggested that wealthy people upon their death would be reluctant to give away their works of art and so on. I wonder what he thinks they might do with them.

**The Chairman:** They might sit back and contemplate them.

**Senator Connolly:** You cannot take it with you.

**Mr. Brown:** I think the point is that they will be reluctant to leave them to charities if they know that the gift, in effect, is going to be subject to tax which will have to come out of the revenue of the estate. If the beneficiaries have to pay tax, there could be an argument that they might as well have the paintings too, in order to have the assets on which the tax has to be paid.

**Mr. Carr:** This might be even more of a problem during a person's lifetime, because he would realize that in giving a painting away it has led to taxes of so many thousands of dollars; and I think he would be very reluctant to do this.

**Senator Hays:** What about the capital gains in this situation?

**Senator Connolly:** This is a case where capital gains would arise.

**The Chairman:** I think he would be better off if he sold the painting, and then at least out of the realized proceeds he would have some money to pay capital gains tax. If he gives it away and then has to find the money to pay taxes on it, it is not going to encourage giving things away.

**Hon. Mr. Phillips:** Mr. Chairman and honourable senators, two important charitable organizations that appeared before us made suggestions other than the ones you are now making. Instead of there being an election, the suggestion is that there be a roll-over similar to a complete exemption on the basis of the gifts that are given, and *inter vivos*, at death a roll-over to the charitable organization, and a deduction in respect of 20 per cent of the taxable income would be confined to the cost of the depreciable assets. I am merely giving you the alternative approach.

**Mr. Carr:** Yes, with respect, Mr. Chairman, I am not too convinced that there is very much difference between us. Our suggestion is that in these circumstances, where a gift



has been bequeathed to a charity, we suggest that it be valued, at the option of the donor, at any amount not greater than the fair market value and not less than cost. In these circumstances I would imagine the donor would deem the disposition to be the cost. I think this is essentially what the charitable organizations are looking for.

**Mr. Brown:** The point is if you are talking about an asset with perhaps not a great deal of value, especially with someone in the lower tax bracket, I think they would rather have it at fair market cost because the value of the charitable donation might be worth more to them than the small amount of capital gains tax that they would have to pay on it.

**Senator Connolly:** I am afraid that I did not follow that very well. Will you give us an example?

**Mr. Brown:** Let us take a situation where you have an individual who has a painting which he acquired for \$1,000, and it increases in value and is now worth \$11,000. If he were to give that painting to a charitable organization or a museum he would be deemed to have a realized capital gain of \$10,000, on which he would have to pay tax. A tax of 50 or 60 per cent of half of it would amount to \$3,000. He would be allowed a charitable donation of \$11,000, but whether he could take advantage of that depends on his total income. If his total income is \$22,000 his maximum charitable donation is only \$4,000. The savings which he would realize through claiming that donation might be around \$1,800 or \$2,000. The point is that he is then out of pocket because he has made the gift. A person probably would not mind this deemed realization if he had a very substantial income in relation to the value of the gift. He might as well pay the capital gains tax and get the charitable deduction at the fair value. But in circumstances where you are giving away very valuable property in relation to your annual income, the gift will cost you tax dollars.

**Senator Hays:** How did we treat that, Mr. Phillips, when we were dealing with the example of giving away a summer home?

**Hon. Mr. Phillips:** The people who appeared before us requested, in effect, a roll-over provision where there would be no deemed capital gain realization on the transfer. In effect, it would simply mean that the donor would then be getting a deduction from his taxable income within the framework of 10 to 20 per cent, only to the extent of the cost on the gift which was given at death. This is instead of the election as provided for on page 4 of the detailed recommendations. Does that answer your question?

**Senator Hays:** Yes.

**The Chairman:** Can we move along now? I was wondering what your thoughts were, Mr. Brown, in connection with the points for discussion. Around one-third of these points have been dealt with in some way by the amendments. They may have been badly dealt with by the amendments. But for our purposes, if we assume that there is something less than all these sections that you have referred to that we need to look at, if you have an eliminator, you might proceed to do the eliminating.

**Mr. Brown:** Yes, this is a long document. I have one copy here, and we have gone through it and have eliminated all the points which we feel have been dealt with by the Government. I would not wish to read all of this at the moment because it would take some time, but I would be very happy to leave this copy with you.

**The Chairman:** Would you do that?

**Mr. Brown:** Certainly. As I have said, the Government has dealt with perhaps one-third or less of the points in our detailed memorandum. Some of the other points have probably become obsolete due to other changes. In one or two cases, quite frankly, we were so rushed into making our comments that the comments themselves were perhaps in error. But we have stroked off all the points which have been dealt with in one way or another. And there remain a very substantial number of technical areas which we think should warrant further consideration. I think some of these points may appear to be relatively technical. We are very much concerned that under a self-assessment system, that depends on taxpayer morality, the taxpayers must be convinced that the system is fair, and they must be convinced that the Government is anxious to see that the system is fair. Even an anomaly which would affect only a relatively few people should be looked into and corrected.

**Hon. Mr. Phillips:** Mr. Chairman, could I suggest that Mr. Brown send to you, as chairman of this committee, a revised copy of the items which are still outstanding, in other words, eliminating one-third of the points which have been dealt with? Then the chairman, at his discretion, can deal with that material with this committee.

**Mr. Brown:** We would be more than pleased to do so. I apologize for not having had an opportunity to do that before this meeting but, as you realize, a number of the amendments were just out last week and they are of such a technical nature that one would require several days to ponder them in order to appreciate their implications.

**The Chairman:** I also understand that the document we have before us is already in the hands of the Department of Finance. Is that correct?

**Mr. Brown:** That is correct; it has been in their hands since August 27.

**The Chairman:** In other words, they are aware of all of these items.

We have been giving some thought as to whether we should not have one preliminary report which would deal with the technical changes, in the same way as you have started here and, having done that, we could very well say, "Attached hereto is a list prepared by the Canadian Institute of Chartered Accountants, a copy of which has been in your possession for some months".

**Senator Benidickson:** Since a specific date.

**The Chairman:** Yes. With these technical changes we are not likely to say that it should read differently from what you say.

**Mr. Brown:** As I say, Mr. Chairman, on further sober reflection, we have discarded some of them, but, I would say at least half of them remain outstanding at the present time.



**The Chairman:** That is the list I want.

**Mr. Brown:** We will see that you have it within a short time.

**The Chairman:** Yes, because we only have a short time.

**Senator Macnaughton:** That will be made an appendix, will it?

**The Chairman:** No. It will be filed with us, and the purpose I had in mind, subject to what the committee may say, was that we would have one report which would deal with the technical changes and we would attach this document that we get, disclosing the authors of it and drawing to the attention of the Department of Finance the fact that they have had it in their possession for some months and we recommend it quite strongly as requiring some correction.

**Senator Benidickson:** Not necessarily approving it holus-bolus.

**The Chairman:** No. I feel we can recommend it. If the Canadian Institute of Chartered Accountants makes recommendations on the technical language, I am prepared to assume that there is merit in the recommendations.

**Senator Benidickson:** I would agree with you.

**The Chairman:** That does not mean I am prepared to assume that what they have suggested is the correct and only way to deal with a specific problem, but I feel it does raise a point for them to look at.

**Senator Benidickson:** And the fact that it has been in their hands since August 27 with the result that only about 50 per cent have been subject to either amendment by the minister or have been discarded upon further reflection by the institute, raises, I feel justifiably on our part, a query as to what was wrong with the other 50 per cent.

**The Chairman:** It is also subject to the assumption by us, and justifiably so, that they did not simply pick and choose from this list; they must have gone through the list and seized on the ones that they were ready to accept and put into these amendments, so obviously they have been studying it.

**Senator Macnaughton:** We are printing the pages on areas of major discussion?

**The Chairman:** Yes, we will be printing the seven pages.

**Senator Macnaughton:** And in due course the institute will file revised points for discussion with the committee?

**The Chairman:** Yes, and if honourable senators would like to have copies of it, we will see they are distributed.

**Senator Macnaughton:** I feel we should.

**The Chairman:** We may add a great deal to the sum total as a result of this.

**Mr. Brown:** I would like to make it clear that because we proposed approximately 150 amendments to the tax legislation, we should not assume that the institute was omniscient. I feel there are probably additional areas which we

did not pick up and which other associations, such as the Bar Association and the Canadian Chamber of Commerce, may have recognized and your committee in its work has recognized. Furthermore, we cannot guarantee that all the points we did pick up were correctly dealt with, but these points were arrived at as a result of considerable discussion by groups of chartered accountants across Canada. What we would like to see happen is that these points do receive some consideration and review in order to determine whether these are of any merit to them.

**The Chairman:** We can recommend that this be done. We just do not have the time to take each one of these and relate it to the section of the bill and make a decision as to whether it should go one way or the other.

This is our first run before the bill comes to us. We are just looking at the subject matter. We will have a second run when the bill is before us, and we will see what they have done to that point. If they have not heeded some of the recommendations we have made, there may be some firm discussion, because there is no question about the authority that we have; it is a question of our using it.

Are there any other points you would specifically like to deal with at this time, Mr. Brown?

**Mr. Carr:** I think not, Mr. Chairman, speaking for myself, because if we start going through the detailed 31-page memorandum with which you are going to be provided, it would be difficult to know where to draw the line.

**The Chairman:** You do not feel that we are shutting off or snuffing out some information in relation to some of the sections of the bill that we should particularly look at in a way other than the way we are proposing to do it?

**Mr. Brown:** I do not believe so. I feel the bill is an enormously technical document, and once you get into the particular sections of it and their implications the discussion does become one where, perhaps, one would like to sit down all by one's self and go through it until one understands the language rather than having a committee meeting on it.

What we are concerned with, and we emphasize this again, is that we hope, that by bringing forward constructive ideas, in as disinterested a way as we possibly can, we can improve the tax legislation. We are concerned that it has been brought forward in something of a hurry, and we believe that there were a number of technical deficiencies of almost staggering proportions in the bill when it was first introduced in June. A good many of these, of course, have been corrected, but some remain.

**Senator Benidickson:** I am glad to hear that, because I have heard some comments that the amendments were of little significance, except in, shall I say, narrow areas.

**Mr. Brown:** The amendments the Government has introduced to date have solved a number of important problems. For example, one that was put in just last week gives professional people—lawyers and accountants—who have an interest in a partnership, for the first time under this provision, a cost base for capital gains tax purposes equal to what they paid for the partnership asset. That, I feel, is of great significance to some of our members, and we are very glad to welcome that change in the tax law.

What we are essentially concerned with are the technical matters. For example, to bring home something directly to the point, you will not find in our representations any comments about the accrual basis of taking up income for professional practice. We had a great many words to say about that when it was a policy issue, but now that the issue has been decided in the legislation before Parliament, we are silent on the matter. We are simply concerned with the technical implications.

**Senator Benidickson:** But you have not changed your views?

**Mr Brown:** No, we have not.

**The Chairman:** Is there anything further?

**Mr. Brown:** No, I do not believe there is, Mr. Chairman. We will see that this document is in your hands within two days.

**The Chairman:** Thank you very much, gentlemen.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

STANDING SENATE COMMITTEE ON

# Banking, Trade and Commerce

The Honourable SALTER A. HAYDEN, *Chairman*

No. 47

THURSDAY, NOVEMBER 4, 1971

Preliminary Report

on

The Summary of 1971 Tax Reform Legislation

MEMBERSHIP OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*, and

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hays
Blois	Isnor
Burchill	Lang
Carter	Macnaughton
Choquette	Molson
Connolly ( <i>Ottawa West</i> )	Smith
Cook	Sullivan
Croll	Walker
Desruisseaux	Welch
Everett	White
Gelinas	Willis
Giguere	

*Ex officio members:* Flynn and Martin

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate,  
September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by  
the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking,  
Trade and Commerce be authorized to examine and  
consider the Summary of 1971 Tax Reform Legislation,  
tabled this day, and any bills based on the Budget Reso-  
lutions in advance of the said bills coming before the  
Senate, and any other matters relating thereto; and

That the Committee have power to engage the services  
of such counsel, staff and technical advisers as may be  
necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,

*Clerk of the Senate.*





Thursday, November 4, 1971

## INTRODUCTION

On September 14, 1971 there was tabled in the House a document entitled "Summary of 1971 Tax Reform Legislation" and on the same date, by resolution of the Senate, consideration of same was referred to the Standing Senate Committee on Banking, Trade and Commerce.

For the purposes of brevity and identification, the "Summary of 1971 Tax Reform Legislation" will be referred to in this report as the "proposed legislation" and the Standing Senate Committee on Banking, Trade and Commerce will be referred to as "your Committee" or "the Committee".

The Committee would like to take the opportunity at this time to commend the Government in respect of many of its proposals pertaining to individuals, in particular for the reduction in taxes, the increased personal exemptions for both single and married taxpayers and for taxpayers aged 65 and over, the allowance of a deduction for child care expenses, the deduction for moving expenses occasioned by a job change and the increased deductions for pensions and charitable contributions. Your Committee also notes with approval the allowance of a deduction by corporations of interest paid on money borrowed to acquire shares of other corporations. We would further commend the Government for modifying many of the proposals put forward in the "White Paper Proposals for Tax Reform" in response to the many representations made in respect of same.

Pursuant to the order of reference dated September 14, 1971, your Committee has heard a number of representations and has received a number of written submissions on the proposed legislation. Having studied the various representations which have been heard or received up to and including the 27th day of October 1971, your Committee has concluded that it is desirable to submit to the Minister of Finance, as expeditiously as possible, a number of recommendations in respect of the proposed legislation which is presently being considered by Committee of the Whole in the other House. It is the hope that, upon the receipt by the Minister of Finance of these recommendations, the same will be accepted by him as being pertinent and relevant, and to the extent so regarded, that appropriate amendments will be submitted by him to the other House while the said proposed legislation is being considered in the Committee stage.

Having regard to the urgency of the matter and the problem of time, your Committee is submitting for your approval at this time a limited number of recommendations but it is hoped that the Committee will still be in the position to make further recommendations before the proposed legislation reaches this House. Alternatively, the Committee will submit these further recommendations when the said proposed legislation reaches this House after having passed the other House.

The proposed recommendations are hereinafter submitted in seriatim form.

## IMPACT ON THE CONTINUING VIABILITY OF CANADIAN MULTINATIONAL CORPORATIONS—THEIR DOMESTIC AND FOREIGN OPERATIONS THROUGH FOREIGN AFFILIATES, THEIR NEED FOR SUCH FOREIGN OUTLETS TO MAINTAIN HIGHER LEVELS OF EMPLOYMENT IN CANADA, THEIR CAPITAL NEEDS IN CANADA AND ABROAD AND THEIR COMPETITIVE POSITION IN WORLD MARKETS

Your Committee is deeply concerned with the possible effect of the proposed legislation on the competitive position of Canada's international corporations in world markets. To the extent that Canada's world trading position is adversely affected, it follows that our economic growth as a whole must likewise suffer.

### A. Passive Income

One of the areas which gives rise to this concern is that relating to the treatment of income earned abroad by Canadian residents and their foreign affiliates. The principal purpose of these provisions is to prevent Canadian residents from avoiding or unduly deferring Canadian income tax on passive income such as dividends, interest, rents, royalties and certain types of capital gains by diverting such income to a non-resident corporation or trust and allowing the non-resident corporation or trust to accumulate such income abroad instead of repatriating it to Canada.

To prevent any possible abuse in this regard, it is proposed that Canadian residents (both corporate and individual) will be obliged to include in income their "participating percentage" of any diverted income earned by a non-resident corporation or trust which is "affiliated" (as defined) with the Canadian taxpayer. This income must be taken into account each year by the Canadian resident whether or not received in the year from the foreign affiliate.

Most certainly, the objective of attempting to thwart tax avoidance is a valid one. However, the anti-avoidance rules relating to diverted income are extended in such an indiscriminate manner as to encompass not only diverted income but also all passive income of foreign affiliates even though the affiliates are established for bona fide business purposes and are not established or used for the purpose of diverting passive income abroad in order to avoid or unduly defer Canadian income tax.

This is particularly unfortunate in the light of the fact that the proposed legislation does not define what income is to be excluded from the diverted income rules as being "active business income". Because of this, there is a serious danger that income such as interest received by a foreign affiliate on short term deposits or on trade receivables and royalties received by such an affiliate in respect of patents or know-how developed by it abroad in the course of its active business operations (to name but a few) may be taxed currently in the hands of the Canadian shareholder as diverted income even though such income is in fact directly attributable to the foreign affiliate's active business. Such income is not diverted income.

Further, it has been noted that international corporations are not infrequently obliged by the laws of a foreign country to carry on their business operations in that country through a foreign affiliate which is controlled by residents of that country. In circumstances such as these, the fact that the foreign affiliate earns passive income is often a matter which is beyond the control of the Canadian international corporation and is therefore not motivated by tax avoidance considerations. Nevertheless, in the absence of adequate de minimis relieving provisions in the proposed legislation, the Canadian international corporation will be subject to Canadian income tax on its "participating percentage" of such passive income.

This indiscriminate extension of the diverted income rules to include all passive income of foreign affiliates is further aggravated by the following:

1. Because of the manner in which the term "participating percentage" is defined, the amount taxable in a Canadian shareholder's hands under the passive income rules may, in some instances, be greater than the portion of the foreign affiliate's passive income that actually accrues to his benefit; this could occur where the foreign affiliate is not wholly-owned by one Canadian taxpayer and there is more than one class of shares of capital stock outstanding (treating certain income debentures as capital stock for this purpose).

2. No provision has been made in the proposed legislation to allow a taxpayer to apply losses sustained in one year in respect of a passive income source against passive income "earned" in other years under a loss carry-over provision.

Even if the assimilation of passive income with diverted income could be justified, the above-described defects should be rectified.

#### B. Dividends received from foreign affiliates

Your Committee is also concerned with one other matter that is inherent in the proposals relating to international income. It is intended that the treatment to be accorded to dividends received from foreign affiliates will differ according to whether the foreign affiliate is, or is not, located in a country with which Canada has a tax treaty.

Your Committee has difficulty in appreciating the reason for this difference in treatment. Until such treaties are negotiated, uncertainty will prevail. This can only have an unsettling effect on our trading and business operations abroad. Quite apart from this, it offends your Committee that business decisions should be influenced by the government's success, or lack of success, in negotiating tax treaties. Our international trading position should not be either jeopardized or used as a means of bargaining between governments.

In this connection, while the Committee is aware of the Government's intention to provide tax-sparing relief with respect to operations established in developing countries pursuant to commitments entered into prior to 1976, nevertheless, we cannot agree with the taxing of dividends from affiliates operating in non-treaty countries. Many of these countries are developing nations which offer tax incentives to foreign corporations. Canada should not tax away

these incentives and reduce their value to Canadian corporations.

#### C. Other considerations

As a result of the foregoing proposals, the after-tax return to Canadian international corporations from foreign business operations will be reduced and their competitive standing in world markets will be prejudiced. If this occurs, the effect may be to discourage foreign business operations and, having regard to Canada's dependency on world trade, the curtailment of these operations can only have an adverse effect on our own economic growth. Further, any such restriction on foreign business will reduce the support for marketing and research facilities in Canada, which again will worsen our competitive position abroad. Needless to say, the demand for technical skills and other employment opportunities will be reduced, compounding our present unemployment position.

In voicing its concern about the impact of these proposals on employment opportunities in Canada, your Committee is not unmindful of the fact that two of Canada's largest international corporations who appeared before the Committee and who stated that they would be adversely affected by those proposals are understood to employ approximately 25,000 Canadians. As is well known, any loss of employment in a particular sector of the economy such as this has a ripple effect on the economy as a whole and must inevitably lead to further unemployment. Copies of the briefs submitted to your Committee by the two above-mentioned corporations were forwarded to the Department of Finance at its request.

It is imperative that we, as a nation, do not lose sight of the fact that Canada is one of the major trading countries of the world and that the encouragement of Canada's international corporations in their efforts to expand world markets is of the greatest national importance and the highest priority. Any measures such as those contained in the proposed legislation which inhibit these efforts are to be deplored, particularly in view of the fact that these proposals run counter to the patterns being set by other developed nations. For example, the effect of the proposals recently put forward by the United States government with respect to domestic international sales organizations (commonly referred to as the DISC proposals) would be to defer payment of U.S. income tax until dividends are distributed.

Indeed, the Government in its original approach to the taxation of foreign source income, as outlined in its White Paper Proposals for Tax Reform (1969), conceded that Canadian international corporations should not be placed at a competitive tax disadvantage. At page 72 (paragraph 6.9) of the White Paper it is stated:

"On the other hand, Canadian business is often required to go abroad to seek foreign sources of supply and to develop foreign markets. Going international is frequently necessary to enable Canadian companies to achieve the economies of scale which are otherwise denied to them by the relatively small size of the Canadian domestic market. Such companies would find it hard to compete on the international scene if they were sub-



ject to more onerous taxes than those which apply to their competitors."

In addition to all of the foregoing, recent comments of the Minister of Finance indicate that the Government is also aware of difficulties that may be encountered when he stated as follows:

"We have already received a number of representations relating to the passive income provisions and it seems clear that some changes to the law as necessary should be made before the provisions take effect. However, we have concluded that it would be premature to introduce changes at this time before all representations have been received and given the study they require."

YOUR COMMITTEE RECOMMENDS the following:

#### I A. Foreign accrual property income (passive income)

That the Government give renewed consideration to the "foreign accrual property income" (FAPI) rules with a view to making at least the following changes:

(a) that the definition of the term "foreign accrual property income" be amended to exclude from the category of income which is subject to the foreign affiliate rules any income or capital gains from property that may reasonably be regarded as having been used for the purpose of gaining or producing income from an active business; or, that the term be redefined in such other manner as to ensure that the overall thrust of the foreign accrual property income provisions will be restricted so that the income subject to these rules will include only diverted income; in the result, that income such as interest on short-term deposits, interest on trade receivables, gains on the disposition of capital property used in a bona fide business operation and other like items will not be classed as foreign accrual property income.

(b) that the de minimis rule contained in the proposed legislation be broadened to the effect that the passive income rules will not apply to any foreign affiliate whose passive income does not exceed a specified percentage of its total gross revenue (such as the 30 per cent rule in the United States); alternatively, the de minimis rule may be expressed as a percentage of the foreign affiliate's gross assets.

(c) that the term "foreign affiliate" be re-defined for purposes of the foreign accrual property income rules to include with respect to foreign corporations only those corporations which are controlled directly or indirectly in Canada.

#### B. Dividends received from foreign affiliates

That the proposed differentiation in treatment of dividends received from foreign affiliates, depending on whether the foreign affiliate is located in a treaty country or non-treaty country, be eliminated and that all dividends received by resident corporations from foreign affiliates be exempt from tax. In any event, your Committee can find no valid reason for the failure to provide a tax credit in respect of foreign withholding taxes on dividends from non-treaty countries.

II. That the Government announce any changes in these provisions at the earliest opportunity and, pending same, that the effective date of the passive income rules which are to commence with respect to passive income earned in taxation years commencing after December 31, 1972 be deferred in their implementation for a period of at least one further year to December 31, 1973.

In conclusion, your Committee feels constrained to reiterate the views expressed by it in its Report on The White Paper Proposals for Tax Reform condemning the implications inherent in the Government's proposals that vast tax avoidance schemes exist through the use of foreign entities. As stated in its Report, the Committee believes that tax avoidance of this kind can be effectively blocked under existing legislation and failure to block such abuses (if they exist) is due more to lack of enforcement of existing law than to lack of legislation.

#### FARMERS

##### A. Basic herds

At the present time, farmers who maintain a permanent herd of animals for the purpose of producing livestock or livestock products for sale are construed as having a capital asset in the form of a "basic herd". This treatment has been sanctioned by the Department of National Revenue in its "Farmer's & Fisherman's Tax Guide" which sets out rules for establishing and enlarging basic herds. In other words, the brood animals forming part of the basic herd are analogous to other capital assets of the farmer such as land and orchards and to the fixed capital assets of any other business.

Under the proposed legislation, it is intended to abolish the concept of the basic herd and to treat such herds as inventory or stock-in-trade. Under the transitional rules, basic herds which have already been established will continue to be treated as capital assets to the extent that gains accrued at the commencement of the new system will not be subject to tax. However, gains accruing thereafter will be treated in the same manner as profits on the sale of inventory.

Your Committee is not aware of any reason for not continuing to recognize a permanent herd for what it is, namely, a capital asset.

YOUR COMMITTEE RECOMMENDS that provision be made in the proposed legislation for the continued recognition of a farmer's permanent herd as a "basic herd" and, therefore, as a capital asset.

##### B. Capital gains and farm land

Your Committee is of the view that farmers occupy a special position in the economic structure of this country. Over the years, this sector of the economy has become increasingly subjected to pressures which have led to a profound change in the nature and use of farm lands. Your Committee is concerned by this trend and believes that measures should be taken to reverse it.

**YOUR COMMITTEE RECOMMENDS** that consideration be given to extending the rollover provisions to permit land together with any other capital property which is used by an individual in a farming activity to be transferred, either during lifetime or on death, to lineal ascendants or descendants without being subject to capital gains treatment under the deemed realization provisions. This exemption should only be available in those circumstances where the transferee or transferees continue to carry on the farming activities.

#### EMPLOYEES PROFIT SHARING PLANS

Under present law, an employee who is a beneficiary under an employees profit sharing plan is taxed in the same manner as an employee who receives a profit sharing bonus directly from his employer and invests the money received. In summary, the employee's position is as follows:

1. the employee is taxed annually on any amount which his employer contributes to the plan on his behalf in the same manner as he would have been if he had received a bonus of an equivalent amount directly;
2. the employee is not allowed a deduction in respect of any contributions which he himself may pay into the plan;
3. the employee's share of the income earned each year by the plan is taxed annually in his hands; and
4. amounts received by the employee out of the plan (whether on retirement or otherwise) are, in general, non-taxable since these amounts will normally have been taxed previously.

Under the proposed legislation, the same general rules will apply. However, with the taxation of capital gains, the employee will also be taxed annually on his proportionate share of one-half of the net capital gains realized by the trust in each year (excluding any portion accrued prior to January 1, 1972) as well as on his share of the income earned by the trust in the year. In addition, provision is made in the proposed legislation with respect to the taxation of any unrealized gain on capital property distributed in specie to an employee on his withdrawal from the plan. Under these provisions, the employee is subject to tax in the year of his withdrawal on any accrued gain in respect of the property received from the trust (excluding any portion accrued prior to January 1, 1972) but it would appear from the proposed legislation that such accrued gains will be treated as ordinary income rather than as capital gain.

Quite evidently, these accrued gains should at least receive capital gain treatment and this should be clearly stated in the proposed legislation. However, even this treatment is unsatisfactory inasmuch as it places a member employee at a severe disadvantage vis-à-vis an employee who invests after-tax earnings directly. In the opinion of your Committee, capital property which is in substance the employee's property should not be considered as having been realized at fair market value on distribution to the employee. The deferral of gain would be consistent with the treatment to be accorded to a capital beneficiary of an ordinary trust.

**YOUR COMMITTEE RECOMMENDS** the following:

1. that where property is distributed in specie to an employee by the trustee of an employees profit sharing plan, the trustee should be deemed to have disposed of the property for proceeds equal to its cost amount (as defined) to the trust;
2. that the employee should be deemed to have acquired the property at the cost amount to the trust; and
3. that the employee should not be taxed until he ultimately disposes of property, at which time any gain should be subject to capital gains treatment.

#### DEFERRED PROFIT SHARING PLANS

The tax treatment of deferred profit sharing plans differs from the treatment accorded employees profit sharing plans. The provisions of the present law relating to deferred plans are, in summary, as follows:

1. the employee is not taxed currently on any amounts which his employer may contribute to the plan on his behalf nor on the income earned in the year by the plan; and
2. instead, the employee is subject to tax on the full amount received on his withdrawal from the plan minus any portion representing a refund of contributions paid by the employee into the plan; the exclusion of the employee's contributions follows from the fact that the employee is not allowed a deduction for contributions but is obliged to make these payments out of tax-paid dollars.

It is significant to note that the amount taxable as income in the employee's hands represents not only his share of (a) the employer's contributions, and (b) the income earned by the plan, but also (c) his share of any net capital gains of the trust. This treatment has been acceptable to member employees partly because of the tax deferral feature inherent in these plans but also in large measure because the employee has the right to avail himself of the special tax averaging provisions of Section 36 of the present Income Tax Act in respect of a lump sum payment received on his withdrawal from the plan.

Under the proposed legislation, the lump sum distribution from the plan will continue to be treated as ordinary income whether the distribution is made from employer contributions, income accumulated by the trust, capital gains realized by the trust or unrealized gains in respect of property distributed in specie to the employee.

However, the tax averaging provisions of Section 36 of the present Act are not carried forward into the proposed legislation in respect of amounts accumulated by the trust after 1971. Instead, these provisions are to be replaced by averaging provisions which, for purposes of members of deferred profit sharing plans, appear to be quite inadequate. In this regard transitional provisions are to be introduced to permit employees to take advantage of an averaging provision equivalent to Section 36 of the present Act in respect of amounts accumulated in the trust up to December 31, 1971. However, if such an election be made by an employee, he cannot avail himself of either of the



proposed averaging provisions (general or forward) in respect of that portion of the amount accumulated in the trust after December 31, 1971. Also, in future years, the transitional rule will be of diminishing benefit.

The general and forward averaging provisions available under the proposed legislation are not only much less generous than the elective provision under section 36 of the present Act, but the requirement to purchase an income averaging annuity in order to obtain forward averaging in effect removes the basic purpose of a deferred profit sharing plan, i.e. the accumulation of a lump sum on retirement.

In the opinion of your Committee, the effect of the proposed legislation will be to legislate these plans out of existence. Relief should be granted; the most appropriate means of achieving this relief is by the application of capital gain rules to the property of the trust.

#### YOUR COMMITTEE RECOMMENDS the following:

1. that any amount distributed by the trustee of a deferred profit sharing trust out of capital gains realized by the trust should qualify for capital gains treatment in the employee's hands;
2. that where property is distributed in specie to an employee by the trustee, the trustee should be deemed to have disposed of the property for proceeds equal to its "cost amount" (as defined) to the trust;
3. that the employee should be deemed to have acquired the property at the "cost amount" to the trust; and
4. that the employee should not be taxed until he ultimately disposes of the property, at which time any gain should be accorded capital gain treatment.

#### DEEMED DISPOSITION ON CEASING TO BE A RESIDENT OF CANADA

One of the provisions of the proposed legislation which has occasioned widespread concern is the Government's proposal that taxpayers who emigrate from Canada will be deemed for capital gains purposes to have disposed of all of their capital assets (other than "taxable Canadian property") for an amount equal to the fair market value of the property at the date of their departure. Any taxable capital gain (or allowable capital loss) determined by reference to such fair market value must then be taken into account in computing the emigrant's income for tax purposes for the year in which he ceases to be a resident.

One of the effects of these provisions is that a taxpayer who leaves Canada to take up residence abroad will often be subject to double taxation—first in Canada in the year in which he ceases to be a resident and secondly in his new country of residence in the year in which he ultimately disposes of the property. This will occur if the foreign country imposes tax on capital gains (but does not have a provision similar to that contained in the proposed legislation to the effect that there is a deemed acquisition on becoming a resident) and if the tax payable in one country is not available as a credit against the tax payable in the other. The only possible relief in such a situation would be

by way of tax treaty and, in your Committee's opinion, this type of relief is unlikely as we know of no other country which uses an accrual basis of accounting for capital gains upon entering or leaving the country. Failure to provide adequate relief runs counter to the principle in our law that double taxation is to be avoided.

The proposed legislation does provide an alternative to the foregoing. Instead of paying tax on his deemed gains as aforesaid, the taxpayer may elect to defer taxation until the year in which the gains are actually realized. However, if such an election is made, the taxpayer will be subject to Canadian income tax in the year of realization on his world income for that year (and not simply on the capital gain) to the same extent as if he were still a resident in Canada. This alternative will often prove unduly harsh insofar as it applies to persons who are not in fact resident in Canada when the gain is realized. For example, a taxpayer who has ceased to be a resident of Canada may find himself in the position of having to pay a substantial amount of Canadian income tax under these provisions in the year in which such a gain is realized even though the amount of the gain be nominal.

Your Committee notes that the problem alluded to in the preceding paragraph only arises in respect of property other than "taxable Canadian property". It is important to realize that a taxpayer who leaves Canada and who has assets consisting of "taxable Canadian property" is not subject to the aforementioned rule. When he subsequently becomes a non-resident, he may dispose of his "taxable Canadian property" and, although subject to tax, the tax is calculated on the basis that he has no income other than his gain on the disposition of his "taxable Canadian property". Unless the taxpayer is otherwise deemed to be a resident of Canada, it is obvious that this rule has quite different tax effects from those which would apply if the same taxpayer also had property other than "taxable Canadian property". In the latter situation, the taxpayer will be subject to Canadian income tax in the year of realization on his world income. Your Committee does not appreciate the necessity for such a difference in tax treatment.

There are other anomalies such as the lack of carry-forward provisions in the event of capital losses.

Your Committee also considers it unfortunate that no allowance has been made in these provisions for the many exceptional circumstances which are bound to occur; for example, where the taxpayer is forced to leave Canada for health reasons or by reason of a transfer abroad at the request of his employer.

#### YOUR COMMITTEE RECOMMENDS:

1. that provision should be made to enable the Minister of National Revenue to grant relief if, in his opinion, hardship will result and the departure is occasioned
  - (a) by reason of illness;
  - (b) by reason of the transfer of an employee at the direction of the employer; or
  - (c) by any other reason which the Minister considers deserving of relief.



2. that when a taxpayer ceases to be a resident of Canada he should be deemed to have disposed of all his capital assets, wherever situate, for an amount equal to fair market value and that a fixed rate of tax, say of 20 per cent, be levied on any gains at that time; and

3. that if the taxpayer elects to defer payment of tax as provided for in the proposed legislation, he should not be obliged to pay Canadian income tax on his world income if he is not in fact resident in Canada in the year of realization; instead, all of the capital property owned by the taxpayer at the date of his departure should be deemed to be "taxable Canadian property" and the taxpayer should be subject to tax on any taxable capital gains realized in respect thereof in the same manner as other non-residents.

#### GIFTS, BEQUESTS AND DEVISES TO CHARITIES—DEEMED REALIZATION

The proposed legislation provides that all capital property (other than depreciable assets) owned by a taxpayer at the date of his death will be deemed to have been realized at its then fair market value and any capital gain or loss shall be included in income for that taxation year. In the case of depreciable property, there will be a deemed realization at midway between fair market value and undepreciated capital cost. A similar rule is proposed in respect of gifts inter vivos. There is an exception to the general rule where assets are transferred on death or by way of inter vivos gift to a spouse or to certain trusts in favour of a spouse. In the latter circumstances, the transferee is considered to have acquired the property at an amount equal to the "cost amount" of the property to the transferor.

Your Committee is concerned that no exception has been made in respect of gifts, bequests or devises to registered charitable organizations or to other similar tax-exempt organizations. By way of contrast, gifts, bequests and devises to such organizations are not subject to tax under the present Estate Tax Act nor under the provincial succession duty Acts. Your Committee therefore considers it unreasonable that a taxpayer should be subject to an income tax on a deemed realization when making a gift, bequest or devise to a charitable organization or to other similar tax-exempt organizations.

Your Committee appreciates that, in some circumstances, it may be more beneficial from an income tax point of view to accept a deemed realization of an amount equal to the fair market value of the subject matter of a gift and claim a deduction for the full market value thereof. On balance, however, your Committee believes that the legislation should be neutral in respect of any tax benefits resulting from the making of a charitable gift (except as otherwise provided).

**YOUR COMMITTEE RECOMMENDS** that the proposed legislation be amended to provide that, where capital property is transferred to a charitable organization or other similar tax-exempt organization by way of gift, bequest or devise, the taxpayer will be considered to have disposed of the property for an amount equal to the "cost amount" thereof to him.

#### MINING AND PETROLEUM

Since the majority of provisions of the proposed legislation affecting the resource industries are to be implemented by amendments to the Income Tax Regulations, most of the comments which follow refer to the news release of the Department of Finance dated July 6, 1971. That document outlines the regulations proposed to apply to the mining and petroleum industries.

##### A. Earned Depletion

The proposed legislation will remove the automatic 33 1/3 percent depletion presently permitted under the Income Tax Act; it is to be phased out gradually over the next 5 years. Automatic depletion will be replaced by the concept that depletion must be earned by incurring exploration and development expenditures. The formula adopted will be that for every \$3 of eligible expenditures made after November 7, 1969 a taxpayer would earn the right to deduct \$1 of depletion in computing his taxable income after 1976, subject to a maximum of 33 1/3 percent of net production profits.

The proposed regulations define expenditures which will be eligible to earn depletion as including the following:

(a) Canadian exploration and developments expenses, except for:

(i) the acquisition cost of Canadian resource properties,

(ii) costs in respect of such community and transportation facilities as houses, schools, hospitals, sidewalks, roads, sewers, sewage disposal plants, airports, docks and similar property (other than a railroad not situated on the mine property) acquired to establish community and transportation facilities necessary for the operation of the mine,

(iii) Canadian exploration and development expenses in the vicinity of the mine after it came into production, and

(iv) interest on funds required to finance exploration, prospecting and development.

(b) New depreciable mine assets (ie. a building except an office building that is not situated on the mine property; mining machinery and equipment; and electrical plant set forth in Class 10 of Schedule B by virtue of subsection 1102 (9) of the Income Tax Regulations in connection with a new mine or a major expansion of an existing mine), and

(c) Expenditures on new buildings and machinery, to the extent that they are to be used to process ore from Canadian mineral resources beyond the stage to which they were previously processed in Canada, up to but not beyond the prime metal stage or its equivalent.

Expenditures for the acquisition of Canadian resource properties should, in the opinion of your Committee, qualify to earn depletion. The acquisition of such properties is an integral part of exploration and development expenditures: indeed it is the first step in any exploration or development program. Your Committee recognizes, however, that the inclusion of the cost of Canadian

resource properties as expenditures which would be eligible to earn depletion would require that safeguards be inserted into the proposed legislation to prevent the buying and selling of such properties between related taxpayers to artificially earn depletion. One suggestion would be to deduct \$1 of the transferor's earned depletion for each \$3 of proceeds of disposition. If the transferor had no earned depletion capable of the reduction, it could be subject to recapture of depletion previously allowed.

Following the publication of the White Paper on Tax Reform, the Department of Finance issued a news release dated August 26, 1970 which contained a letter from the Minister of Finance to the provincial ministers of finance and treasurers. That document stated that the government was "prepared to propose three further important changes affecting the taxation of the mining industry".

The first two changes were to widen the definition of expenditures which would qualify for "earned depletion" to include

(1) "the costs of new facilities located in Canada to process mineral ores to the prime metal stage or its equivalent"; and

(2) expenditures "for mine buildings, and machinery and equipment acquired in connection with a major expansion of an existing Canadian mine. This extension would put the major expansion of an existing mine on a roughly comparable tax footing with the opening of a new mine."

Your Committee heard evidence of expenditures of the type set forth in that letter which were incurred by reason of the acceptance by mining companies of the above-proposed changes. In your Committee's view, the mining industry was entitled to accept the government's proposals at their face value, namely as being "further important changes affecting taxation of the mining industry". In effect the government represented that the changes proposed in its news release of August 26, 1970 would be implemented in legislation and Regulations so that the mining industry might more immediately undertake the opening of new mines and the major expansion of existing mines in the interest of expanding employment and the national economy. One witness stated that his company had incurred expenditures of \$120 million in expanding its production facilities, \$30 million of which were spent on major smelter and refinery expansions. The Company made public its reliance on the August 1970 changes to the White Paper when it announced that expansion. The government did not at that time contradict what was apparently the clear intention of its news release.

However in the proposed regulations released on July 6, 1971 there appears the statement that "expenditures on new buildings and machinery, to the extent they are to be used to process ore from Canadian mineral resources beyond the prime metal stage or its equivalent" would be eligible to earn depletion. The restriction to "new" buildings and machinery appears to contradict directly the government's August 26, 1970 proposal to permit expenditures for "mine buildings and machinery and equipment acquired in connection with a major expansion of an existing Canadian mine" to earn depletion.

Your Committee heard evidence that officials in the Department of Finance have stated that their interpretation of the proposed regulations would render ineligible for earning depletion, expenditures on a major expansion of existing facilities. Their alleged interpretation will require eligible buildings to be new from the ground up. However since your Committee has not yet heard any witnesses from the Department of Finance, it has set out the facts in connection with

(1) the news release by the Minister of Finance on August 26, 1970 proposing additional changes to widen the definition of expenditures that can qualify for earned depletion;

(2) the proposed Regulations released on July 6th, 1971 by which such proposed changes would be administered;

(3) the interpretation allegedly put upon the language of the Minister's proposal of August 26th, 1970 substantially limiting its scope; and

(4) evidence submitted that it was only following the Minister's widening of the proposed scope of the definition of earned depletion that projects involving substantial expenditures became feasible.

**YOUR COMMITTEE RECOMMENDS** that serious consideration be given to the situation presented by this set of facts.

In any event, your Committee believes that if the government's intention be to encourage additional processing in Canada, all expenditures on structures and machinery incurred to increase Canadian processing facilities should qualify to earn depletion. Companies which cannot afford to construct elaborate smelting and refining facilities as part of their initial investment should not be penalized if subsequently they expand their existing processing facilities. Nor should the construction of custom smelters and refineries be denied this incentive to the extent that they process foreign ores.

In the White Paper on Tax Reform, at page 67, the Department of Finance proposed that expenditures "on exploration for or development of mineral deposits in Canada" be eligible to earn depletion. The August 26, 1970 News Release reiterated the White Paper proposals in this regard. However the proposed regulations issued July 6, 1971 exclude the four above-noted categories of Canadian exploration and development expenses which will be eligible to earn depletion. Your Committee heard numerous submissions urging that these exclusions be eliminated.

The company engaged in the \$120 million expansion programme referred to above incurred \$10 million of expenditures on development of an existing open pit mine by stripping waste rock, only to discover that expenditures eligible to earn depletion are now to exclude "Canadian exploration and development expenses in the vicinity of a mine after it came into production".

Other witnesses stated that such an exclusion would penalize small mines that have insufficient capital to enable them to complete their total exploration before bringing a property into production. Your Committee feels that this particular exclusion is not warranted. The gov-



ernment may be concerned with the difficulty of determining whether an open pit or underground operation is exploration or actual mining. YOUR COMMITTEE CONSIDERS that to be a question of fact to be decided in each case, and does not consider that problem to be sufficiently burdensome to warrant excluding any *bona fide* exploration from being eligible to earn depletion.

Your Committee is of the opinion that the risks of the oil and gas industries are of sufficient magnitude to require that depreciable property such as production equipment and natural gas plants be eligible to earn depletion in the same manner as mining machinery and equipment are treated in the case of new mines and major expansions of existing mines. At a time when the cost of production equipment (such as drilling and production platforms) required for the development of off-shore and far-north petroleum and gas properties will be enormous (likely double and triple present costs), YOUR COMMITTEE RECOMMENDS that those and similar expenditures qualify to earn depletion.

In order to encourage the development of remote areas of Canada, YOUR COMMITTEE RECOMMENDS that the cost of social capital and transportation facilities be eligible to earn depletion. Those expenditures, when incurred in remote regions, can form a major portion of total exploration and development costs and are essential to the operation of a mine. Without such expenditures there could be no development of the property.

The exclusion from eligibility to earn depletion of interest on funds required to finance exploration projects can only penalize smaller companies with limited capital. YOUR COMMITTEE THEREFORE RECOMMENDS that the cost of borrowing money to be used to finance exploration qualify to earn depletion.

In summary YOUR COMMITTEE RECOMMENDS that all "Canadian exploration and development expenses" as defined in the proposed legislation should earn depletion, as should depreciable mine assets (whether new or used), depreciable production equipment and natural gas plants in the petroleum and natural gas industries, and expenditures on new buildings and machinery as well as on expanded buildings and machinery, to the extent that they are to be used to process ore from any mineral resources beyond the stage to which they were previously processed in Canada, up to but not beyond the prime metal stage or its equivalent. Therefore any expenditure which is required to reduce the profit from which depletion may be deducted should qualify as an eligible expenditure.

In the event that your Committee's recommendation in this regard be not adopted, an alternative (but less satisfactory) treatment would be to permit the expenditures enumerated above to be deducted from income by resource companies for purposes of computing their taxable income, but to stipulate that such expenditures would not reduce their production profits from which earned depletion is deductible. In other words if the expenditures in question are not to be permitted to earn depletion, they ought not to reduce the base on which depletion is calculated; however they should remain deductible in computing taxable income.

YOUR COMMITTEE RECOMMENDS that the transitional period required to convert from automatic depletion to earned depletion be extended to 1980. Alternatively, companies should be permitted to "bank" eligible expenditures whenever incurred (that is, including expenditures incurred prior to November 7, 1969) after deducting from such "bank" all depletion previously allowed. Expenditures made prior to November 7, 1969, (which is the date prescribed by the proposed regulations as being the date after which companies can accumulate expenditures which will qualify to earn depletion) were incurred on the basis that automatic depletion would be available. Accordingly those expenditures should at least be included in the computation of earned depletion.

#### B. Accelerated Capital Cost Allowance

The three-year exemption from tax of profits derived from the operation of a new mine is to be withdrawn on December 31, 1973. It will be replaced by an accelerated write-off of specified capital equipment and facilities. The proposed regulations provide that the following types of *new* depreciable assets acquired before a new mine comes into production and for the purpose of gaining or producing income from the mine (including income from the processing of mineral ores up to the prime metal stage or its equivalent) will qualify for accelerated capital cost allowance:

1. a building (except an office building that is not situated on the mine property),
2. mining machinery and equipment,
3. electrical plant that would otherwise be included in Class 10 of Schedule B by virtue of sub-section 1102 (9) of the Income Tax Regulations, and
4. houses, schools, hospitals, sidewalks, roads, sewers, sewage disposal plants, airports, docks and similar property (other than a railroad not situated on the mine property) acquired to establish community transportation facilities necessary for the operation of the mine.

Depreciable property of the type listed in clauses (1), (2), and (3), will also qualify for the accelerated capital cost allowance where it is acquired in the course of the major expansion of an existing mine and before the commencement of production at the higher level of capacity. For this purpose a major expansion will be considered to have taken place if the productive capacity of the *mine mill* is increased by at least 25 per cent.

The proposed regulations will enable both new mines and existing mines engaged in major expansion programmes to claim accelerated capital cost allowance on specified types of "new depreciable assets", provided they be acquired before the mine came into production (or, in the case of major expansions, before production at the increased capacity commences). The purpose of this incentive appears to be to promote increased development of new and expanded mines, rather than to encourage the purchase of new assets instead of used assets. YOUR COMMITTEE CONSIDERS that if a company decides that it should, for economic and business reasons, pur-



chase used assets rather than new ones, the cost thereof should be eligible for the accelerated capital cost allowance.

In addition your Committee sees no reason to limit this incentive to assets acquired *before* production begins. That restriction places at a severe disadvantage those mines with insufficient financing to defer the commencement of production until after all of the qualifying assets have been acquired.

Similarly many "new" mines cannot afford to build a smelter or a refinery immediately. If a smelter or refinery were added after a mine had established itself, the addition would not appear to qualify as a "major expansion", since that term is defined in the proposed regulations to mean an increase by 25 per cent in the productive capacity of the "mine mill". Your Committee is of the opinion that new or used smelting and refining assets, whenever acquired, should be eligible for accelerated capital cost allowance. This will help to promote increased processing of minerals in Canada.

Your Committee also wishes to draw attention to the following items which, although technical, do merit serious consideration:

(a) an expenditure which the proposed regulations describe as a "building (except an office building that is not situated on the mine property)" should be amended to include other "structures" to make it clear that dams, conveyor trussels, tanks and sub-structures will qualify for accelerated capital cost allowance;

(b) the phrase "mining machinery and equipment" should be amended to read "mining and processing machinery and equipment" to accord with the preamble to the proposed regulations. The preamble states that various assets acquired for the purpose of producing income from the mine, "including income from the processing of mineral ores up to the prime metal stage or its equivalent" would be eligible for fast write-off;

(c) the definition of the social capital transportation costs which will qualify for accelerated capital cost allowance should be re-phrased by stating the general categories of expenditures which are to qualify. That general principle should be followed by an enumeration of particular items which would not restrict the generality of the guiding principle. As presently worded, the proposed regulations would appear to exclude dams, lighting installations and water lines, for example;

(d) social capital and transportation costs incurred on a major expansion of an existing mine logically should qualify for fast write-off to the same extent as buildings, machinery and equipment; and

(e) the definition of "major expansion of an existing mine" should be revised to include a 25 per cent increase in the productive capacity of a mine or mill. On occasion the output of a mine could increase by 25 per cent without a corresponding increase in mill capacity (for example, where ore is custom milled). It is seldom that ore is custom milled outside Canada.

### C. Transfers of Resource Properties

Under present law, mining properties and royalty interests are treated as capital assets. That is, their acquisition cost is not deductible and proceeds on their sale are not taxable. However, since 1962 the acquisition cost of oil and natural gas rights have been deductible as exploration and development expenses, and proceeds on their disposal have been fully taxable.

The proposed legislation will, following an eight-year transitional period, require the inclusion in income of the entire proceeds of sale of all Canadian resource properties. Correspondingly, the cost of acquiring such properties will be deductible from income.

YOUR COMMITTEE RECOMMENDS that the transfer of Canadian resource properties between related companies should be permitted to occur without incidence of tax.

### DEFERRED RECOGNITION OF CAPITAL GAINS (ROLLOVERS)

With the introduction of taxation of capital gains in Canada, provisions must be made for the deferring of tax in appropriate circumstances such as where there is no change in economic interest. The proposed legislation duly recognizes this and contains a number of provisions to defer the tax on gains. The principal ones are:

1. Involuntary dispositions where property has been destroyed or expropriated and the compensation received is used before the end of the following taxation year to replace the property.

2. The conversion of convertible bonds, debentures and notes for shares of the same corporation or bonds for bonds from the same debtor.

3. The transfer of assets to a corporation if the transferor (which may include a partnership) owned at least 80 per cent of each class of the corporation's capital stock immediately following the transfer. This deferral is subject to a number of limitations and restrictions.

4. The transfer of capital property to a spouse or to specified classes of trusts for the benefit of a spouse.

5. The transfer of property by a partner of a Canadian partnership to the partnership. This deferral is also subject to certain restrictions and limitations.

6. The transfer of partnership property to a member of the partnership provided that the transferee subsequently carries on the business formerly carried on by the partnership.

7. The liquidation of a wholly-owned Canadian subsidiary into its Canadian parent corporation.

8. The disposition of shares on the reorganization of a corporation's share capital to the extent that any money or property (other than shares of the corporation) received by the shareholder does not exceed the adjusted cost base of the shares disposed of in the course of the reorganization.

9. The disposition of shares upon the amalgamation of two or more corporations provided that

(a) where preferred shares are disposed of, the shares of the successor corporation which the share-

holder receives in exchange therefor have substantially similar rights and conditions as the preferred shares which were exchanged, and

(b) where common shares are disposed of, the shareholders of the predecessor corporation receive in total at least 25 per cent of the issued common shares of the successor corporation.

Your Committee is of the opinion that the aforementioned rules which provide for deferred recognition of capital gains (rollovers) are of assistance but are not adequate. A tax system should not impede transfers of properties in bona fide legitimate business transactions. Sound management decisions often dictate that transfers of capital property be made between related groups of corporations for example, transfers of unused equipment from one subsidiary to another which could employ it more efficiently. Unfortunately the proposed legislation imposes a barrier to such transactions unless the corporation is willing to pay the tax on a deemed gain or is willing to assume a non-allowable capital loss. There is no valid reason for imposing penalties in circumstances such as this especially when appropriate safeguards have been incorporated in the proposed legislation to disallow superficial losses and to block artificial transactions and tax avoidance.

Your Committee fails to understand why the Government has departed from the ground rules it laid down in its own White Paper on Tax Reform, which read on page 42, paragraph 3.43:

"The government believes that there are some situations in which it would be unfair to collect a capital gains tax even though the taxpayer has sold or otherwise disposed of an asset at a profit. These situations fall into two broad classifications—those where there is a forced realization and those where there has been no change of underlying ownership even though there has been a sale."

Provided that there is no change in economic interest, no deemed realization should occur in any circumstances where, for example,

- (a) there is a forced transfer,
- (b) corporate reorganizations occur,
- (c) property is transferred to a corporation by its "incorporators"—the proposed legislation restricts deferral to those situations where the transferor (which may include a partnership) transfers property to an 80 per cent controlled corporation,
- (d) there is a transfer of assets to a business trust.

The Committee believes that there are other transactions which are as equally entitled to a deferral as those specified in the proposed legislation and suggested above. It is not possible for your Committee to envisage all of the transactions which should be accorded deferred gain treatment, therefore:

**YOUR COMMITTEE RECOMMENDS** that the tax-free deferral provisions be broadened to the greatest extent possible to include all situations where underlying ownership remains the same. Because it is impossible to foresee

all of the situations in which deferrals should be permitted, it may be appropriate to authorize the Minister of National Revenue to expand the deferral provisions by way of Regulation as the need for such provisions becomes apparent, perhaps requiring prior approval as a condition of obtaining the benefit of a tax-free deferral.

## DESIGNATED SURPLUS

Your Committee has noted that the concept of "designated surplus" is to be retained in the proposed legislation. This concept was originally introduced into the present Act in 1950 to prevent taxpayers from being able to distribute their corporate surplus free of tax. Prior to the enactment of these provisions, it was possible to arrange to receive a corporation's undistributed income in the form of a non-taxable capital gain through the relatively simple expedient of selling the shares of a surplus-laden corporation to another corporation which could then distribute the surplus of the first corporation free from income tax.

In order to offset any advantage to this kind of transaction, provisions were enacted to the effect that, where one corporation acquired control of another, the surplus or retained earnings on hand in the controlled corporation at the end of the taxation year immediately before control was acquired was designated and any dividends paid out of such surplus became taxable to the receiving corporation.

As events have shown the designation of corporate surplus was not entirely satisfactory and in 1963 a further provision was enacted known as Section 138A, whereby the receipt of amounts by a vendor of shares should be construed as a dividend and could be taxable as such in his hands. With the introduction of Section 138A it might have appeared that the designation of corporate surplus was no longer necessary, but it was nevertheless retained.

In considering the need for retaining the designated surplus provisions, your Committee notes that the tax savings that might be achieved under present law in the absence of designated surplus provisions could be as great as 60 per cent of the surplus involved (i.e., tax at the 80 per cent maximum rate of personal income tax less the 20 per cent dividend tax credit). The proposed inclusion of one-half of capital gains in ordinary income combined with the proposed reduction in the maximum rate of personal income tax and the change in the dividend tax credit system will substantially reduce the amount of tax saving which could be achieved by converting corporate surplus into a capital gain. Therefore, there is not the same need for the designated surplus provisions under the proposed legislation as there is under the present Act.

Despite this, various amendments have been made to these provisions which will effectively deter many valid corporate reorganizations. An example of this tightening of the designated surplus provisions is the deeming of a dividend to have been paid out of designated surplus in the event of a vertical amalgamation, e.g. the amalgamation of a parent and its subsidiary.



Having regard to the reduced need for the designated surplus provisions and the obstacles which these provisions place in the way of bona fide corporate reorganizations, these provisions should be eliminated; particularly in view of the fact that Sections 137(2) and 138A(1) of the present Income Tax Act, with which the Department of National Revenue has successfully attacked dividend stripping arrangements, are to be carried forward into the proposed legislation. It would also appear desirable for the purpose of simplification that your Committee give consideration to the abandonment of designated surplus, particularly when the proposed legislation is introducing so many new types of surpluses.

It might also be relevant to note that since the deemed dividend provisions of the proposed legislation do not apply to foreign corporations, Canadians who control such corporations will be able to convert corporate surplus into a taxable gain. There is therefore some precedent in the proposed legislation for eliminating the designated surplus concept. However their counterpart Canadian corporations will be refused such a treatment.

**YOUR COMMITTEE RECOMMENDS** that the special taxes which are to be levied on dividends paid or received out of a corporation's designated surplus be withdrawn.

It is recognized that the elimination of tax on dividends paid out of designated surplus will presumably require amendments to the proposed legislation to provide that these dividends will reduce the cost base of shares for eventual capital gains purposes. It may also be necessary to provide that a corporation which wishes to make a distribution of pre-1972 designated surplus will be required to "tax pay" amounts distributed from such surplus by paying the special 15 per cent tax relating to 1971 undistributed income.

Recent amendments to the proposed legislation were tabled pertaining to the definition of designated surplus. One of the effects of these amendments would be to designate the undistributed income on hand of a corporation the control of which changed prior to the end of its 1972 taxation year. This would appear to mean that an amalgamation which was effected before 1972 would result in the designation of the entire surplus of each of the amalgamating corporations. Such designation of surplus would carry over into the amalgamated corporation.

Your Committee considers that such a result could not have been intended, and it desires to voice its disapproval of designated surplus in general and this amendment in particular.

#### CONSOLIDATED RETURNS OF INCOME

The question of consolidated returns of income by related corporations is not a new one, having been raised many times in the past. In point of fact this concept was part of our taxation law for some 20 years, between the periods of 1932 and 1952. The apparent reason for its introduction into the law during that period, was the absence of business loss carry forward provisions and as a result, qualified corporate groups were permitted to consolidate their

incomes and thus absorb their losses on a current basis. In effect, these corporations were prepared to be associated for income tax purposes as if they were a single entity.

In 1952, with the introduction of provisions allowing taxpayers to a business loss carry-over, it was believed that there was a reduced need for consolidated returns of income by corporate groups and the concept was therefore abandoned. There is also some suggestion that the decision was dictated by administrative convenience.

In appreciating this matter it is noted that for some period of time we have also had in our law the concept known as associated corporations. In order to assist small business corporations, provision was made in the income tax law for a dual rate of corporate tax. That is, the corporation was subject to tax at one rate on a defined amount of taxable income and at a higher rate on any taxable income in excess of this amount. However, it was decided that corporations which formed part of a related group (as defined) should be considered to be associated and that one corporation in the group should be entitled to the lower rate of tax or, alternatively, that the amount eligible for the lower rate should be allocated amongst the group. These associated corporation rules were for the purpose of determining the applicable tax rate and did not permit the application of current losses from one corporation to another within the group.

Throughout the years, extensive rules have been enacted for the purpose of deeming corporations to be associated. Under the present provisions, the Minister of National Revenue is also entitled, in his discretion, to treat corporations as associated. The effect of these provisions is to associate corporations who would not otherwise wish to be associated.

In the opinion of your Committee it appears somewhat incongruous that there exist situations wherein some related corporations wish to be associated, and other related corporations do not. To this end, the concept of the consolidated return of income provided a vehicle for the former while the concept of the associated corporation provided the vehicle for the Minister of National Revenue in respect of the latter. The difficulty is that upon the abandonment of consolidated return of income provisions, the former group continue to be associated corporations without the ability to apply current losses from one corporation to another.

Your Committee recognizes the fact that separate corporations must often be created for various commercial purposes. In some cases, provincial or federal laws will require separate corporations to be established. These corporations are nevertheless in substance part of the same corporate family and their financial consolidation should therefore be duly recognized.

While the loss carry-over provisions permit application by each corporation of current losses to other taxation years, nevertheless, the immediate application of such losses to the income of other corporate members of the group is a more realistic view of the situation. Your Committee recognizes the basic principle that profits of one member of a group should be used to reduce the losses of another member of the group. This principle has been duly recognized in the United States.



Because of the restricted number of rollover provisions in the proposed legislation and the resulting difficulty which will be encountered in merging the operations of a related corporate group, your Committee believes that it is essential that corporations should be permitted to file consolidated returns of income, if they so elect.

The Committee has made this suggestion on previous occasions. This view has been reinforced by other notable committees, commissions and professional bodies, including the House of Commons Committee on Finance, Trade and Economic Affairs, the Royal Commission on Taxation (Carter), the Canadian Bar Association and the Canadian Institute of Chartered Accountants.

**YOUR COMMITTEE RECOMMENDS** that provision be made in the proposed legislation to permit corporations which are members of a qualifying group to elect to file on a consolidated return of income basis. If it is found that such a provision is impractical, **YOUR COMMITTEE RECOMMENDS** that consideration be given to the introduction of a scheme of subvention payments similar to that formerly used in the United Kingdom.

## CONSTRUCTION INDUSTRY

Your Committee has studied the representations made by this industry and has come to the conclusion that two major points should be modified in the proposed legislation.

The first one relates to the reporting of income and arises from the fact that it is extremely difficult to determine the annual income from contracts such as stipulated sum contracts of more than one year's duration. For this reason, the construction industry has historically reported income on the completed contract method of under two years' duration. This method has been approved by the Minister of National Revenue as a matter of administrative practice. However, there is no statutory authority for this method of reporting income and the taxpayer has accordingly no right of appeal if the Minister refuses in any given situation to accept this method of reporting.

The second problem raised relates to the fact that the description of assets falling within class 12(h) and class 22 of Schedule B to the present income tax regulations is unduly restrictive in respect of the conditions referred to therein. It is the view of your Committee that the conditions set forth in these classes do not reflect present-day prices for the purpose of class 12(h) and that a more extended definition should be provided for the equipment to be included in class 22.

### **YOUR COMMITTEE RECOMMENDS**

1. That the completed contract method on fixed sum contracts of under two years' duration should be incorporated in the proposed legislation as an accepted method to determine a construction business' taxable income for a year.

2. That special attention be given in regulations to be issued concerning capital cost allowance related to the construction industry in order to remove unnecessary restrictions and to expand its application.

## CAISSES POPULAIRES AND CREDIT UNIONS

Under the proposed legislation, caisses populaires and credit unions will no longer be exempt from tax. Instead, it is proposed that these organizations will be taxed in substantially the same manner as other private corporations. As such, they will be entitled to take advantage of the small business deduction to the extent allowable to other private corporations.

One of the defects of the proposals originally put forward by the Government was that the provisions relating to the small business deduction failed to give recognition to the constraints that are placed upon caisses populaires and credit unions by their governing legislation. These organizations are required by law to set aside an annual mandatory reserve, no part of which may at any time be distributed amongst the organization's members. In addition, they may set aside such additional reserve as they consider necessary to assure their financial stability. Like the mandatory statutory reserves, these voluntary reserves cannot be distributed to members.

In considering the effect of the original tax proposals on these organizations it should be recognized that amounts set aside as reserves annually pursuant to the relevant governing legislation are not allowed as a deduction in computing income for tax purposes. These reserves should not be confused with the allowances which caisses populaires and credit unions will be allowed to claim as a deduction under the proposed legislation in respect of their outstanding loans and investments.

In view of such statutory restrictions, these organizations are unable to distribute all of their after-tax income by way of dividend and are therefore unable to perpetuate the small business deduction in the same manner as other private corporations. Having duly considered the representations submitted by these organizations, your Committee concluded that the following recommendation should be put forward:

That caisses populaires and credit unions should not be required to include in their "cumulative deduction account" (for purposes of determining the available balance of their total business limit of \$400,000) such portion of their taxable income as is set aside in the year as a reserve to the extent that such reserve is not available for distribution to members. This should be subject to the further limitation that no recognition be given to any such reserve to the extent that the total amount set aside does not exceed, say, 5 per cent of the organization's total deposits and share capital at the commencement of the year.

The effect of the amendments which the Government recently tabled in this regard is to alleviate, at least in part, some of the problems which confronted these organizations under the original proposals. We commend the Government for introducing these amendments. However, as the effect of these amendments differs somewhat from the afore-mentioned recommendation, **YOUR COMMITTEE RECOMMENDS** that this matter be given further consideration by the Government.

## ADMINISTRATION AND ENFORCEMENT

Your Committee has had referred to it several provisions of the proposed legislation relating to enforcement. Your Committee concurs with attempts to protect the rights of taxpayers whose affairs are under investigation. The Committee is concerned however, that these attempts have not gone far enough, and furthermore, that other existing defects have not been dealt with.

Under the proposed legislation the power of holding an inquiry pursuant to the Inquiries Act is continued. Nevertheless, the changes proposed permit:

(a) the hearing officer to be appointed by the Tax Review Board upon the application of the Minister of National Revenue,

(b) the person whose affairs are being investigated is entitled to be present, and to be represented by counsel, and

(c) the hearing officer may, upon application by the Minister, exclude the person whose affairs are being investigated, and his counsel, if their presence would prejudice the conduct of the inquiry.

Your Committee has also noted that in matters of evasion, if the Minister of National Revenue has elected to proceed by way of a criminal prosecution, no liability for any ministerial penalty may be levied *unless* such penalty was assessed *prior* to the laying of the information or complaint.

Finally, the saving provision relating to the prevention of double ministerial penalties as found in Section 56, ss 3 of the present legislation, is omitted from the proposed legislation.

## YOUR COMMITTEE RECOMMENDS the following:

1. that in respect of inquiries into the affairs of a taxpayer under the proposed legislation:

(a) the appointed hearing officer should not be an official of the Department of National Revenue,

(b) the taxpayer whose affairs are being investigated should be entitled either personally or through counsel, to cross-examine all witnesses and should also be entitled to receive a copy of the transcript of all evidence taken at such inquiry, and

(c) any order excluding from an inquiry the taxpayer whose affairs are being investigated, or his counsel, should be subject to immediate review by a judge of the Federal Court of Canada;

2. that the double jeopardy provision should be expanded so that if the Minister of National Revenue elects to proceed against a taxpayer by way of information or complaint, the Minister cannot as well levy a ministerial penalty; or, conversely, if the Minister elects to proceed against a taxpayer by way of ministerial penalty, the Minister cannot as well commence criminal proceedings by way of information or complaint; and

3. that the saving provision contained in Section 56, ss 3 of the present Act be introduced into the proposed legislation.

## VALUATION DAY

With the introduction of a capital gains tax in Canada, it is essential that such a tax should not apply to any portion of ultimate proceeds of disposition which represent simply a recovery of original cost. This was the error of the White Paper when it originally proposed that capital property should generally be valued at fair market value at Valuation Day.

To some extent the foregoing error has been corrected by the introduction of the concept popularly referred to as the "tax-free zone". Gains will be included for taxation purposes only to the extent that the proceeds exceed the higher of actual cost and Valuation Day value, and losses will be deductible only to the extent that the proceeds are less than the lower of actual cost and Valuation Day value.

Your Committee commends the Government for introducing this concept in the proposed legislation. However, the Committee regrets that the Government did not see fit to provide that property acquired by a taxpayer prior to June 18, 1971 by way of gift, bequest or devise should be deemed to have been acquired at a cost equal to the fair market value of the property at date of acquisition. Such a provision would be inconsistent with the proposed treatment of property so acquired after December 31, 1971.

YOUR COMMITTEE RECOMMENDS that provision be made in the new law to the effect that property acquired by way of gift, bequest or devise prior to June 18, 1971 be deemed to have been acquired at an amount equal to its fair market value at date of acquisition for the purpose of calculating any taxable gain but not for the purpose of calculating any allowable loss.

## EPILOGUE

The foregoing sets forth the observations, opinions and recommendations of your Committee on the briefs presented and witnesses heard up to and including the 27th day of October, 1971. It is therefore of a preliminary nature only.

Your Committee intends to present a second report after the termination of its hearings covering submissions made subsequent to October 27, 1971.

Some of the topics with which your Committee intends to deal in its second report are:

1. professional income on an accrual basis,
2. new rules applicable to partnerships and to trusts and their beneficiaries,
3. the treatment of mutual funds, investment corporations and clubs,
4. investment income of private corporations,
5. Canadian income of non-residents such as withholding tax, branch tax, non-resident owned investment corporations, capital gains of non-residents,
6. corporate distributions,
7. natural resources (other than those already dealt with) for example the pulp and paper industry,

8. mutual funds (registered retirement savings plan),

9. treatment of income of insurance companies

10. the ability of recipients of all forms of lump sum payments to avail themselves of general and forward averaging even though they elect the equivalent of section 36 averaging in respect of the pre-1972 portion of such payments.

11. Tax incentives for fixed income securities.

Your Committee finally notes with approval that the proposed legislation has been the subject of discussion at the recent conference between the Minister of Finance and his counterparts in each of the provincial governments. It is to be hoped that these will be continuing discussions.

The Committee's views as to the need for these consultations in order to develop a unified tax system are adequately expressed in its Report on The White Paper Proposals for Tax Reform where it was stated:

"Your Committee, however, wishes to again express its appreciation of the Government's desire to work closely with the provinces in an attempt to evolve with the passage of time a symmetrical taxation system, and it urges the Government to continue its quest for the attainment of this highly desirable goal."

Respectfully submitted,

Salter A. Hayden,  
*Chairman.*

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT  
1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable JOHN J. CONNOLLY, *Acting Chairman*

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No. 48

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THURSDAY, NOVEMBER 4, 1971

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Eleventh Proceedings on:

“Summary of 1971 Tax Reform Legislation”

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(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

## Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,

*Clerk of the Senate.*



# Minutes of Proceedings

Thursday, November 4, 1971.  
(61)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further examine:

“Summary of 1971 Tax Reform Legislation”

*Present:* The Honourable Senators Connolly (*Acting Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Cook, Croll, Desruisseaux, Gélinas, Haig, Hays, Isnor, Molson, Smith and Welch—(16).

*Present, but not of the Committee:* The Honourable Senator Laird—(1).

The Chairman being occupied with revisions to the Preliminary Report and upon motion duly put it was Resolved that the Honourable Senator Connolly (*Ottawa West*) be elected Acting Chairman.

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *Elgistan Management Limited:*

Mr. J. D. H. Mackenzie, President;  
Mr. George P. Keeping, C.A., partner, Clarkson & Gordon Co.;  
Mr. A. M. Minnion, Q.C., of law firm of McMaster, Meighen, Minnion & Co.

### *Loram Ltd.:*

Mr. Fred P. Mannix, President;  
Mr. W. G. Gray, Controller;  
Mr. D. W. McClement.

### *Anglo-American Corporation of Canada Limited:*

Mr. J. David Taylor, Q.C., Director, and partner Toronto law firm of Fasken & Calvin;  
Mr. Gerald J. Risby, Vice President-Treasurer and Director.

At 12:00 o'clock Noon the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, November 4, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, we are going to hear three submissions this morning, from: Elgistan Management Limited; Loram Ltd.; and Anglo American Corporation of Canada Limited. If it is satisfactory to the committee, we will hear Elgistan Management Limited first.

**Hon. Senators:** Agreed.

**The Acting Chairman:** Representing Elgistan Management Limited are: Mr. J. D. H. Mackenzie, President; Mr. George P. Keeping, of Clarkson, Gordon & Co.; and Mr. A.M. Minnion, Q.C., of the law firm of McMaster, Meighen, Minnion & Co., of Toronto.

I understand you are going to make the opening statement, Mr. Mackenzie. Would you care to proceed with that?

**Mr. J. D. H. Mackenzie, President, Elgistan Management Limited:** Thank you, Mr. Chairman. Honourable senators, before giving a short introduction to the written submission of Elgistan Management Limited, copies of which are already in your hands, I should like to introduce Mr. Keeping of Messrs. Clarkson, Gordon & Co. and Mr. Minnion of Messrs. McMaster, Meighen, Minnion & Co. Mr. Keeping and Mr. Minnion are, respectively, partners in firms of accountants and lawyers which act for our company and provide us with tax advice. They had much to do with the preparation of the submission.

As representatives of Elgistan Management Limited we were privileged to appear before you in April, 1970, when the Government's White Paper entitled "Proposals for Tax Reform" was being considered by your committee. You have now kindly given us the opportunity to present our views on tax reform Bill C-259 in so far as the bill and its amendments affect the non-resident interests under our company's management.

In our submission on the White Paper we provided an outline of the manner in which our non-resident investors held their interests in Canada. There has been no material change in these arrangements in the intervening time. Briefly, the non-residents continue to hold their investments through the medium of non-resident earned invest-

ment corporations, which we will refer to as NROs, and, for ease of management, each NRO's marketable securities are held through units in a unit trust fund. In addition, the NROs hold shares in several private companies.

In our submission on Bill C-259 we attempt to show how the tax reform proposals affect the interests under our company's management, and why the existing corporate and trust structure could not be suitable for these interests beyond 1971. We have tried to be objective and have confined most of our observations to technical points.

I must mention, however, that an examination of these technical aspects naturally led to a consideration of matters of principle. We came to the inescapable conclusion that after 1971 the NRO could play only a very limited role in the marshalling of a non-residents' capital, and a Canadian unit trust fund owned either directly or indirectly by non-residents would be penalized to such an extent, and for no good reason that is apparent to us, that it would have to be terminated and the assets transferred to another country.

I think the implications of this for Canada are worth considering. If a sizable pool of capital, largely invested in Canadian marketable securities, were to be moved out of the country, it seems unlikely to us that the managers of a foreign unit trust which would take the place of the Canadian trust would have the same inclination to buy Canadian securities as their predecessors. Canada's security markets suffer from a lack of liquidity now, and we envisage the situation deteriorating as serious foreign investors with long-term objectives not inimical to Canada are discouraged by an inhospitable tax climate.

While we live in hope that the Government will introduce relieving amendments, the uncertainties engendered by tax reform must make even the staunchest non-resident investor wonder whether continued involvement in this confusing process makes good business sense.

Mr. Chairman, that is basically our stand. We have tried to outline this in our submission, and I and my colleagues will be pleased to answer any questions your committee may wish to put.

**The Acting Chairman:** Thank you, Mr. Mackenzie. For the record, perhaps it would be helpful at this stage were you to give us a specific example of how your company operates, even though we went through it on the White Paper submissions. You talk about non-resident owned investment corporations, and perhaps you would tell us precisely what you do and whether you are actually managing other companies in which non-residents have investments.

**Mr. Mackenzie:** Well, our company, Elgistan Management Limited, is a management company and it has been

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formed to act for non-resident investors who, for the most part, reside in the United Kingdom and in the Republic of Ireland.

**The Acting Chairman:** Corporate and individual?

**Mr. Mackenzie:** Basically they are individual investors, private investors. The management company manages a number of non-resident owned investment companies, NRO's as we call them, for the benefit of these individuals. Typically, an individual would probably have a non-resident owned investment corporation. The non-resident owned investment corporation will hold assets in three main classes of security: shares of other private companies, which I might term operating companies; units of a unit trust into which, for ease of management, we have grouped all our marketable securities; and bonds held directly by the NRO's themselves. The reason for these, and the usefulness of the NRO, has been that you have a corporate entity in the country in which you are operating.

**The Acting Chairman:** Your company is organized and incorporated in Canada?

**Mr. Mackenzie:** Yes.

**The Acting Chairman:** Federally?

**Mr. Mackenzie:** Yes.

**Senator Molson:** Do your principals have any similar companies or investments in other jurisdictions or in other countries?

**Mr. Mackenzie:** Yes, indeed they have.

**Senator Molson:** Where?

**Mr. Mackenzie:** In Europe.

**Senator Molson:** Are there any in the United States?

**Mr. Mackenzie:** We do not have any in the United States.

**The Acting Chairman:** Would you care to say anything about the magnitude or size of your portfolios?

**Mr. Mackenzie:** We did reveal this when we made our submissions on the White Paper, and the whole was put at \$100 million.

**The Acting Chairman:** This is foreign capital which would otherwise presumably not be here in Canada for investment?

**Mr. Mackenzie:** Again, if you go back to our White Paper discussions over a year ago, I pointed out that one of the main reasons we were in Canada was the very hospitable tax climate. This is the reason, I think, the capital was here in the first place vis-à-vis the United States.

**The Acting Chairman:** What are the principal features? I do not want to monopolize this questioning . . .

**Senator Hays:** May I pursue Senator Molson's questioning? You said you had investments in Europe. In what countries in Europe do you have investments?

**Mr. Mackenzie:** In Holland, Italy, France and Germany.

**Senator Hays:** Can you tell us what sort of treatment you receive from these countries as compared to Canada?

**Mr. Mackenzie:** It varies.

**Senator Hays:** I think it is important that we should have this type of information, if available, so that we can see whether you are being treated less favourably in Canada than in Holland or Germany.

**Mr. Mackenzie:** Holland has a fairly agreeable tax climate, I understand, but you are really directing your question to somebody who is not au fait with tax arrangements for all these countries.

**Senator Hays:** But much of your investment in Canada is in the way of real estate, buildings and that sort of thing?

**Mr. Mackenzie:** We have a real estate company, yes.

**Senator Hays:** Do you have buildings in Holland and France?

**Mr. Mackenzie:** Yes.

**Senator Hays:** You are making these investments continually?

**Mr. Mackenzie:** Yes.

**Senator Hays:** And you cannot tell this committee exactly how they are treated in each of these countries?

**Mr. Mackenzie:** Well, it is a very complex question to answer. I mean, you are asking me to explain the taxing arrangements of these European countries.

**Senator Hays:** Well, would you just identify one country?

**Mr. Mackenzie:** Since June I have been trying to understand what this country's taxing arrangements are going to be.

**Senator Beaubien:** Mr. Mackenzie, from what you understand about this tax bill, what is the difference going to be between what you pay now and what you would pay under Bill C-259 if it becomes law?

**Mr. Mackenzie:** Well, the foremost is a capital gains tax. Most countries in the world do not levy a capital gains tax on non-residents unless the non-residents hold real property, direct business assets or partnership assets in the country in question. Now Canada is seeking to tax non-residents on the gains they make on disposal of taxable Canadian property, which is a list defined in clause 115 of the bill. This includes shares of all private companies, which would include our non-resident owned investment corporation.

**Senator Beaubien:** Mr. Mackenzie, in the United States are shares in that sort of thing held by non-residents not taxed, and the profits made and capital gains?

**Mr. Mackenzie:** I understand not, because Canadian capital gains are not taxed by the United States Treasury if those gains are made in U.S. stocks.

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** This is the result of a treaty which we have.



**Mr. Mackenzie:** Yes.

**Senator Beaubien:** Mr. Phillips, do we have a treaty with England?

**Hon. Mr. Phillips:** Yes.

**Senator Beaubien:** Would they not be covered by the treaty?

**Mr. Mackenzie:** Yes, where the treaty exists non-residents will be protected. But Canada is seeking to re-negotiate these treaties to make section 115 applicable. But it can be applied immediately to non-residents living in non-treaty countries.

**Senator Beaubien:** Would that affect you?

**Mr. Mackenzie:** Canada does not have a treaty with the Republic of Ireland. It has a treaty with the United Kingdom. As of January 1, 1972, non-resident-owned investment corporations, although entirely owned by non-residents, will immediately have their gains taxed on taxable Canadian property. This is one of the arguments in our submission.

**Mr. George P. Keeping, of Clarkson, Gordon & Co.:** I think that I am right in saying that this committee, in its report on the White Paper, recommended, along with the Commons committee, that NRO's be taxed similarly to non-residents. In other words, if a non-resident investor sought to invest his portfolio in Canada through a non-resident investment corporation, he would be in no worse position than if he invested directly in Canada. I think Mr. Mackenzie pointed out the advantage of having a corporation in Canada to help facilitate the management of the portfolio investments.

**Hon. Mr. Phillips:** The recommendations made were that residents in Canada functioning through an NRO would be in no better or no worse position.

**Mr. Keeping:** Yes, that is right. This has not been implemented in Bill C-259. By the amendments some changes have been made which have alleviated inequities between the taxation of a non-resident holding his investments directly and the taxation of a non-resident investing through an NRO. There are still major areas where an investor who invests through an NRO is at a distinct disadvantage as compared to a non-resident with a direct investment. These areas are as follows: first of all, a number of non-resident-owned investment portfolios in Canada are not confined entirely to Canadian investments. Mr. Mackenzie has already said that his company does not operate in the United States. However, they do have some American investments in their portfolio. As the amended law now stands, capital gains made on foreign investments will not be taxable. This is in line with the non-resident investor who owns foreign investments directly. Naturally, Canada would not enter into the picture at all. When a person makes a capital gain on a foreign investment in Canada, he cannot distribute it to the NROs without suffering a withholding tax. The capital gains merge into the income stream with the rest of the revenue, and he can only get them out by way of an ordinary dividend. In many countries when a dividend is received it is classified as income. This is the case in the

United Kingdom. You can imagine the difference in the United Kingdom between taxation of income and taxation of capital gains.

The second point is that on the sale of non-resident-owned investment corporation shares Bill C-259 imposes a tax on a non-resident shareholder's gain on the disposal of his NRO shares. Very frequently in these instances, in dealing with an NRO investment there are large portfolios of Canadian marketable securities which are not subject to capital gains tax if held by a non-resident. However, if a non-resident were to dispose of his NRO shares to a member of his family, the unrealized gains on the marketable securities would become taxable. Under the recent amendment he could get his gains on the marketable securities out tax-free by way of a capital gains dividend. However, he could not get the unrealized gains out. The unrealized gains enter into the valuation of the shares of the NRO and, therefore, help to determine the gain or loss which he would make on disposal of his NRO shares. This is a ridiculous situation. If he were to sell his whole portfolio on the day before he disposes of his shares and then buy them back again, he would realize all the gains. This would be very good for the stockbrokers.

**Hon. Mr. Phillips:** Please do not prejudice the tribunal!

**Mr. Keeping:** The third point is that at present there is a tax treaty with the United Kingdom which precludes Canada from taxing gains made by non-residents on the sale of Canadian securities and, vice versa, the United Kingdom from taxing Canadians on disposal of United Kingdom investments. However, under the proposed legislation, as of January 1, 1972 gains on taxable Canadian property in a non-resident-owned investment corporation become immediately taxable. If the investor held his investments directly he would be protected by the treaty. However, if he has invested through an NRO his gains on taxable Canadian property are immediately subject to tax.

**Hon. Mr. Phillips:** But is this not the complication, that when a non-resident investor decides to invest in a company which is, after all, incorporated under our law—I am playing the devil's advocate against you on this point—you are saying that the NRO which is organized under our laws should, for taxation purposes, be assimilated to a non-resident? Is that your basic premise?

**Mr. Keeping:** That is the way the law has been in the past; and the Commons committee has recommended that it be treated this way in the future.

**Hon. Mr. Phillips:** Yes, but if I may, I am trying to help this committee understand your basic legal point, that non-residents investing in Canada, obviously if they have a permanent establishment, place of business, or purchase real estate and so on, get one type of treatment. If they purchase securities generally they receive another type of treatment. For purposes of convenience, non-residents group themselves together, in effect, and agree to take their investment position through the medium of an NRO company. In the process this NRO company, if organized under the laws of Canada, immediately subjects itself to all the pressures resulting from that and the fact that it is a resident in Canada. Because of the circumstance that it is an NRO company, your point is that it should not be

assimilated, in effect, to an ordinary organized Canadian company. You apply that to even an organized company for holdings of securities, et cetera, legally owned business establishments, because of the circumstance that the ownership is vested in individuals outside of the country.

**Mr. Keeping:** That is right.

**The Acting Chairman:** I wonder if we could pursue it one step further. I understood Mr. Mackenzie to say that one of the categories of investment managed is that held by this company, Elgistan Management.

**Mr. Mackenzie:** No, it does not hold anything; it is just a management company.

**The Acting Chairman:** In any event, there are non-residents who have direct investments in Canada. I take it that your company acts as trustee for those investments. Is that so?

**Mr. Mackenzie:** As manager.

**The Acting Chairman:** Well, in that case I take it that the dire tax consequences described by Mr. Keeping, and commented upon by Mr. Phillips, would not apply.

**Mr. Mackenzie:** They would not apply to the management company. They will apply to the interests of the non-residents we are managing; that is, they will apply to the non-resident investment corporation.

**Hon. Mr. Phillips:** May I, with your approval Mr. Chairman, draw to the attention of honourable senators the following: We have spent some weeks recently dealing with the subject matter of international income generally. We have confined ourselves thus far to briefing, studies and recommendations, which presumably will continue today, with respect to foreign income moving to Canadian residents. This is the first brief we have heard with respect to the other side of the coin in connection with the new bill. It deals with international income generally and covers what is now being discussed in part, the movement the other way, from Canada, so far as the interests of non-residents are concerned.

We are moving into new terrain, which heretofore has not been covered. This will now become, presumably, the subject matter of further consideration as reflected in what was described last evening as the epilogue of further matters to be considered.

In other words, we are not too late to consider the representations which are being made today having regard to our deliberations to date. I wish to explain that, because we have a time limit in respect of certain representations which have been made to date and which will be dealt with, possibly, today. Therefore I wish to make it clear that there will be no time to deal with this subject matter in our up-to-date discussions, but this will go forward for further consideration.

**Senator Carter:** I have trouble distinguishing between the company itself, which does the managing, and the investors whose investments they are managing. Your plea is not on behalf of your company, which is an incorporated company, but, as I understand it, is on behalf of those who invest in it. They receive different treatment because they

happen to group together through your company to do their investing, rather than managing it themselves.

**Mr. Mackenzie:** That is broadly correct. Our submission is on behalf of our non-resident principals. That is possibly a better word.

**Senator Carter:** As a Canadian company, incorporated under Canadian law, are you treated differently from other Canadian companies?

**Mr. Mackenzie:** Elgistan Management is not, but we are really referring to the NRO companies we manage, of which there are several. They are non-resident investors who invest through non-resident owned investment corporations.

**The Acting Chairman:** Could I take Senator Carter's question a step further: I understand that you manage for at least two classes of non-residents. Some buy and own shares in Canadian incorporated non-resident corporations?

**Mr. Mackenzie:** That is correct.

**The Acting Chairman:** In addition to that, you also have a portfolio of investments for individuals who are domiciled and resident abroad, which you manage in trust for them—is that so?

**Mr. Mackenzie:** Yes, but the units of that portfolio investment are in the main owned by the NROs. There are exceptional cases in which the units are owned directly by non-resident investors.

**Mr. Keeping:** Elgistan Management Limited is a purely management organization; it does not itself own investments. It derives its income from the fees of managing its principals' investments through their non-resident owned investment corporations. Elgistan Management is not a group of the funds of certain non-residents, but purely a management corporation. The actual investments are held in the larger part by the marketable securities in the trust. The trust has units which the non-resident owned investment companies hold. The non-resident owned investment companies are owned by individual non-residents.

**Senator Carter:** As a management company you are not an investment company, but you must have income or you would not be in business.

**Mr. Keeping:** Elgistan Management Limited derives its income from the fees of management and is taxed as an ordinary corporation.

**Senator Carter:** You are no different from any other corporation?

**Mr. Keeping:** No, not at all.

**Senator Carter:** So you are only concerned with the interests of the companies who use your services.

**The Acting Chairman:** This brief is presented only on behalf of the NRO companies managed by Elgistan.

**Senator Beaubien:** As far as Elgistan is concerned, your tax problem does not change.



**Mr. Keeping:** That is true.

**Senator Beaubien:** You have no problem there at all.

**Mr. Keeping:** No.

**Senator Cook:** When the ordinary private non-resident in the United Kingdom makes capital gains through holding a Canadian security does he pay capital gains tax there?

**Mr. Mackenzie:** Yes.

**Senator Cook:** Is the holder of NRO shares any better off? If he is exempt from paying capital gains tax in Canada on the profits made by the NRO, does he also escape capital gains tax in England?

**Mr. Mackenzie:** Not when he comes to dispose of the shares in that company.

**Hon. Mr. Phillips:** Mr. Chairman and honourable senators, I think that the background of this and the difficulty involved could probably be explained. It is the other side of the coin resulting from diverted income from Canadians which is reflected in the new bill in the famous FAPI or passive income, which, in the attempt to reach diverted income, went further and reached legitimate non-Canadian income of multinational Canadian corporations, even though it was not diverted income.

What we are facing here is the broad problem in a series of highly technical amendments recommended in this brief, which even tax lawyers would have to study carefully. It is the fundamental problem about which these gentlemen are complaining, that an NRO company is, in effect, a non-resident even though it is organized under Canadian law and was given certain privileges under Canadian law to come here in order to attract foreign capital during a period when the climate seemed to indicate that it was desirable for Canada to provide a haven for foreign capital coming into the country, to help our balance of payments and to do many other things. The climate has changed, but historically that is behind the organization of the NRO's.

Under the new act we have moved towards the conception that if a foreign investor comes here and avails himself of a Canadian corporate medium for his investments, that NRO company, as much as possible, is assimilated to a Canadian resident in every way, with all the consequences resulting therefrom. In effect, the basic point is—and it is something that we discussed in the White Paper some time ago: Are we in favour of penalizing NRO companies and taking the position, "Thank you for nothing in coming here with your foreign capital"; or being a new, developing country, do we say, "We love you, or at least like you. Come up here with your money and help us in using your funds for the expansion of our country, in investments and the like."?

**The Acting Chairman:** "And we will give you an attractive tax position."

**Hon. Mr. Phillips:** Yes;—"And this will not be considered as a tax haven," and we so recommended. The Commons committee did not recommend it in quite the same way. Mr. Keeping said that the Commons committee took the same position as the Senate committee. It did to the extent

that the NRO company was used as an instrument for Canadian residents. That is a modification, and you say so in your own brief. The Commons committee did not go as far as we did in that respect.

**Mr. Keeping:** May I quote from the Commons committee report?

**The Acting Chairman:** Yes.

**Mr. Keeping:** The Commons committee recommended:

To the extent possible the NRO be treated as a non-resident for all purposes including tax on capital gains.

**Hon. Mr. Phillips:** But did you not say that there was some reasoning in the Commons report, that to the extent that it was used as an instrument of tax avoidance by residents it was not to be given that privilege?

**Mr. Keeping:** That is right. The Commons committee recommended that non-residents be subject to Tax on what is now called taxable Canadian property, largely on the ground that if that tax were not imposed it would leave a loophole whereby Canadian residents could avoid tax.

**Hon. Mr. Phillips:** Through the medium of the NRO. In other words, to the extent that an NRO—

**Mr. Keeping:** Not necessarily through the medium of the NRO. For instance, let us take an ordinary private company which owns an apartment house and the shares are held directly by a non-resident. I think the Commons committee felt that if there was not a tax imposed on any gain on disposal of the shares of that company on a non-resident, there would be a loophole whereby a Canadian resident could avoid the capital gains tax.

**Hon. Mr. Phillips:** Or deemed to be a loophole because the location of the capital asset was deemed to be a permanent establishment, or something of that nature, and should be taxed. Broadly speaking, your fundamental complaint is that the non-resident using the mechanism of an NRO should not be placed in a worse position than the individual himself.

**Mr. Keeping:** That is the fundamental point.

**The Acting Chairman:** I understood that from the beginning. I thought you had the two categories of investment to manage, that in one case you got preferential treatment, namely for the individual who had the direct investment here, while if he did it through the NRO he did not get the preferential treatment.

**Mr. Mackenzie:** I think that is also right. If treaties are re-negotiated so that section 115 comes in and taxes also come in, I think a non-resident of Canada will find himself in a worse position investing in Canada than, say, in Australia or the United States. This is an important point.

**Senator Hays:** That is the point I was trying to get across, namely, what other countries receive a better deal.

**Mr. Mackenzie:** If Mr. "X" in London owned more than 25 per cent of a public corporation and he sold those shares, in Canada he would be taxed on the gain.



**The Acting Chairman:** If he owns those shares in a public corporation in Canada and is a resident of Canada?

**Mr. Mackenzie:** Yes. He would be taxed on that gain. He would also be taxed on that gain in the United Kingdom.

**Senator Beaubien:** Could he offset?

**Mr. Mackenzie:** I imagine he could. Take somebody who is in the Republic of Ireland. There would be no offset, because there is no capital gains tax in Ireland.

**Senator Hays:** The countries that you have mentioned would be more desirable for investment, namely, Australia and Ireland. You also mentioned another country.

**Mr. Mackenzie:** I am not sure whether if you owned more than 25 per cent of a public corporation in the United States the capital gains tax would apply to a non-resident.

**Senator Cook:** I can see the point that a non-resident who invests in a non-resident owned corporation would be no worse off than a non-resident who invests privately. On the other side of the coin, is an investor who owns a non-resident investment corporation any better off than a private investor?

**Mr. Keeping:** He is worse off.

**Senator Cook:** Is he any better off?

**The Acting Chairman:** You mean under the present law?

**Senator Cook:** No. I was thinking in terms of the amendment. Would he be better off if the amendment goes through than if he were a private investor in the UK?

**Mr. Mackenzie:** Ultimately, he would suffer capital gains on the disposal of the NRO shares in the United Kingdom.

**Senator Cook:** But there is a deferral of the capital gains tax?

**Mr. Mackenzie:** There is a deferral, yes.

**Senator Cook:** For how long?

**Mr. Mackenzie:** Until he realizes his shares. You could argue that this would be the same for a non-resident direct investor in marketable securities; he could just postpone the selling of his stock.

**Senator Cook:** Yes, but that would take place in Canada.

**Senator Molson:** Mr. Chairman, is not one of the problems the matter of the principle of the new legislation that incorporates capital gains into income, creating, in effect, a penalty for the non-resident in many jurisdictions? if it had been a straight capital gains tax this might not have applied.

**Hon. Mr. Phillips:** This is one aspect.

**Senator Molson:** It is one aspect. The gain becomes income in the hands of the foreign recipient and he is penalized.

**Hon. Mr. Phillips:** Honourable senators, there is a summary of the recommendations here. You will find them at pages 10 and 11 of the brief. There is quite a sophisticated

set of recommendations which clearly call for a careful study by your committee and your advisers. I would suggest, if I may, Mr. Chairman, that all this committee may be seized of in the presentation today are the fundamental aspects involved in the treatment and the determination of the basic point as to whether Canada should remain a respectful haven for bona fide investments by non-residents. We have to be concerned as to whether, with the imposition of the capital gains tax, we will introduce such a number of road blocks of one type or another as to invite foreign capital to leave us, or, at least, inhibit foreign capital from coming in. That is what it really amounts to.

**The Acting Chairman:** Yes.

**Hon. Mr. Phillips:** In the process you have the philosophy that Canadians are here and, willy-nilly, we are subject to the laws. But the foreigner is not here willy-nilly; he can either come or not come, as he sees fit. To the extent that he is here, he may be caught by the proposed laws.

There are two aspects to the proposed legislation. One is that of those who are here, like the gentlemen who are making submissions today. The other, and it is probably a more serious question—I do not wish to appear cynical—is with respect to those who are not here but who otherwise might come if the conditions were fair and reasonable.

**Senator Molson:** Those who are not here and probably will not come.

**Hon. Mr. Phillips:** Yes, in all likelihood.

When I was on the other side of the table, I was strongly in favour of regarding Canada people and one of the great trading nations of the world. I believe it is absurd to take the position that through normal savings, bearing in mind the high tax rates and the social content of our legislation, we could ever build up the necessary reserve of capital to bring about the normal expansion of our country; and I took the position then, as I do now, that surely this country requires the NRO companies. I strongly supported the philosophy behind that, many of my colleagues felt the same way, and the Senate generally supported the conclusions arrived at by this committee. We are now facing legislation that says the contrary.

**Senator Cook:** Would the provisions of the tax treaty affect the reciprocal arrangements?

**Hon. Mr. Phillips:** Yes; that is another aspect, Senator Cook. We took the position in the report on the White Paper that we were putting the cart before the horse in the treatment of this whole business of international income. There are phasing-out aspects in one sense, crystallization of the legal position from 1976 onwards, and, presumably, on parallel lines we are supposed to work out treaties.

The position taken by the Senate was, "For heaven's sake, work out your treaties first, before you strike in this area in order to determine to what extent you can work out a set of orderly treaties; and when you have worked out a set of orderly treaties with the great nations of the world, then condition the legislation to conform so that we know exactly what our position is." The idea was to take ten or twelve of the leading trading nations—the United Kingdom, the United States, Germany, Belgium, Holland, and so forth—and work out a series of treaties.

We have a situation of an increased imposition of withholding tax here, and we do not even know whether there is a distinction to be drawn between treaty and non-treaty countries. In its effect it becomes a matter of hopeless complexity. The failure to accept the concept that the treaty should precede the treatment of foreign income has created this impasse. If you are dealing with a company based in Ireland or if you are dealing with major shareholders in a non-treaty country, you have one consequence. If you have a revision of a treaty with a treaty country, you have another consequence. You cannot balance out the whole situation in terms of recommendations unless that is known. This committee is faced with a matter of domestic policy preceding the treaties. That is our problem.

**Senator Molson:** It may be difficult to write these treaties after committing ourselves to a policy in that regard.

**Hon. Mr. Phillips:** We thought we were rational in our approach. After all, normally the history of locomotion is that the horse does precede the cart, if you want to move forward.

**Senator Hays:** We did not properly define capital gains either.

**Hon. Mr. Phillips:** The only proper definition of course, would be negative in its withdrawal, as is proven by the complexities that have arisen.

**The Acting Chairman:** You say your portfolio is worth approximately \$100 million?

**Mr. Mackenzie:** No, I said the total assets were worth \$100 million.

**The Acting Chairman:** Yes, your total assets. What percentage of that is invested in Canada?

**Mr. Mackenzie:** I would say 85 per cent.

**The Acting Chairman:** And how long has this process been going on?

**Mr. Mackenzie:** Since 1930.

**The Acting Chairman:** So it is an operation that has been in being for the benefit of Canadian investment for 41 years. Are there other organizations similar to yours that operate in this area?

**Senator Hays:** Yes, there are a good many.

**The Acting Chairman:** I just want this on the record. In other words, what we want to get at here is some idea of the magnitude of the problem.

**Mr. Keeping:** The figure I have heard bandied about would indicate that the amount involved is probably in the vicinity of \$800 million to \$1 billion.

**Mr. A. M. Minnion, Q.C., McMaster, Meighen, Minnion & Co.:** I have one group of European clients who have, I would say, an interest of \$200 million. I cannot name them at the moment because it is confidential.

**The Acting Chairman:** And you are just one practising lawyer interested in this field.

**Mr. Minnion:** Yes.

**The Acting Chairman:** Senator Molson, do you have a question?

**Senator Molson:** I merely wanted to query that figure, as to whether it was the amount invested.

**Mr. Mackenzie:** I think Mr. Keeping was just answering the amount that probably came in via the NRO.

**Senator Carter:** Are there any major differences between the recommendations in the summary on pages 10 and 11 and the ones in the Senate report on the White Paper?

**Hon. Mr. Phillips:** The Senate report on the White Paper dealt with the broad principles of non-taxation of non-residents other than in respect of withholding taxes, as moneys moved out of the country for the benefit of the non-resident investor or beneficiary. We never went into detail to the extent that we have here, because at that time, although there was talk of a capital gains tax, it would have been utterly impossible to follow through on the treatment on a mere hypothesis or assumption of a capital gains tax.

For instance, in the Senate report we suggested a capital gains tax of 25 per cent flat not to be included in income. Here again, rationality gave way to something else, in my humble opinion. Although we deserve, I would think, some credit for having annihilated the whole concept of integration, we lost out when capital gains tax came into play, because 50 per cent of it was included in income. Our recommendation was that we supported a capital gains tax, but consistent with our strong views against integration—which, thank God, were accepted in part—we said that if there is to be a capital gains tax, and that was inevitable, there should be a flat rate of taxation thereon. Where there is a flat rate of taxation thereon, the treatment of NRO's under the law now, which calls for remedies in the opinion of these gentlemen, could not possibly have been in the minds of this committee when we considered the White Paper.

**The Acting Chairman:** Are there any other questions?

**Hon. Mr. Phillips:** I should like to put forward one thought, if I may. I am looking at page 10 of the brief, which is the series of recommendations. This is getting to be technical, and I will not take too much time over it. As I said a little while ago, real property is being assimilated to part of the operations of an establishment in Canada. What bothers me is "B". A shareholder of an NRO company can sell the shares, make a full capital gain thereon even though there are unrealized gains on Canadian marketable securities in foreign investments. Notwithstanding that, you want to deduct it from the sale price of the shares. In other words, a shareholder of an NRO company may sell at pretty much true worth, even though there is unrealized capital gain on domestic securities and foreign securities, and still you would want to deduct it from the purchase price.

**Mr. Keeping:** The reason for that is that, when realized, those gains would not be taxable under the bill. The gains on foreign investments and the gains on Canadian marketable securities would not be taxable. However, if one were



selling the shares of an NRO in which there were unrealized gains on those two types of investments, they would be taxable because, as you say, it would be the real value, which would include the unrealized gain. As I said, if an individual who owned an NRO was disposing of certain of his interests, perhaps settling them on his children in his NRO, he could avoid this by selling out his whole portfolio and buying it back the next day, and therefore realize the unrealized gains, and there would be no tax, if his whole portfolio were made up of foreign investments and investments in Canadian marketable securities. Surely, that is an absurdity which would cause a person to sell out his whole portfolio and buy it back the next day?

**Hon. Mr. Phillips:** The first one, "A," I can see, but suppose that broadly speaking the conception was accepted that the NRO was to be assimilated to an individual, would you not simplify the problem by accepting the suggestion that on the sale of securities there is a flat withholding tax applicable, and that therefore becomes available for the NRO shareholders?

**Mr. Keeping:** That is what we have advocated here. On Canadian taxable property we have advocated that the non-resident be treated in a similar manner to the resident. In other words, if a resident is a resident of a treaty country providing for a 15 per cent withholding rate on income, we suggest that the capital gains that are taxable, gains on Canadian taxable property, be treated in the same way as they would be treated in the hands of a Canadian resident; that is to say, one-half of the gain would be taxed at the income rate. In other words, if it was a 15 per cent withholding tax rate, he makes \$100 capital gain, 50 per cent of that, or \$50, would be taxable at the 15 per cent rate, and you therefore preserve the same relationship between the taxation of residents and the taxation of non-residents, the same relationship between the taxation of income and taxation of capital gains.

**Hon. Mr. Phillips:** Of course, if you took the position that the NRO should not be assimilated to the Canadian taxpayer, you would simplify matters by having a flat rate of taxation applicable to the NRO companies, and that flat rate of taxation would be equivalent to withholding tax before the movement of the proceeds to the NRO shareholder. Where you get yourself in a box here is the movement, as Senator Molson said, of the capital gains into income.

**Hon. Mr. Molson:** That is the trouble.

**Mr. Keeping:** To some extent this has been provided for now in the law by the amendments of October 13. They now provide that a special capital gains dividend may be paid out of gains from Canadian marketable securities, and from gains from Canadian taxable property after the 25 per cent tax. There has been some movement in order to identify the capital gains going out from an NRO, and I think that will be of some assistance to the residents of the other countries, who will be able to identify their capital gains. Prior to that amendment of October 13 it all went into the income stream, and it would have made life absolutely intolerable for the non-resident of a country such as the United Kingdom.

**Hon. Mr. Phillips:** Mr. Chairman and honourable senators, my suggestion is that I do not think we can do much more with this brief, other than send it back to the technical advisers for careful study, and include it in our subsequent deliberations.

**The Acting Chairman:** Is that agreed?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Thank you very much, gentlemen.

**The Acting Chairman:** Honourable senators, next is Loram Ltd., represented by: Mr. Fred P. Mannix, Jr., the President; Mr. D. W. McClement; and Mr. W. G. Gray, Controller. Mr. Mannix will make a preliminary statement.

**Mr. Fred P. Mannix, President, Loram Ltd.:** Mr. Chairman and honourable senators, first of all I should like to thank you very much for the opportunity to appear before you again. It was a year and a half ago that we were here.

I might remind you that we are involved in major ways in three basic industries: we mine about 37 per cent of the coal in Canada; we are one of the major construction interests in Canada; and we also have a more than minor part in the oil and gas industry, inasmuch as we have the controlling interest in Pembina Pipelines.

There are set out in the brief three basic points which we feel quite strongly on, more on a technical than a philosophical basis.

The point on joint ventures, to do with construction, is on page 12 of the brief. In the construction industry, as you know, a joint venture is very common because of the magnitude of the projects and the associated risks. Partnerships, which we call joint ventures in construction, are very common, not only within Canada but also in the international sphere. We feel that the legislation which is presently operating is much more simple and that the proposed legislation under the new tax law is unnecessarily complex.

The basic point is that these operations are merely extensions in specific areas on a pool basis to reduce exposure because of the very great financial commitments, and it would seem only reasonable for each participant to reflect only its applicable share. Really, we cannot understand the problem, as the legislation is set up, that the minister must feel, because of the great complexity of the law, as he has suggested.

**Hon. Mr. Phillips:** Mr. Chairman, may I interrupt here again, and draw the attention of the committee to the following. We heard from the construction industry generally. We heard the Canadian Construction Association, and one of the points they raised was the question of the method of treatment of profit and loss in respect of long-term construction contracts and the like. Their representations in that respect are being dealt with in the preliminary report. The construction people also raised the question that Mr. Mannix is raising now, with respect to the subject matter of partnerships, which is a special section under the bill.



Honourable senators will recall that strong opinion has been expressed in some quarters in Canada that the whole section is unnecessary, complex, and not sufficiently important to have been introduced at all, and that, if it were introduced, in any event a distinction should be drawn between partnerships, as such, in the normal sense of the term—all of us here understand in general terms the meaning of a partnership—and a joint venture where A, B, C and D, retain their so-called economic and business sovereignty and contribute their resources, know-how and assets in such a way as to bring about a joint venture. This does not result in a partnership, which is a new legal entity. There is a fundamental distinction between a joint venture, broadly speaking, and a partnership. If A, B, C, and D go together into something that creates a new entity, that is really a partnership. A, B, C and D agreeing to go together . . .

**Senator Isnor:** For the time being.

**Hon. Mr. Phillips:** . . . in a common, single undertaking of some kind would more or less constitute a joint venture. All I wish to say is that this subject matter is included for study already in the epilogue material which is presently being considered by your technical staff, and you need not pause any further on that with Mr. Mannix. We know the problem and it is the subject of study.

**Mr. Mannix:** The main concern is that it would make Canadian construction companies non-competitive in the international sphere and would certainly impose problems within Canada as well. We already have problems in dealing with competitors from other countries, and this would unnecessarily complicate our position in dealing with international matters.

**Hon. Mr. Phillips:** In other words, what you are telling the committee is that you could live with this act without the whole section dealing with partnerships being there; and that, to the extent that it is there, it hurts you rather than helps you?

**Mr. Mannix:** That is right.

**The Acting Chairman:** I take it that when you talk about joint ventures with reference to the construction industry you are not confining your remarks to the construction industry. I gather from your opening statement that you are involved in areas of the economy other than construction where joint ventures do in fact get established.

**Mr. Mannix:** That is correct.

**The Acting Chairman:** Is there any other branch?

**Mr. W. G. Gray, Controller, Loram Ltd.:** It is very much so also in the oil and gas undertakings.

**The Acting Chairman:** And you are familiar with that?

**Mr. Gray:** Yes.

**The Acting Chairman:** And your remarks would apply to the oil and gas industry just as they do to the construction industry?

**Mr. Gray:** Yes, that is correct.

**The Acting Chairman:** That is your first point.

**Mr. Mannix:** The second point really starts on page 7, stating that, "The new provisions taxing proceeds on sale of mineral rights results in gross retroactive taxation of capital."

The proposed legislation says that the cost of mineral properties incurred after 1971 will be allowed as a deduction in determining taxable income, and the proceeds from the sale of mineral rights will be included in income, even though the properties may have been acquired prior to 1971 and no deduction has been allowed for their cost. We basically run into a point where, if you have acquired a property before 1971 and then you sell it, you have no deduction for the comparable cost, and this is retroactive taxation.

We feel this is unnecessarily harsh and retroactive and that anybody who is in a position of already assembling properties, coal properties, for example, and then subsequent to this taxation sells that property will be taxed on 100 per cent of the proceeds, with no deduction for the cost of assembling that property.

**Hon. Mr. Phillips:** Is that dealt with specifically in respect of mineral rights?

**Mr. Gray:** Yes, sir. It is phased in.

**Hon. Mr. Phillips:** Have you the section where that appears?

**Senator Beaubien:** Mr. Mannix, surely there will be some value for that property on valuation day?

**Mr. Mannix:** They are not allowing that as a deduction, sir, as I understand the act.

**Hon. Mr. Phillips:** Have you a section in the act that supports that statement, because that comes as a surprise to us?

**Mr. Gray:** I will get that section for you, sir.

**Hon. Mr. Phillips:** Then shall we suspend that, Mr. Chairman, and proceed to the next point?

**The Acting Chairman:** Yes. Perhaps you could take the third point, Mr. Mannix.

**Mr. Mannix:** The third point is depletion, and we refer to that on page 8. It is proposed that the present depletion allowances be replaced by a concept of earned depletion. This proposal is unfair to taxpayers with a mine in production at the present time, or when the legislation was announced, because they may not be required to expend further moneys on exploration, which would contribute to a depletion bank. As a result of that, where they have based the economics on the present ten-cents-a-ton depletion, for example, and they have based the economics of a mine on the existing circumstances beyond the phasing-in period, they will lose the depletion if they are not in a position to or do not spend the money to earn the depletion in a bank.

**Hon. Mr. Phillips:** Mr. Chairman, I should like to direct myself to Mr. Mannix on that point. Mr. Mannix you are

addressing a group of gentlemen who have been through this business for the last month, roughly. We have heard from a number of very important companies both in the mining industry, as such, and in exploration and development, as such, as distinguished from active mining operations, and we have heard from the oil and gas industries. Conclusions have already been arrived at with respect to the whole subject matter of depletion, to the extent that I do not think you have dealt with any items that are not already covered at some length by us. I do not want to shorten your presentation, but I want you to know that we have gone into practically every element you have raised in your submission with respect to depletion. Before the end of the day you may be reading about it. Certainly, before the end of the week you will. It is not likely that we have overlooked any items you have referred to in your depletion study.

**The Acting Chairman:** In other words, Mr. Phillips is saying that you are pretty good because you agree with us.

**Mr. Mannix:** Thank you, sir. There is just one other point I might mention. In the coal industry we have to compete with the coal industry of Australia, for example, and of various other countries. We find that in the coal industry if we have an earned depletion bank concept we are in a much more difficult competitive situation vis-à-vis countries that have depletion on an earned income basis. In other words, it is a percentage of income.

**The Acting Chairman:** Particularly where you have established mines.

**Mr. Mannix:** Precisely.

**The Acting Chairman:** And I take it that in Alberta you do have extensively established mines.

**Mr. Mannix:** That is our position at the present time. We have six established mines which we are operating. For an established miner this is unduly harsh, we feel.

**Hon. Mr. Phillips:** If you were a member of this committee, we might be able to go into the section in more detail, but I do not think we can do so with you now, Mr. Mannix. I think you had better leave depletion alone, because it is completely dealt with by this committee already and there is no use in stating to you that which is covered and that which is not covered, because that is for the Senate to consider. I would suggest that all you can do is leave your brief here and let us see, in due course, whether or not we have met you on it.

**The Acting Chairman:** I wonder if Mr. Gray has come up with that section.

**Mr. Gray:** Yes, it is section 59(3) and (4).

**The Acting Chairman:** That deals with the disposition of resource property acquired before 1972. I note that it is a long section, but perhaps it would be as well to read it into the record.

**Senator Beaubien:** It does seem to be an important point. I think you should read it.

**Hon. Mr. Phillips:** Yes, Mr. Chairman, I think you should.

**The Acting Chairman:** Section 59, subsection (3) of Bill C-259 reads as follows:

59. (3) Where a taxpayer has made a disposition after 1971 of property owned by him on December 31, 1971 that

(a) is property described in any of subparagraphs 66(15)(c)(i) to (vi) and is not property described in paragraph (1)(c), or

(b) would be property in subparagraphs 66(15)(c) to (vi) if the references therein to "in Canada" were read as references to "outside Canada",

the following rules apply:

(c) the relevant percentage of the amount receivable by the taxpayer as consideration for the disposition thereof shall be included in computing his income for his taxation year in which the disposition was made, notwithstanding that the amount or any part thereof may not be received until a subsequent taxation year; and

(d) where the taxpayer and the person who acquired the property were not dealing with each other at arm's length, for the purposes of this section, section 64 and section 66

(i) the cost to that person of the property shall be deemed to be the amount included in the taxpayer's income by virtue of paragraph (c) in respect of the disposition by the taxpayer of the property, and

(ii) when that person subsequently disposes of the property of any right or interest therein, the amount receivable by that person as consideration for the disposition shall be deemed to be the relevant percentage of the amount actually receivable by that person as consideration therefor.

I am sure we are all greatly enlightened by that.

Then section 59(4) reads as follows:

(4) For the purposes of paragraphs (3)(c) and (d), the "relevant percentage" of any amount receivable as consideration for the disposition of property is 60% plus the percentage (not exceeding 40%) obtained when 5% is multiplied by the number of full calendar years in the period commencing at the end of 1972 and ending with the end of the calendar year in which the disposition was made.

**Hon. Mr. Phillips:** I think, Mr. Chairman, that honourable senators would like to include in the record their appreciation of the precision, clarity and phraseology of the section.

**Senator Beaubien:** Now, you tell us what it means.

**Hon. Mr. Phillips:** I am not going to attempt to do so. Having recorded our appreciation, I think that here also we can only take cognizance of it and have it really studied, because you have a series of references, as you can see, to other sections which involve exclusions.

**The Acting Chairman:** For the purposes of the record it might be helpful if our witnesses here were to give us their interpretation of it.



**Hon. Mr. Phillips:** And possibly some guidance, Mr. Chairman, as to why, if your interpretation is right, it is there at all. Usually there is some motivation behind the introduction of a section which would seem to exclude from capital gain the deduction of the cost or valuation, whichever is higher, because that is what you are saying, is it not?

**Mr. D. W. McClement, Loram Ltd.:** It seems very inconsistent with the rest of the features where they allow you a capital base at the start of the act.

**Hon. Mr. Phillips:** Do you have any clue on that?

**The Acting Chairman:** Just a moment. Mr. McClement, would you mind repeating your comment, because it is rather important and we have a reporter here who has to take it down. So would you mind repeating what you said, and not too quickly, please, because we want to get it on the record.

**Mr. McClement:** It seems very inconsistent with the rest of the features of the act which start out taxing capital subsequent to the implementation of the capital gains tax on January 1, 1972, presumably, because this section taxes all capital right from initiation. Say it went back to 1800, it would tax the whole process. Now, of course, it is scaled down a little because in the first year it only taxes 60 per cent, and then it escalates up 5 per cent a year, so after 10 years it taxes 100 per cent of the proceeds, even on a property that may have been acquired in 1800, which is gross retroactive taxation and hard to comprehend.

**Senator Burchill:** Has this been brought to the attention of the officials of the department?

**Mr. McClement:** Through the Coalmine Operators Association, yes. They presented a brief pointing this out.

**The Acting Chairman:** When was that brief presented?

**Mr. McClement:** About three weeks ago.

**The Acting Chairman:** Do you know if any part of the representations have been reflected in the amendments that have been laid before the House of Commons?

**Mr. McClement:** Not, we understand, to date.

**Hon. Mr. Phillips:** But we will still put the question, Mr. Chairman, with your approval. There usually is a reason—and in many instances the reasons are not good, and the reasoning may not be sound—but why this unusual section applicable to mineral rights?

**Mr. Mannix:** We do not know why. It is inconsistent from the point that it does not value the mineral rights at a time, and the only reason I can see is perhaps the very great difficulty in valuing a mineral property, say, one that was completely unexplored at the start of the act, and this would be the only reason that we can see that they would say, "We do not take a value as of January 1, 1972," and for that reason they have phased in a progressive tax.

**Senator Beaubien:** But, Mr. Mannix, if you sold the property just after January 1, 1972, and got \$10,000 for it, that would give you a pretty good idea of the value it had on December 31, 1971.

**Mr. Mannix:** That is correct, but that would not be allowed as a deduction.

**Senator Beaubien:** But if you have something that you can sell in January, 1972 for a price, surely that gives a good idea of the value of it two or three weeks before that?

**Mr. Mannix:** That is correct, but historically many properties are held for a long period of time. We have properties, for example, that were picked up in the early 1950's and which may not come into development for another 10 or 15 years. How do you value that as of January 1, 1972, if you have not had, for example, some sort of appraisal mechanism; and the difficulty of the appraisal mechanism is the only reason that I can suggest for this section of the act.

**Hon. Mr. Phillips:** Well, what do you suggest to overcome that difficulty?

**Senator Beaubien:** But that cannot be a good reason, Mr. Phillips, because if somebody owns the property and dies, then somebody makes a valuation.

**Mr. Mannix:** That is correct, and we suggest that the property should be valued at the start of the new system, and that from then on any increase in value be taxed accordingly as a capital gain. This section is inconsistent with the rest of the legislation from the point of view that it does not take a start value, if you want to call it that, at the start of the new system. With everything else a value is taken, but with regard to mineral properties the legislation is not written in that way.

**The Acting Chairman:** An arbitrary valuation is provided.

**Mr. Mannix:** That is right, and through the actual section there is not one provided as a cost, and instead of taxing it as a normal capital gain, they have phased in something that retroactively taxes any value accumulated to the date of the start of the system.

**Senator Cook:** Even if the owners had evidence to say it was worth \$1 million, they would not be heard.

**Mr. Mannix:** That is correct.

**Senator Beaubien:** It does not make any sense.

**The Acting Chairman:** It might very well be that the committee would want to hear evidence from the officials of the department on this point.

**Hon. Mr. Phillips:** I do not think, Mr. Chairman and honourable senators, that we can do more than take cognizance of this point for study.

**The Acting Chairman:** Are there any other questions, honourable senators?

Are there any other points you would like to make, Mr. Mannix and gentlemen?

**Mr. McClement:** I just gather it is too late for a capital gains tax at this point. That is accepted. I think we feel that we are still a pretty young country for that point.



**The Acting Chairman:** It is too late for a separate capital gains tax rather than one whereby the capital gain is added to income.

**Senator Molson:** He is of our team, Mr. Chairman, but I am afraid his help has come a little late.

**Hon. Mr. Phillips:** We made that recommendation, as you know, in the Senate report and we failed on that.

**Mr. Mannix:** I would like to thank you very much Mr. Chairman and honourable senators.

**The Acting Chairman:** Thank you very much indeed.

**The Acting Chairman:** The last brief is being presented on behalf of Anglo American Corporation of Canada Limited. Those appearing are: Mr. J. David Taylor, Q. C., Director, and partner in the law firm of Fasken & Calvin; and Mr. Gerald J. Risby, Vice-President-Treasurer and Director, Anglo American Corporation of Canada Limited. Mr. Taylor will make a preliminary statement.

**Mr. J. David Taylor, Q. C., Director, Anglo American Corporation of Canada Limited:** Mr. Chairman and honourable senators, we appreciate the opportunity of appearing before you once again in connection with your hearings on tax reform. We have filed our brief with you, which contains a certain amount of background material, and part of this will be familiar to you from our earlier appearance. In essence, it shows that the Anglo American Corporation of Canada Limited is the investment arm in Canada of what is probably the largest mining finance group in the world. This company has assets in Canada of \$127 million. As the brief indicates, we have a policy of re-investing the earnings from these Canadian investments, subject to what would be considered a modest return by way of dividends repatriated abroad. The principal investments of this group are in the resource industry. You have received a great many submissions from such groups.

One of our potential investments is in Baffin Island, where the total investment, if you include financing cost, would be in the order of \$300 million. This investment has been very adversely affected by Bill C-259.

**Senator Cook:** About which project are you speaking?

**Mr. Taylor:** The Baffin Island project, on page 2. It is an immense iron ore deposit which is very pure; and because of its remoteness it is a very expensive project to develop.

**Senator Benidickson:** Is this the property in which Madsen Gold Mines Limited have an interest?

**Mr. Gerald J. Risby, Vice-President-Treasurer and Director, Anglo American Corporation of Canada Limited:** Yes, it is the same property.

**Senator Cook:** It does not appear on your chart.

**Mr. Taylor:** No, we do not show anything on our chart but wholly-owned subsidiaries. This is a potential development in which, when it commences, this group would have the controlling interest.

In our submission to you we will not be elaborating with respect to depletion and other matters in connection with the resource industries. However, I did want to point out that so far as the new earned depletion rules are concerned there would be contained within this \$300 million figure almost \$8 million for townsite, \$34 million for a railroad and bridge, and \$46 million for dock and harbour facilities, none of which would be eligible for earned depletion.

**The Acting Chairman:** Was there a change made at the recent Meeting of Ministers of Finance with respect to railroads? I do not think there was an amendment, but I thought some change was made.

**Mr. Taylor:** I have not been made aware of any changes.

**Senator Benidickson:** Mr. Chairman, I made that assertion yesterday after reading the *Toronto Globe and Mail*. I read it again this morning, and it does not appear to be in as positive language as it was yesterday. It indicated this morning that the Minister of Finance had simply told the Quebec treasurer that in relation to earned depletion he would give very careful consideration to the inclusion of railroads under the new proposal.

**Senator Molson:** There is nothing mentioned about infrastructure?

**Senator Benidickson:** No, there is nothing mentioned about social infrastructure.

**Mr. Taylor:** I was aware that you had representations made to you on this matter; and I simply wanted to make the point that there is at least \$30 million invested in a railroad and bridge on this project.

**The Acting Chairman:** Mr. Taylor, I wonder if we could return to the Baffin Island investment project. You spoke briefly about this aspect of it. Is the fact that infrastructure social capital investments do not earn depletion the main problem in connection with the Baffin Island project?

**Mr. Taylor:** No, our brief sets out in detail the fact that, in our judgment, the change in concept from percentage depletion to earned depletion makes this, as any other project, inherently less attractive to us. We consider the earned depletion concept to be stingy in the areas it contains. It is a combination, in fact, with the loss of the three-year tax holiday and other aspects. I do not think any of them can be quantified, but we can say that all of them, taken as a whole, make this project, which is risky and speculative, far less attractive.

**Senator Benidickson:** What is your opinion of its relationship to investment in other countries, where taxation might be more attractive or less onerous?

**Mr. Taylor:** Simply with regard to that aspect, we consider that investments in Australia or Ireland are now inherently much more attractive to the group as a whole. One of the points made in the brief is that the Canadian company, for which we are particularly speaking this morning, will now perhaps be told by the greater group that its resources will be devoted to Australia and Ireland in preference to Canada.

**Senator Cook:** This is a remote area, is it not?

**Mr. Taylor:** Very remote.

**The Acting Chairman:** It could not be more remote.

**Senator Cook:** Did we not recommend in our report on the White Paper that mines in remote areas should receive special consideration?

**Hon. Mr. Phillips:** Yes, we did, and to the extent we have dealt with this subject matter it will be reflected in today's report.

**Senator Burchill:** Do you measure the life of an ore body such as that in the Baffin Island project when making your investment?

**Mr. Taylor:** We can only say at the moment that there is such an immense quantity of ore there that sufficient to ensure the financing of a project of this type. It is believed, without being able to demonstrate it, as would be necessary for public financing, that the reserves are incredibly large.

**Senator Burchill:** How will you calculate the life of the railroad for purposes of write-off?

**Mr. Taylor:** It will be needed for at least 30 years, sir, by which time there will probably be a different type of transportation.

**The Acting Chairman:** Your company is not an NRO company.

**Mr. Taylor:** No, I wish to make the point that this company has not come in as an NRO, which I regard as a company which attempts to remove all dividends from this country, subject of whatever withholding taxes may be applied.

This company has followed a deliberate policy of re-investing the major portion of its earned income here. The effect of the treatment it will receive under the new bill will force a change of that situation.

We know you have had many submissions with regard to depletion; we do not know if you have had any with respect to this point. The cardinal problem facing this company is that it is not a public company under the provisions of the new bill. It is a private company and, despite the size of these investments which in Hudson Bay Mining, for example, amount to \$60 million, they are still not controlling interests, but portfolio investments.

Here we stand, a private company with portfolio investments, which under the bill will be taxed by a special refundable tax of 33-1/3 per cent. This applies to a private company regardless of size. The consequence of that is that if it is wished to recover that tax, dividends must be paid. Examination of the chain of companies shown in the chart contained in the brief will illustrate that to recover the 33-1/3 per cent tax, dividends must eventually be paid abroad and a 15 per cent withholding tax paid for non-residents. It becomes a simple question of whether it is desired to pay a tax of 33-1/3 or 15 per cent.

**Hon. Mr. Phillips:** I do not usually do this, but I wish to compliment the author of this brief. It is very important, and I would suggest that the senators read it carefully.

We included at the top of the list in our so-called epilogue the subject matter of private companies. In my opinion, the distinction drawn between private and public companies in this respect is one of the most unwise aspects of the bill.

I was amazed by the distinction, which is as follows. The phrase "private corporation" is distinguished from "public corporation" in the sense of the public corporation being listed on stock exchanges, and so forth. If such a corporation has investments in Canadian companies, the dividend income from one Canadian company to another Canadian company is tax-exempt. That has been moved over from the present law. The dividend forms part of the undistributed earned income and is distributable at any time in the form of a public dividend. It is only then that the matter of taxability to the local shareholder, resident or non-resident applies. The non-resident pays withholding tax, and the resident in accordance with his tax rate.

A private company such as that referred to by Mr. Taylor, having all its investments in Canadian companies, is subjected to a 33-1/3 per cent tax.

**Senator Beaubien:** Which it would not pay if it were a public company.

**Hon. Mr. Phillips:** That is correct, and it is refundable only when the tax-exempt income brought in is paid out as dividends to shareholders. The result of this, as Mr. Taylor points out, is that an important Canadian company which has thus far, as indicated in the brief, received 3 per cent average income on its investment, will pay a 33-1/3 per cent tax. On moving into the hinterland of Canada, taking long-term views as to what it should do with its accumulated income, as is proven by its investments in these major companies, in wanting to reach into such places as Baffin Bay and the like, it is subject to a 33 1/3 per cent tax immediately, if it does not declare the dividend out. If it declares a dividend out, to the extent that you have non-resident shareholders, those non-resident shareholders are subject to what is now a 15 per cent withholding tax. What will it be under the new law? Whether it will be 15 per cent or in excess thereof depends on whether it is a treaty or a non-treaty country.

I may say that after 50 years in tax practice I found that to be the most amazing aspect of the entire legislation. The rest is complex but, at least, if you had the patience, you could work the thing out. I could never understand why bona fide companies such as these people who are building up capital and using the money for further investment, and all the rest of it, should be forced to declare it out.

In effect, what we are doing in respect of all private companies is putting a freeze on the accumulated savings of our country to the extent that it is in corporate form in private companies. What is the net result? Moving over to the Canadian field, of Canadian companies controlled in Canada, it is another way of inviting foreign capital.

To the extent that we are in bondage to non-resident shareholders—legitimate bondage, because we welcome



the money here, and I say that with all due respect, but nevertheless it is servitude and bondage economically—we are saying to private companies in Canada, “You are subject to a 33 1/3 per cent tax if you want to build up your further reserves of investment. You owe it now, and you can get it back only if you declare your dividends out.” It is another way of saying that we are penalizing thrift and savings which, in my day and in that of all honourable senators, was considered a virtue rather than a vice. In effect, what we are now saying is that it is vicious to be thrifty.

**Senator Cook:** “Invest your money in Canada,”—

**Hon. Mr. Phillips:** “... and we will tax you.” A classic example is that of a company with a 3 per cent yield historically on investments that will now be forced to pay 33 1/3 per cent on its income or, alternatively, will be subject to withholding tax, and will not have the further reserves of capital for expansion. This is a subject matter which we hope to deal with in what we call the second bite of the cherry. It has not been dealt with by honourable senators in the presentations we have had to date, but it is top on our list if we can get to it in time. I think, Mr. Taylor, you have made a superlative case here because of your record.

**Senator Benidickson:** Does that apply to a private company, whether it is controlled by Canadians or whether in this case it is controlled by people outside Canada?

**Hon. Mr. Phillips:** There is no difference.

**Senator Benidickson:** If it is controlled outside Canada and they want to pay dividends, there is a 15 per cent withholding tax.

**Hon. Mr. Phillips:** For non-treaty ones I think it goes up to 25 per cent.

**The Acting Chairman:** Would you agree, Senator Phillips, that it is not only a penalty on thrift, but it is also a road-block to further development in Canada?

**Hon. Mr. Phillips:** Yes. That is what I mean. It is a very serious thing; it penalizes thrift.

**Senator Cook:** And it forces money out of the country.

**Hon. Mr. Phillips:** If you are going to be subjected to a withholding tax, or alternatively a 33 1/3 per cent corporate tax, it does not make any sense.

**Mr. Taylor:** You have no option but to distribute.

**The Acting Chairman:** You will go from Baffin Bay to Bantry Bay.

**Mr. Taylor:** That is right. There will be a loss to our group in this country of \$1,300,000 a year from its dividend flow. It will go either to our Government in tax, or it will just go out of the country and will not come back.

**Senator Cook:** What is the rationale of that? What is behind it?

**Hon. Mr. Phillips:** It is the philosophy against accumulation of savings without declaring dividends out. There is

merit to the conception that with moneys accumulated by way of exempt income there should be some method of getting it out within a reasonable period. Further, the philosophy behind the exemption is that public companies are under pressure of shareholders. They have a public board of directors subject to dividend pressures. The market place determines the policy of public companies. Presumably the retention of the exempt income will be related to dividends required plus corporate needs, and the shareholders will be instrumental in bringing pressure to bear on the directors to cause a distribution of dividends. Therefore, under the new bill, they said to public companies, “Keep your exempt income”. But when it came to private companies, there is no such pressure, and therefore they said there must be some way of preventing undue accumulation of wealth.

Anticipating that, we took the position in the Senate, when dealing with the White Paper, notwithstanding the views in certain quarters that we were allegedly representing vested interests, we were the only ones to take a concrete position on this—compared to that of the committee in the other place, which is supposed to be the protector of the small man—and said that if at the end of five years—we drew no distinction between public and private companies—exempt income is not declared out as a dividend, then at the end of the fifth year from the date of its receipt a penalty tax of 15 per cent should be payable by the corporation to the revenue of the country.

That 15 per cent paid by the corporation would not be a credit on any dividend subsequently declared to the shareholders; in other words, it could be an appropriation of a surplus. When a dividend was declared out of \$100 and the 15 per cent penalty was paid, the shareholders would be taxed on the \$100 and not on the \$85.

This Senate committee recommended that, and we were the only ones in the study of the bill that insisted that exempt income be taxed. What we said was that there were reasons why companies might not be able to pay out exempt income immediately; there may be indebtedness to banks or attractive investments and that type of thing, and, therefore, we said, “We will give the recipient of exempt income five years to get rid of that dividend. If the corporation does not get rid of it within five years by declaring it out to the shareholders, then the revenue of Canada will receive a windfall of 15 per cent of that undistributed income.”

Now, what have they done? We get quite the contrary. We get the public corporations still exempt and the private corporations subject to a rate of 33 1/3 per cent, refundable only if the corporation declares the dividend out.

**Senator Burchill:** Does the entire dividend have to be declared out?

**Hon. Mr. Phillips:** Yes, the entire dividend must be declared out in order to get the refund.

I believe, Mr. Taylor, you can prorate it; in other words, if you declare half of it out you get half of your 33 1/3 per cent, but you do not get your whole 33 1/3 per cent unless you pay out the whole dividend.



**Senator Gélinas:** Mr. Taylor, have you made direct recommendations to the Department of Finance?

**Mr. Taylor:** No, we have not. We were invited to re-attend here by this committee before we got that far, and we thought this was the best forum we could find.

Our suggestion for curing this is a simple one; it is not complex. In fact, we have three suggestions, one of which could work, but we do not think it is sufficiently attractive.

I would like to deal with each one, if I may, Mr. Chairman.

**The Acting Chairman:** Yes, please do.

**Mr. Taylor:** It is obvious that our problem is that we are being treated as a non-public corporation when, in fact, we have all the postures of a public corporation as far as this country is concerned. That is the real source of our difficulty. We are looking for means that would enable us, as a matter of right rather than regulation, if that is possible, to elect to be taxed as a public corporation. There are regulations proposed for companies which list on stock exchanges, but there has never been a hint of forthcoming regulations with respect to a company like ours, which at the moment, for reasons which we set out in the brief—whatever its long term intentions may be—does not list on the Toronto Stock Exchange or any other stock exchange in Canada. We suggest, in order to avoid this outflow of money from Canada, that non-resident corporations be entitled to elect to be taxed as public companies. In this sense they would lose some advantages, but, in our eyes, the opportunity to retain the dividend income in this country is worth while and we will give up the other advantages to get this one.

**Senator Cook:** What advantages would you give up?

**Mr. Taylor:** The ability to make certain capital repayments which public corporations cannot do and private corporations can do. I hesitate to venture further than that, because I find the rules governing private corporations so incredibly complex that I am sure I will make a wrong statement.

Our second suggestion would be that if the Government is concerned that if it does grant overall exemption of this type to a non-resident corporation, such an overall exemption might lead to tax abuse, then limit it to non-resident corporations of a limited size.

In paragraph 305 of our brief, at page 79, honourable senators, we suggest a simple test. This test is clearly understood in Canada because it is the same test that is in the Canada Corporations Act in order to determine whether or not a company must make its financial statements public. It would be a simple matter to say that any company which is obliged, under the provisions of the Canada Corporations Act, to make its financial statements public, is entitled to elect to be taxed as a public company under this proposed act.

**Senator Beaubien:** That sounds like a sensible solution.

**Senator Molson:** It is a small step.

**Senator Benidickson:** But those private companies that are not obliged to make public their financial statements are relatively small private companies.

**Mr. Taylor:** That is right.

**Senator Benidickson:** Would you still qualify? You spoke earlier of an investment in one property of \$300 million. I believe a company with over \$10 million . . .

**Mr. Taylor:** It would be an easy test for us; we are well above either side of the test.

The virtue, if you can call it that—I do not necessarily say it is—of putting an absolute size in as the test is that it would allow the Government, if it chose, to perpetuate the business of forcing income out of the smaller private investment companies.

We believe that one of the purposes of enacting this legislation with respect to private companies, as Mr. Phillips has said, is to force dividends out of a company—which are taxed in the company, say, at 50 per cent—to a shareholder who is so well off that he is going to be paying 60 per cent on the income he gets. This is the reason for insisting on this refundable tax on portfolio investments. If that is a virtue, and I do not say it is, it could be avoided by making the test one where we could only elect to be taxed as a public company if we had assets in excess of \$5 million and revenue over \$10 million.

**Senator Cook:** Do any of these corporations have revenue of over \$10 million?

**Mr. Taylor:** I cannot imagine there being too many of them.

**Senator Hays:** They are putting the private companies on the same basis for tax as an individual?

**Mr. Taylor:** That is their intention.

**Senator Hays:** The private individual pays his tax on this basis. It is just a matter of degree. If he has no income and he is worth \$20 million or \$30 million he is taxed on that basis. It appears to me a private company would be taxed on the same basis as an individual.

**Hon. Mr. Phillips:** That is correct.

**Mr. Taylor:** We just feel it is inappropriate to treat us as a Canadian individual citizen in terms of what we are and what we are trying to do. We should be able to elect as a matter of right and not regulation to be taxed as a public company.

**Senator Hays:** You want deferral until such time as it is realized?

**Mr. Taylor:** This cures the problem of maintaining our existing posture. We are not asking for favoured treatment with respect to other Canadian companies.

**Senator Cook:** The proposals are not economic; they would be forcing money out of the economy.

**The Acting Chairman:** As regards the background of this company, that is eminently true.

**Hon. Mr. Phillips:** Senator Hays put his finger on it. There is a fundamental question of policy as to whether a distinction should be drawn between private companies, who can get exempt income, and individuals, who are immediately subject to a tax rate. The answer is related to the higher issue of economics and expansion, and whether it is desirable to build up within reason a legitimate amount of investment pool.

**Senator Hays:** Reserve money.

**Hon. Mr. Phillips:** Reserve money for investment. If an individual gets it, one of the big arguments is that even though he is paying his tax thereon the rest is purchasing power and is lost; the average individual does not save it; probably he will buy a gift for his wife or do something, and it peters out. Whereas, if you get it into pools of capital in corporate private companies, it is available. Obviously that can be done; all you do is make the rich richer by having a pool.

**Senator Hays:** Accumulation.

**Hon. Mr. Phillips:** Our idea in the Senate was that it must go out. If it does not go out, then, by heavens, the revenue is entitled to a penalty on windfall income. We suggested 15 per cent. It could even be more than 15 per cent after a reasonable period; even 20 or 25 per cent—so as to avoid the social abuse of undue accumulation of capital in private companies.

**Senator Hays:** He might redirect his whole operation to a different form of investment as well, saying, "I am now looking for depreciation, and that sort of thing, to invest those moneys that are not used." Would that be right?

**Mr. Taylor:** It is a possibility.

**Senator Cook:** Would not this be a better alternative, a better idea?

**Hon. Mr. Phillips:** The difficulty with this idea is that, first of all, Mr. Taylor's point covers relief for the bigger companies and not for the small ones. Secondly, it would give relief to non-resident shareholders of this type of company rather than to Canadian shareholders. It is an alternative approach. For a company with such a good working record as this company, it seems to be desirable. I think at this stage we have covered this point. I personally think it is one of the most important items in the bill, which deserves the attention of this committee.

**Senator Beaubien:** Would it be possible to have a special act of Parliament to make this company a public company?

**Hon. Mr. Phillips:** You do not have to do that. Mr. Taylor gave reasons why the company does not wish to go public. There are all sorts of reasons.

**The Acting Chairman:** They are in the brief too.

**Hon. Mr. Phillips:** Today a company such as Mr. Taylor's company could go ahead and create a preferred stock if it has not got one; it could sell it to the public between now and December 31 and, bingo, you are a public company.

**The Acting Chairman:** With all the advantages.

**Hon. Mr. Phillips:** You get your exempt income. All he has to do is to create a class of stock.

**Senator Hays:** Pay your lawyer and go to Miami!

**Hon. Mr. Phillips:** Get it sufficiently attractive as to rate. I am not counsel for the company, and Mr. Taylor and his clients must have reasons why they do not want to go public. But it does not mitigate or reduce the merits of the case simply to say, "Why don't you go public?"

**Senator Beaubien:** They may have to.

**Hon. Mr. Phillips:** If they do not get relief they probably will.

**Mr. Taylor:** May I speak on this point? Even if we had a very good bland stock market and our pre-investment in Hudson Bay had not had this very long strike, and copper prices were up, so that Anglo American itself would find it a very good time to go public, sooner or later this will happen. Even if that happens, you still do not solve the problem for a non-resident investor in terms of re-investment. If you look at the chart at the back of our brief, our shareholders in An-Can itself are to a certain extent private Canadian companies. We have mentioned Interlink Investments as a specific example. This is a Canadian company incorporated in this country. It has \$27 million worth of net assets at the moment. It cannot elect to be taxed as a public company; this company will never be listed. If Interlink is not allowed to elect to be treated as a public company—I do not know that is much of a favour, but that is what they would like—that company's net assets will be repatriated, and there is a substantial loss to the economy, \$27 million worth of assets, and the presence of those in Canada as opposed to outside of Canada is gone. There is just no economic choice here; you either pay the 33 1/3 per cent tax or say, "We will take it abroad. We will only pay 15 per cent." Who can expect a non-resident to suffer that?

**Senator Cook:** Maybe have a combination of both, two tests.

**Hon. Mr. Phillips:** I think, Mr. Chairman, we are thoroughly seized of this aspect of the brief.

**Senator Hays:** We get the point.

**Mr. Taylor:** It is our cardinal point. The others, as I say, we are concerned about, such as the treatment of resource industries, which you have heard about from other people; we are equally concerned.

**The Acting Chairman:** The material in your brief will be very carefully screened.

**Hon. Mr. Phillips:** Might I ask Mr. Taylor to repeat the three alternatives, the three suggestions? I think you jumped from one to the other, but I do not think you gave them in seriatim order. Which do you like most? What is the order?

**The Acting Chairman:** Give them in the order of priority in which you prefer them.



**Mr. Taylor:** The first priority is to allow a non-resident company, which meets the tests presently set out in the Canada Corporations Act, to elect to be treated as a public company.

**The Acting Chairman:** For the purposes of the Income Tax Act.

**Mr. Taylor:** For the purposes of the Income Tax Act. That would let a company which is large in its own right, or large because of its affiliates, have that treatment.

The second—which is a very much simpler approach but not, I think, necessarily as desirable, because it might lend itself to abuse, or the fear of abuse by Canadians—is just to let any non-resident corporation elect to be treated and to be taxed as a public company.

**Senator Hays:** Would you say that again?

**Mr. Taylor:** Our first test is the one of absolute size, so that you are dealing only with substantial investors. The second one is to say that any non-resident corporation, even if it has only \$100 in it, can take this treatment if it wants to. It has been suggested to us, when discussing this concept, that it might lend itself to some form of tax abuse. I do not quite understand how, but if there is that concern, then I am suggesting the first alternative, that you must have a company of a certain size to get this right to elect.

Our third suggestion is to recognize that there has been in this company, and a great many others, a very substantial investment made in this country under the old tax rules, and we should say, "Fine, we will have two pools of investment. We will have pre-1972 investments and post-1972 investments." The non-resident who comes in tomorrow knows that he gets the new treatment, and if he chooses to suffer that it is his affair. On the investments presently in the country, you would account for them separately and say that dividends from existing investments are entitled to this exempt status.

**Hon. Mr. Phillips:** Including replacement if you sold?

**Mr. Taylor:** We have tried to be modest in our proposal. We thought it should be the dividends on the stocks, if you like, that we now hold.

**Hon. Mr. Phillips:** The freeze.

**Mr. Taylor:** The freeze. You look at those and say that if you had something you could convert into those stocks, convertible bonds, they would be included if you now own those bonds or options. All those rights would be included. If Hudson's Bay amalgamated with another company, for instance, the securities that came out on that amalgamation would continue to be given this treatment. We do not think this is attractive, because we think it is complex and the act is far too complex as it is.

**Hon. Mr. Phillips:** Mr. Taylor, I think that if I were a minister of the Crown I would eliminate No. 2 because it is a privilege for non-residents as against Canadians. It would not be a particularly attractive suggestion, because we would be putting the non-resident in a somewhat privileged position. I think we are down realistically to No. 1,

under the Canada Corporations Act, or No. 3, a freeze of the present assets and their replacement.

**Senator Carter:** Do you not think that No. 3 is politically more attractive? It is more complex, but there are two disadvantages in No. 2.

**Hon. Mr. Phillips:** I think No. 3 is obviously politically the least troublesome because it is not retroactive in its effects, whereas No. 1 might be regarded as something in favour of bigness, in terms of \$10 million of gross revenue and \$5 million of assets under the Canada Corporations Act. However, we understand it, sir.

**Senator Molson:** By law, you have made some requirements of these companies, because of their bigness. It could be argued—I do not know how well—that all you are doing now is carrying that a small step further, because, as the Canada Corporations Act demands, you are giving them similar treatment under the Income Tax Act.

**Hon. Mr. Phillips:** One might say that although No. 1 has certain limitations, they can elect and even reduce, for purposes of the exemption under No. 1, gross revenue and the amount of assets, so that bigness does not have the attraction of the exemption. But at least No. 1 and No. 3 Mr. Chairman, are worthy of careful study.

I think, Mr. Chairman and honourable senators, you would want us to tell Mr. Taylor and Mr. Risby that the whole question of depletion and the treating of financial resource industries has been exhaustive studied. Do you agree? So you have lost nothing by not dealing with it now.

**Senator Benidickson:** In referring to non-resident ownership, I notice on the chart a reference to something called investors groups. Is this what we know as the Winnipeg based investors group?

**Mr. Taylor:** That is correct, sir.

**Senator Benidickson:** From the chart, approximately 10 per cent is referred to. Does that mean that the investors group owns 10 per cent of Anglo American, or vice versa?

**Mr. Taylor:** They own 10 per cent of Anglo American.

**Senator Benidickson:** That is a distinct Canadian organization that has a fairly substantial interest in Anglo American. I probably think of that one because it is near where I come from.

**Mr. Taylor:** They have been investors for several years.

**The Acting Chairman:** Are there any other questions? Have you any further points you would like to make, Mr. Taylor?

**Mr. Taylor:** We obviously are, and must be, concerned about the intention to tax non-residents in certain areas which are not now taxed, which are not provided for by the treaties. I think it will be very difficult to have these included in our treaties.

**Hon. Mr. Phillips:** The whole question of treatment of non-residents is expected to be the subject of a study by



this committee. We are seized of all, or a good many, of the difficulties.

**Mr. Taylor:** The one thing that is perhaps peculiar to this group is that it has the habit of sending its executives here and to other countries on limited tours, three-year or five-year tours, or something of that sort. The Canadian proposal to tax someone who is here for that limited period of time, on gains abroad which are not realized, we find most awkward. It is just the sort of thing that it is almost impossible to police. There are obvious opportunities for evasion.

**Hon. Mr. Phillips:** Are you discussing the exist provisions?

**Mr. Taylor:** Yes.

**Hon. Mr. Phillips:** I think that is worthwhile, if the Chair and honourable senators would take five minutes on that. Let us take that up and take five minutes on it.

**Mr. Taylor:** It is page 18, paragraph 7. I think the points we want to make are the points you have in front of you. It could create incredible problems about enforcement, because it lends itself to a man deciding he is never going to tell this country what his foreign assets are when he comes here. In any event, if he is honest and says there is an unrealized gain of \$5 million or \$1 million on his investments in South Africa or England, and he pays the tax here, he gets no help at home. It is not going to be recognized in most of these jurisdictions for a foreign tax credit. So you are really asking the man to become a saint in his own lifetime.

**The Acting Chairman:** Or a criminal.

**Mr. Taylor:** Yes. He has incredible opportunities.

**The Acting Chairman:** What about the capital gains on Canadian investments that he would make while he was in Canada?

**Mr. Taylor:** We are not opposing that sort of thing. We think that if a man is here and is earning income here, he should pay tax here just as any other individual.

**Hon. Mr. Phillips:** He is a resident.

**Mr. Taylor:** We just say that we should perhaps ignore this, because you cannot catch what happens to his assets abroad. Let us forget about those and look to what happens to him while he is in this economy. If he makes capital gains while he is here, then tax him in the same way as you tax any other Canadian resident.

**Hon. Mr. Phillips:** Would you approach this from the point of view of citizenship?

**Mr. Taylor:** I do not think that is possible. We would take the residence approach.

**Hon. Mr. Phillips:** The suggestion is that if you have a representative or official of an international company, who retains his citizenship of another country, say the U.K., and is only here for, say, five years and he is technically a resident of Canada but he clearly retains his characteristic of a transient—

**Senator Beaubien:** As an American does?

**Hon. Mr. Phillips:** —that in those cases the exist rule should not apply, as Mr. Taylor says in the brief:

7.03. We can appreciate the Government's concern with respect to people who have enjoyed the economic benefits of Canadian residence and then removed their assets tax free from Canada.

We touched on that, and not too lightly, last evening, when dealing with our report.

However, if an individual is a citizen of a foreign state—

That is why I picked it up on Senator Connolly's point.

—and is only resident in Canada for a short period of time, it is unrealistic to tax him on accrued gains on foreign property, where these relate to property owned by him prior to entry into Canada.

**The Acting Chairman:** Mr. Taylor, would it be possible for you to give us a form of words which might constitute an amendment? It occurs to me that this one might well be the subject matter of a draft of a short amendment. I do not think it would be a complicated one. I do not think the other would be complicated, either. If you would give us both, we would be grateful.

**Senator Hays:** Would they not deal with the fact that this is temporary in the regulation? Would that not be dealt with there?

**Senator Benidickson:** No one likes to invest \$100 million based on a change in the regulation.

**The Acting Chairman:** We do not want to see it in the regulations.

**Senator Hays:** Would that not be the way the Government would manage it?

**Mr. Taylor:** Not necessarily.

**Hon. Mr. Phillips:** I do not think so. Are you speaking of the exit problem or are you speaking of the private corporations? I think the exit problem goes to the hard core of the matter. It is a substantive matter, senator.

**The Acting Chairman:** It is dealt with in the act now.

**Hon. Mr. Phillips:** As you know, senator, we have made some recommendations.

**Senator Cook:** This is only a small point, Mr. Chairman, but should it not say where these relate to property owned by him prior to entry into Canada? He might get foreign property after he comes into Canada.

**Mr. Taylor:** Again we were trying to take the modest approach to this. If, for example, senator, he buys property with his Canadian-earned income . . .

**Senator Cook:** But he might be left property.

**Mr. Taylor:** Well, I think something acquired by gift or bequest should be exempted.

**Senator Cook:** It is only a small point.

**Hon. Mr. Phillips:** I would suggest, Mr. Chairman, that we ask Mr. Taylor to prepared an amendment on the exit

problem, and also one with respect to private corporations. It is purely a personal suggestion, but I think you should deal with election under the Corporations Act, and you alternative No. 3 and leave out No. 2.

**Senator Carter:** Does the Income Tax Act classify taxpayers other than as residents and non-residents? Do they have temporary residents and that sort of thing?

**Hon. Mr. Phillips:** No. Either you are a resident or you are not a resident.

**Senator Carter:** Is there any merit in creating a third category, then?

**Hon. Mr. Phillips:** Well, this is a suggested amendment for those who are here who are citizens of another country

and are here for a period not exceeding five years. The suggestion in respect of their non-resident capital assets is that there would be no deemed-to-be capital gain on departure. The direct answer to your question is that you are either a resident or you are not.

**The Acting Chairman:** It is something very peculiar to the Canadian economy because of not only the need for foreign capital but the need for foreign technology, know-how, skills and that sort of thing.

Are there any further questions, honourable senators? I thank both witnesses very much indeed.

The committee adjourned.







THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 49

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WEDNESDAY, NOVEMBER 10, 1971

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Twelfth Proceedings on:

“Summary of 1971 Tax Reform Legislation”

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(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)

## Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

November 10, 1971  
(62)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to further examine:

“Summary of 1971 Tax Reform Legislation”

*Present:* The Honourable Senators Hayden (*Chairman*), Connolly (*Ottawa West*) (*Acting Chairman*), Beaubien, Blois, Carter, Cook, Everett, Flynn, Gélinas, Isnor, Macnaughton, Martin, Molson and Walker—(14).

The Chairman being occupied with other business of this Committee and upon motion duly put, it was Resolved that the Honourable Senator Connolly (*Ottawa West*) be elected Acting Chairman.

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel.

## WITNESSES:

### *Institute of Profit Sharing:*

Mr. R. A. Campbell, Chairman, Director and Vice-Chairman, Wheelabrator Corporation of Canada Ltd., and President, Metal Laundry Ltd.;

Mr. H. M. Cunningham, Treasurer; Assistant Treasurer, Canada Packers Ltd.;

Mr. B. A. Diekman, Executive Director;

Mr. H. A. King, Vice-Chairman; Vice-President, Personnel, Simpsons-Sears Ltd.;

Mr. N. P. Ovenden, Director-Treasurer, Procter & Gamble Company of Canada Ltd.;

Mr. M. G. Welch, Tax Supervisor, Allstate Insurance Company of Canada;

Mr. Edward Hall, Simpsons Limited;

Mr. T. van Zuiden, Dominion Foundries and Steel Limited.

### *Insurance Bureau of Canada:*

Mr. H. Norman Hanly, Chairman, Federal Legislation and Liaison Committee and President, Dominion of Canada General Insurance Co.;

Mr. David H. Atkins, Consultant and Partner, MacDonald, Currie & Co.;

Mr. E. H. S. Piper, Q.C., General Counsel.

At 11:00 a.m. the Chairman having arrived, the Honourable Senator Connolly (*Ottawa West*) took his seat among the Members.

### *The Royal Architectural Institute of Canada:*

Mr. Jean-Louis Lalonde, President, F.R.A.I.C.:

Mr. C. F. T. Rounthwaite, Vice-President, F.R.A.I.C.:

Mr. Wilson A. Salter, Director of Professional Services, F.R.A.I.C.:

Mr. Keith Sandford, Special Consultant.

### *The Teachers' Insurance and Annuity Association of America:*

Mr. John T. DesBrisay, Q.C., Counsel;

Mr. Wilfred Wilson, General Counsel.

At 12:30 p.m. the Committee adjourned to the call of the Chairman.

## ATTEST:

Frank A. Jackson,  
*Clerk of the Committee.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, November 10, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, Senator Hayden will not be here for about an hour. We are going to hear four presentations this morning: the Institute of Profit Sharing; the Insurance Bureau of Canada; The Royal Architectural Institute of Canada; and The Teachers' Insurance and Annuity Association of America.

Is it your wish, honourable senators, to take these representations in the order in which I have read them?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Then we will call first on the Institute of Profit Sharing. Mr. Campbell, would you like to come forward with your colleagues?

**Mr. R. A. Campbell, Chairman, Institute of Profit Sharing:** Mr. Chairman and honourable senators, on behalf of the members I would first like to thank you for allowing us to appear before you today, and I should like to introduce to you my colleagues. In alphabetical order, they are: Mr. H. M. Cunningham, Treasurer, from Canada Packers; Mr. E. Hall of Simpsons Limited; Mr. H. A. King of Simpsons-Sears Ltd.; Mr. N. P. Ovenden of Procter & Gamble; Mr. M. G. Welch of Allstate Insurance; Mr. T. van Zuiden of Dominion Foundries and Steel Limited; and last but not least, our President and Executive Director, Mr. B. A. Diekman.

All these gentlemen are here with me to try to answer any questions you may care to raise in connection with the brief we have submitted to you. None of them is here on behalf of his own company. We are here to represent the well over 50,000 employees covered by the profit-sharing plans of our 70-odd members. In last Friday's *Globe and Mail* I saw that Senator Hayden, as chairman of your committee, had already presented preliminary recommendations which, if accepted, would have the effect of eliminating some of the serious inequities in connection with employees' profit-sharing plans which we brought to your attention. So serious were these inequities that we simply did not believe them to be intentional, and we said so in the brief before you. On behalf of all our members who operate profit-sharing plans, we are indeed grateful for your recommendations.

**The Acting Chairman:** Of course, you are aware that our recommendation is no guarantee of success?

**Mr. Campbell:** We realize that, but we do appreciate the fact that you have taken such a great interest in our cause, because we think it is a very good and worthy one.

There are two items outstanding at this time regarding employees' profit sharing plans. Lump sum averaging should continue to be available to members of employee profit sharing plans. As Bill C-259 now stands, section 36 disappears and there is nothing adequate to take its place. The second point is only a technical variation on a recommendation that Senator Hayden has already made, and that is that capital gains should be taxed as capital gains. If a member of the employees' profit sharing fund withdraws his holdings in cash, the portion of that cash that represents unrealized capital gains of the fund should be taxed as capital gains in the hands of the employees.

**The Acting Chairman:** At the time of his retirement.

**Mr. Campbell:** Let us deal now with deferred profit sharing plans. We contend that if the proposed tax reform bill goes through without a change, it will, for all intents and purposes, kill deferred profit sharing plans. The Government is not making deferred profit sharing plans illegal; but it proposes to penalize a member of a deferred profit sharing plan with heavy taxes and the member has virtually no choice but to take his benefit in the form of an annuity. There is nothing basically wrong with an annuity, but by far the majority of employees who are members of a deferred profit sharing plan have traditionally preferred to take their benefits in a lump sum. The desires, hopes and aspirations of thousands of employee members have been built up over the years on the expectation that they would receive a lump sum on retirement. At this moment a member of a deferred profit sharing plan who takes his benefit in a lump sum can take advantage of a tax rate averaging facility under the existing section 36. Under the proposed tax reform that facility will be taken away from him and it will be replaced by an averaging system that has but a minimum effect. Section 36 becomes the cornerstone of a perfectly legitimate and widely beneficial activity of an employer sharing with his employees the profits which their skill, enthusiasm and labour have produced. Remove that cornerstone and the whole structure comes tumbling down. Is it not a specious breaking of faith with the public to permit a perfectly legitimate practice to flourish and expand for many years and then, suddenly, for no reason that we have been able to ascertain, abrogate the law and so destroy the whole foundation of deferred profit sharing?

Mr. Chairman, as one who has practised profit sharing for many years, I could talk endlessly on this subject, but I will not take up your valuable time by doing so. Let me conclude by saying that profit sharing does not only benefit the small employee who, without it, might never have a chance to build capital of his own which could make him secure and independent in his retirement years. Not only that, but having some capital behind him he remains a far greater tax revenue producer than if he were forced to live on a fixed annuity.

**The Acting Chairman:** Would you like to explain that point briefly?

**Mr. Campbell:** For example, if you were on a fixed annuity and you worked hard all your life, as many labour people have to, to pay off a mortgage on their little house, or to put a boy or girl through college, this takes just about everything they have accumulated in their lifetime. If they need an additional sum to take a trip to see Aunt Minnie in Great Britain, or to pay off their mortgage, or to send a third child to college, how are they going to do this on a fixed annuity pension? It is most difficult.

**The Acting Chairman:** We have had evidence on earlier occasions that very often these lump sum payments are re-invested in businesses by people who are able to run a new business after retiring from their original business.

**Mr. Campbell:** Thank you senator, I was going to come to that. This is true. I think you will agree that at present the norm is to retire at 60 or even 55. People with great amounts of capital set up thriving businesses and pay great corporation taxes to our government. In our own company we have a case where a young engineer started with us after graduating, around the age of 22, and in 15 or 20 years he has a large sum of capital. The only way he can get this capital out is to leave the company. They get this lovely little lump sum of \$25,000 or \$35,000 and they start a business which is relatively adequately financed and not completely dependent on bank loans. As you know, the bank interest rates have been rather high.

**Senator Macnaughton:** Would \$20,000 to \$35,000 be an average amount on retirement?

**Mr. Campbell:** We began our plan in Canada in 1961; and in 1970 our average employee, with a \$500 maximum contribution, would have around \$24,000 to \$25,000 to his credit. This is in 10 years.

**Senator Isnor:** What proportion of that amount was paid by the company?

**Mr. Campbell:** As I have said, the maximum amount paid by the employee was \$500 a year, so for 10 years it would be \$5,000 total. The company's contribution would be \$15,000.

**The Acting Chairman:** That is taxed on the employee's hands, as it came into his hands?

**Mr. Campbell:** His own contribution, yes. He has paid tax on the \$5,000; but the company's contribution, which varies as you well know, is limited to \$1,500 per employee. This will be changed under the new act. He pays tax on this amount when he takes it out.

**The Acting Chairman:** Under section 36?

**Mr. Campbell:** Yes.

**The Acting Chairman:** I would like to ask one very general question. I am sure honourable senators have other questions to ask, but you have said that in your organization you have 70 member companies with 50,000 employees who are entitled to benefit. Would you like to hazard a guess as to how many other companies and their employees might be involved in similar deferred profit sharing plans that are not members of your organization?

**Mr. Campbell:** I certainly would, because part of my job as Chairman of the Institute is to run down these figures. I would say there are in excess of 100,000 working employees directly involved in profit sharing plans. As you know, the plans vary but they are basically the same. What so many people do not realize is that profit sharing plans are not a substitute for poor wages; they are over and above the normal going rate of wages.

**Senator Isnor:** Mr. Campbell, do all of the colleagues who are with you today use the same profit sharing plan?

**Mr. Campbell:** No, senator, the plans vary. In principle they are similar, but there are many different types of profit sharing plan, some being combined with pension, some being cash, as you know. I would like to have Mr. Welch answer that question because he is one of the tax experts, of Mr. King.

**Mr. M. G. Welch, Tax Supervisor, Allstate Insurance Company of Canada:** There is one point which was brought up by Senator Isnor regarding whether these were executive or non-executive employees.

**Senator Isnor:** No, I made the observation that this would apply mostly to executives because of the large amount involved, as mentioned by Mr. Campbell.

**Mr. Welch:** We have a case of a girl in Vancouver who works in our service and claims department. She is a service representative; she is not a manager or supervisor. She has been in the plan for 15 years and has contributed \$3,600. The company has contributed \$6,600. She now has to her credit \$22,000 after 15 years.

**Senator Isnor:** That is an exceptional case is it not?

**Mr. Campbell:** Oh no, it is not an exceptional case.

**Mr. Welch:** I have a whole list before me. If she stays with the plan another 15 years she will have at least four times that amount, and probably more. She will have at least \$88,000 and probably \$60,000 will be capital gain. She would be taxed on \$30,000 capital gains. We feel that the retention of the lump sum averaging principle is so important. If this person wishes to go into a business or wishes to use it for some other purpose on retirement, with the lump sum averaging principle removed it will be impossible for her to do this. This is very significant to people right down the line. This particular person makes around \$7,200 a year. She is not in the high income bracket, and she is not an exception.

**Mr. T. van Zuiden, Dominion Foundries and Steel Limited:** Mr. Chairman, may I make a comment? I think we should



understand that in all of the plans that we have been talking about this applies equally to all employees in all companies.

**Mr. Campbell:** Right from the chairman of the board to the men who sweep out the back shop. This plan is for all employees; it is underlined four times. The only difference is the amount contributed. If one cannot afford to contribute \$100 or the maximum of \$500, he still shares in the profits.

**The Acting Chairman:** Would you care to comment on what you think might be the reason for the requirement in the bill that an annuity be purchased, rather than a lump sum payment taken?

**Mr. H. A. King, Vice-Chairman, Institute of Profit Sharing:** We have had many discussions with representatives of the Department of Finance regarding this forcing employees literally, by high taxation on a lump sum, to buy annuities. Although they have never actually said this in so many words, one reason is that it might be more socially acceptable and would ensure that the individual at the age of 65 would not squander the lump sum.

**The Acting Chairman:** Did the officials of the department tell you that this was their reason?

**Mr. King:** No one actually said that. When asked the reason for doing this, no one ever says that they are afraid that a lump sum in the hands of a retiring employee will be spent in a prodigal way. However, having attempted to ascertain the reason, we can only conclude by what they do not say that that must be it.

In our particular company, Simpsons-Sears, approximately 99 per cent of our employees withdraw the lump sum. None has ever, to my knowledge, become a money waster or a welfare burden in the community.

**Senator Isnor:** 99 per cent are individuals of that type?

**Mr. King:** Most of them take their shares of the company and keep that as an investment. That will represent approximately half of what they have. In that way they continue their identification with the company and have a hedge against inflation. Most of our employees have been shareholders and have held their shares until retirement.

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** I am sure you will appreciate from the interim report, which you saw last week, that this committee has given serious consideration to this whole problem.

**Mr. King:** Yes.

**Hon. Mr. Phillips:** As I understand the situation, generally you are happy with our suggested treatment with respect to capital gains. That is more particularly so in the case of companies in which part of the deferred profit is reflected in the shares of the company employer. Am I correct in that?

**Mr. Campbell:** We think that is very equitable.

**Hon. Mr. Phillips:** So the committee need not be seized further with that particular aspect.

**Mr. Campbell:** That is correct.

**Hon. Mr. Phillips:** Are we really down to the point where this committee did not go as far as suggested in the Simpsons-Sears brief? I forget whether Allstate took the same position, but it was the transposition of the current section 36 into the new bill. Without that transposition, because the committee did not go that far, you still feel that it will be difficult to live under the new bill, on the assumption that our representations are reflected in amendment?

**Mr. Campbell:** Yes, we must have this averaging because otherwise, particularly in deferred profit-sharing plans, the whole system collapses.

**The Acting Chairman:** Would you point out to the committee the averaging in section 36 which is most helpful to you?

**Mr. Campbell:** I think it is fair to everyone. The last three years prior to retirement is averaged, which in most cases is the most highly productive and highest paid period. There might be the odd exception, but most people then are at their highest remuneration level.

**Hon. Mr. Phillips:** Honourable senators will find that at page 2 of the brief, under the heading "Proposed Section 147, 'Deferred Profit-Sharing plans'". The reference to section 36, saying that it is crucial, which is basically your case, appears in the second paragraph on page 3.

**The Acting Chairman:** Mr. Phillips, would you care simply to put before the committee the averaging permitted under section 36, and the proposed general averaging formula which the brief indicates has only a minimal effect?

**Hon. Mr. Phillips:** I suggest that the witnesses draw the distinction based upon a certain defined income.

**Mr. Campbell:** Would you please tell us what you wish us to discuss?

**The Acting Chairman:** The committee might be interested to know the difference between the averaging permitted by section 36 of the present act and the proposed general averaging formula provided in the bill, which your brief describes as having only a minimal effect.

**Mr. van Zuiden:** The general averaging, as provided in the bill, gives the member retiring from our Dofasco plant probably not more than a 10 per cent reduction from the tax that he would pay if he were taking his withdrawal as a lump sum and paying the marginal rate. It is actually a useless provision in so far as it applies to our plant and possibly to some of the others.

**The Acting Chairman:** What is the formula for general averaging which the bill provides and to which you object?

**Mr. van Zuiden:** I do not object to the formula, but I think it has more application for those with a very high income, such as actors, in a short span of years.

**Mr. Welch:** It is more important to deferred profit-sharing plans, but it is also important to employee profit-sharing plans. Almost every member who stays in for 30 years

will be faced with the problem of having a large sum of money taxed at a given time.

**The Acting Chairman:** At marginal rates, or a little better.

**Mr. Welch:** Yes. We are considering two types of averaging. One is the old section 36, which is lump sum averaging. I do not consider that this has been carried forward into the new legislation at all.

General averaging is something entirely different, with a different purpose. Lump sum averaging under section 36 was for specific cases of employees or individual taxpayers receiving large sums of money at the end of their working life.

**Hon. Mr. Phillips:** I know the answer and the definition, but I think it should come from the witnesses themselves. We are all clear that under section 36 the last three years prior to the profit-sharing plan coming into effect are taken. I believe the Chairman desires further clarification for the senators of the situation involving the last three years with, presumably, the highest compensation, which is different from ordinary averaging, as you say, such as that for actors, athletes and others.

**Mr. Welch:** It is not the average of his prior marginal rates. It is the average of the total tax paid, as related to his total income. Some people in the 35 or 40 per cent marginal tax rate bracket would end up with perhaps a 20 per cent average, when comparing his total tax paid to his total income before deductions. This is the way it is done equitably. He is being taxed on the large lump sum in relation to total taxes paid, and total income over three years.

**The Acting Chairman:** That is under section 36.

**Mr. Welch:** Yes. The general averaging is for the purpose of smoothing out incomes of all taxpayers, mass application, and is in no way comparable to lump sum averaging under section 36.

Basically, an over-simplification of how it works is that if in a given year you have an income which is 10 per cent higher than the previous year and 20 per cent higher than the last four years, that income is considered to be your base. On that base you pay at your normal marginal rate. Let us assume that somebody receives \$8,000, \$9,000, \$10,000 or \$11,000 over four years, and in the last year he gets \$30,000. We take the average—

**The Acting Chairman:** The \$30,000 is paid out of the deferred profit-sharing plan?

**Hon. Mr. Phillips:** No. We are talking about general averaging, as distinct from section 36.

**The Acting Chairman:** Mr. Welch, for the record, we want to be clear on what you are saying.

**Mr. Welch:** Forget the figures I have just mentioned. Take it that in the fifth year he has an income which is 10 per cent higher than his prior year and 20 per cent higher than his average for the past four years. The higher of those two amounts is taken as his base, and he pays normal income tax on that. The figure may reach the 40

per cent bracket. Anything beyond that base goes up from his marginal rate, but in steps that are made five times larger. In other words, if, from his base, he was in a 37 per cent bracket, and he receives another \$2,000, he would then be in the 39 per cent bracket. It takes \$10,000 to reach the 39 per cent bracket. Basically, he is building on his marginal rate. There is no real averaging of that lump sum. It is averaging of income over the years.

**Hon. Mr. Phillips:** It is similar to situations where actors may be unemployed for a number of years and then strike a hit. They receive a contract, and that contract may include a percentage of the profits. That is the type of general averaging we are talking about.

**Mr. Edward Hall, Simpsons Limited:** You pay tax on marginal rates up to the threshold. The problem is much more equitable for the lower income employee getting a lump sum, because he is taxed at the marginal rate up to the threshold, before the averaging begins. Part of the problem is that it hits the lower-income employee much more than the higher-income employee.

**Hon. Mr. Phillips:** Would you not agree that in cases where your profit-sharing plan suffers from the acquisition of shares of the employer company, your averaging problem under section 36, which has been taken away from you, is less serious than in the case of a company which does not have that type of return on a deferred profit-sharing plan? Roughly speaking, do we have more profit-sharing plans which include share-acquisition in the employer company than those who do not? We may probably have been affected by the presentation of Simpsons-Sears, which emphasized the acquisition of shares in the company.

**Mr. King:** I am from Simpsons-Sears. I would say that so far as we are concerned section 36 could disappear if what the committee has recommended is accepted.

**Mr. Campbell:** I would say that 65 per cent do not have shares in our companies.

**Hon. Mr. Phillips:** I do not think the committee was seized of the vital importance of the transposition of section 36 in the new act. The question of lump sum averaging was considered, but the capital gain aspect and roll-over provision received more attention, as you saw from the committee's recommendation. You have used rather strong language in your brief. You say that it is crucial that section 36 be retained in its present form.

**Mr. Campbell:** I would say so.

**Hon. Mr. Phillips:** Is there any suggestion of a modified form which would involve less than that which section 36 gives, and more than that which has been taken away? I believe in compromise. If you ask for a return of something which has been taken away, you present a good case in asking for its return, but the likelihood is that you will not get it. Has any one of you given consideration to a mid-way point rather than the transposition of section 36?

**Mr. van Zuiden:** In our case there is very little that you can gain from having the capital gains treatment on withdrawals, and it is vital for our plan that section 36 be retained, if at all possible.



On the question of compromise, I believe, as Mr. King pointed out, that there has been no statement from Government officials on the philosophy behind the legislation. I assume that they would take the profit-sharing plans right out of the picture. I do not think there could be a compromise as a substitute for what appears to us to be a philosophy against lump sum payment.

**Hon. Mr. Phillips:** Philosophy is one thing; but you are taking the position that there is no alternative to section 36. That is an unusual conclusion, because there is always room for compromise.

**Mr. van Zuiden:** The tax paid under the section 36 treatment is roughly equivalent to that which would be levied if a retired person took out an annuity.

**The Acting Chairman:** You are saying that the tax to be collected under section 36, if it remains in the bill, would be approximately the same as that which would result from the purchase of an annuity and the annuity were taxed?

**Mr. King:** It depends on the individual's personal income. It is true to a degree, but generally speaking the tax paid under section 36 will exceed that paid by anyone using that amount of money to purchase an annuity.

**Mr. Campbell:** Most of these plans are for the common man, the little people, for whom we, as an institute, are here.

**The Acting Chairman:** The annuity requirement, then, has the effect of reducing the tax revenue.

**Mr. King:** Yes, and I would think by a great amount.

**Senator Beaubien:** Mr. Chairman, could we have some examples? It is quite difficult to follow.

**Hon. Mr. Phillips:** First of all, honourable senators, if you turn to page 5 of the brief you will find the highlights of the subject matter we were discussing a few moments ago. The chairman asked me to deal with this, but I think it should be left to those interested to deal with. It concerns the approach of lump-sum averaging and general averaging, and it explains that general averaging is for mass application to "smooth out" year-to-year irregularities in ordinary income.

**The Acting Chairman:** As might be the case with an actor.

**Hon. Mr. Phillips:** Yes, or sometimes even a salesman on commission who gets a bonanza order. In such cases as these you get peaks and valleys, and the aim is to reach something of a plateau.

**The Acting Chairman:** The farmers and fishermen have this too.

**Hon. Mr. Phillips:** You get a plateau instead of a mountain peak or a valley.

We are dealing with an entirely different point here, and that is in respect of a deferred profit given, presumably, at the time of retirement, with the right to average it out having regard to the last three years' compensation. That

is roughly the difference. We are told there is no alternative to section 36, and the Crown thus far in the new bill has simply deleted section 36.

**Senator Cook:** Mr. Chairman, I would like to get some clarification with respect to the social benefits. If an employee retires and he receives, say, \$25,000 or \$30,000 in a lump sum and he dies within a year, can what is left of that amount be passed on to his family? What happens if he is forced to purchase an annuity in the amount of \$25,000 or \$30,000 and then dies within a year? Does it cease, or does his estate get a return of capital?

**Mr. Campbell:** He would get some return of capital.

Our plan is only ten years old, but our American company's plan has been in force since 1947. In our own Canadian company, and our employees are very high earners, just about every employee has taken out only 60 to 65 per cent of any lump sum payment and put it in an annuity so that they would know they would have something.

**The Acting Chairman:** And I suppose a good deal would depend, Senator Cook, on the provisions of the annuity contract.

**Mr. B. A. Diekman, Executive Director, Institute of Profit Sharing:** It depends on how the annuity is elected. If the annuity dies with the beneficiary, then, that will be the end of it. But, for instance, my own annuity does not die with me; it continues to my wife if she survives me.

**Senator Cook:** But it is common in an annuity contract that there is some guarantee of a return of the sum, is it not?

**Mr. Campbell:** So many equal payments.

**The Acting Chairman:** Or for life, or for a term of years, so that if there are survivors the survivors will benefit. In the case of a person, for example, who is a widower or a bachelor, let us say, perhaps he will have it for a term of years and if he does not survive, then his estate is entitled to a certain benefit.

**Hon. Mr. Phillips:** Mr. Chairman, may I put a question? Is there a record in the institute of the number of employees who choose lump sum payments as distinguished from those who choose annuities?

**Mr. Campbell:** Not in the institute. We were a branch of the American Council of Profit-Sharing Industries until two years ago, and, as you well know, the tax laws are so vastly different in the United States that we chose to form our own group. We are still closely connected with our American company and they help us a great deal, but we do not have such figures. We do have some figures from our own company and, as I said, the plan is only ten years old. We have moved our plant from Toronto to Oakville, and we have lost employees, and virtually all elected the lump sum payment.

**The Acting Chairman:** That is in your company only?

**Mr. Campbell:** Yes.



**Mr. King:** In the case of the Robert Simpson Company, the last complete year we have records for, there were 459 people who retired and only four chose to take the annuity. That is less than one per cent.

**Senator Cook:** The general question is this: The compulsion, if you like, to take the option of an annuity does entail a sacrifice on the part of the purchaser of the annuity, apart from the fact that he will not have the lump sum. In other words, if he invested it he would not get back as much as he put in.

**Mr. Campbell:** I do not believe he will.

**Mr. Welch:** I would not agree with that. He could purchase an annuity, and if he lives a long time he may take out more in the long run. He can get a guarantee for five, ten or twenty years and slightly less annual income as a result of asking for a 20-year guarantee; but if he dies after ten years his estate receives the benefits for the next ten years. There is no way you can say that he might not do as well. He might do much better. The big thing that affects people is that they want the lump sum to give them the independence of a capital amount so that they can make some choice in their years of retirement and become a vital human being. The person who retires today does not want to go to his room in the corner of some garret and live on a monthly stipend. He is an interested, active human being, who wants to be part of society; he wants to play his part in society. He wants to go out and get another job to renew his interest in life. He may buy a small business of some kind. We have an electrician who retired last year and he has now put himself into a small servicing and repairs business. This was made possible with the benefits from his profit-sharing plan.

**Hon. Mr. Phillips:** As I see it, going back to this committee's report of last week, your group is working on the principle that gratitude is the lively sense of favours to be received. Is that it? You are thankful for the recommendations made to date?

**Mr. Campbell:** Yes, very thankful.

**Hon. Mr. Phillips:** Nevertheless, that is in the past. Gratitude is the lively sense of favours to be received, not including those we have already recommended, and you are insisting that section 36 is absolutely vital?

**Mr. Campbell:** We sincerely believe so, sir.

**Hon. Mr. Phillips:** And you are asking this committee to reconsider its position on this point and supplement its recommendations.

**Senator Beaubien:** Mr. Chairman, have we looked into what appears to me to be the retroactive effect of this legislation? For example, supposing I had bought a farm expecting that I would receive, say, \$30,000 in two years' time, as a result of Bill C-259, if passed, would I not get a much smaller amount? If I had been working for 28 years and had two years to go, would this bill not be retroactive, resulting in my paying a larger portion of tax?

**The Acting Chairman:** Certainly, this bill changes the rules before the end of the game.

**Senator Beaubien:** Should we not insist then, with respect to contracts which have been entered into with employees, that those employees should get the same amount after taxes?

**The Acting Chairman:** I do not believe the company is at fault; it is the change in the tax rules.

**Senator Beaubien:** No, the company is not changing anything.

**The Acting Chairman:** That is right.

**Senator Cook:** Just along the same lines, Mr. Chairman, if we did not have section 36, the great majority of cases would have to elect to purchase annuities.

**Mr. Welch:** That is right.

**Senator Cook:** And if we do have section 36, would anyone care to hazard a guess as to whether or not it is going to cost the country very much in the way of lost tax revenue?

**Mr. Campbell:** I think you will get more revenue.

**Mr. Welch:** The retention of section 36 will provide greater revenue than will the deletion of section 36.

**Senator Flynn:** There is no doubt this bill will create more revenue for the Government, despite the statements made by Mr. Benson.

**Mr. Hall:** Mr. King distributed this table of comparisons of income tax payable. Column 1 is the tax payable under section 36 of the present act, and column 3 is a rough comparison of the tax revenue received if the person elects to take an annuity guaranteed for ten years.

**The Acting Chairman:** Would you identify the document you are reading from, please?

**Mr. King:** I will identify it as being some eight or ten cases from our profit-sharing records. These are actual employees.

**The Acting Chairman:** What does it purport to show?

**Mr. King:** It purports to show for employee "A", who has been in the fund for 24 years, that his earnings in the last year of employment were \$5,125, that he has a taxable portion in his profit-sharing fund of \$14,841. Under section 36 he would pay a tax of \$1,509. Under Bill C-259, the new averaging formula, he would pay a tax of \$3,573. If he buys a 10-year annuity certain, as far as we know he will pay no tax because his total income will be below what is required to pay tax. If he takes it out as a lump sum under the proposal on capital gains, which is the last column, he will pay tax of \$888.

**The Acting Chairman:** That example does show that the retention of section 36 is more beneficial to the Treasury.

**Mr. King:** Absolutely.

**The Acting Chairman:** By some \$600 or \$700.

**Mr. King:** Here is a low-wage earner who, by Bill C-259, will be paying more than twice as much tax on his lump sum than he would have paid under section 36, so he has no alternative but to buy an annuity.

**The Acting Chairman:** Honourable senators, you all have a copy of this table before you. Do you think it would be useful to include it in the record at this point?

**Hon. Senators:** Agreed.

## COMPARISON OF INCOME TAX PAYABLE ON WITHDRAWALS

## SIMPSON-SEARS PROFIT SHARING RETIREMENT FUND

Employee	Years in Fund	Earnings Last Year of Employment	Taxable Portion of Withdrawal	(1)	(2)	(3)	(4)
				Tax on Withdrawal			
				Lump Sum under Section 36	Lump Sum Under Bill C-259	10 Year Annuity Certain	Lump Sum under Proposal
A	24	5,125	14,841	1,509	3,573	Nil	888
B	23	6,840	14,050	1,580	3,525	Nil	965
C	19	7,155	12,911	1,829	3,219	Nil	971
D	26	7,626	18,304	2,549	5,405	Nil	1,661
E	24	8,919	18,447	2,899	5,488	280	1,733
F	20	9,839	18,637	3,223	5,943	2,050	2,208
G	19	12,750	21,096	4,241	7,624	5,050	2,762
H	23	15,000	19,159	4,122	7,225	4,770	2,268
J	22	16,400	22,928	5,654	9,378	6,050	3,179
K	20	20,000	20,180	5,431	8,322	5,570	3,038

NOTE: 1. All examples calculated assuming exemption for married—no dependents, standard deduction of \$100 and additional exemption for age 65.  
 2. Income after retirement calculated on basis of Company's retirement formula and employee's social security benefits.  
 3. Tax in column (3) calculated on capital portion only of 10 year annuity certain.  
 4. Tax in column (4) is tax payable in year of withdrawal if 50% of realized capital gains, and 100% of unrealized capital gains on securities withdrawn in kind, are excluded from taxable portion of withdrawal. There could be further tax payable on capital gains as and when securities withdrawn in kind are sold.

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**Senator Molson:** Column 4 should be identified as what the proposal means.

**Mr. King:** It shows at the very bottom:

Tax in column (4) is tax payable in year of withdrawal if 50% of realized capital gains, and 100% of unrealized capital gains on securities withdrawn in kind, are excluded from taxable portion of withdrawal. There could be further tax payable on capital gains.

This is if they were rolled-over and tax was paid on them when he sold them; it would be treated as a capital gain in the lump sum he took out, exactly as the Senate committee had recommended.

**Senator Flynn:** It is on the basis that he would have no other income that year.

**Mr. King:** It is on the basis that he would have the income of retirement security, the Canada Pension Plan.

**Senator Flynn:** And nothing else.

**Mr. King:** Perhaps nothing else.

**Senator Flynn:** But if he has something else?

**The Acting Chairman:** Who can say?

**Senator Flynn:** The amount may be much higher.

**Mr. King:** It will be higher.

**Senator Flynn:** Much higher. It is a minimum in all cases.

**Mr. King:** Yes. Most people in this bracket do not have anything else.

**Mr. van Zuiden:** May I speak on the subject of retroactivity?

**The Acting Chairman:** Certainly.

**Mr. van Zuiden:** I think it should be made clear that there has been provision, of a fashion, made—

**Senator Beaubien:** Provision by whom? Who has made provision?

**Mr. van Zuiden:** The provisions of the bill. This provides that accumulations of profit-sharing plans, as they will stand at the end of this year, will remain subject to the provisions of section 36, but credits that will arise after the end of this year will not be. Our objection on this point is that if a member withdraws, let us say, in ten years from the plan and takes advantage of section 36 on his accumulations to the end of 1971, he is denied the right to use any of the other averaging provisions provided in the new bill. Mr. Phillips asked what might be suggested in the way of a compromise. It seems to me that one thing we could look at in terms of a compromise is to have the accumulations to the end of 1971 and the interest that will be earned on this accumulation in the future continue to be subject to the section 36 treatment, to provide that credits after the end of this year be entitled to the new provisions, but that the member withdrawing cannot be denied the right to use both, as he currently is.

**Senator Cook:** Why not give the officials of the Department of Finance the right to have a lump-sum withdrawal?

**Senator Molson:** Then they would be in favour of this.

**Mr. King:** There is no doubt about that.

**The Acting Chairman:** You mean under the superannuation fund?

**Senator Cook:** I do not care how you do it.

**The Acting Chairman:** Are there any other questions?

**Hon. Mr. Phillips:** I would think on that compromise, if we go that far, the simplest procedure is to go back to the original request for continuance of section 36.

**Senator Flynn:** Leave the option?

**Hon. Mr. Phillips:** Yes.

**Senator Molson:** Perhaps we should hear the officials from the department and find out just what this philosophy is. This new tax reform is supposed to bring equity in our lives, and it seems to me that we are running into a good many occasions when it does not appear on the surface that there is any equity at all; it seems to be removing equity.

**Senator Cook:** "If I can't have it, you can't have it!"

**The Acting Chairman:** At the expense of the Treasury too, in this case.

**Senator Molson:** In this case it appears that way.

**Senator Flynn:** You said it is supposed to bring equity; you used the word "supposed".

**Senator Molson:** I did; I said that it is supposed to.

**Hon. Mr. Phillips:** I have double-checked, honourable senators, and I see we dealt with the question of capital gains at some length, and the roll-over, but we did not insist, nor did we recommend that section 36 be continued. We more or less relied on the general averaging provisions.

**The Acting Chairman:** Yes, but I think we have now considered the problem a little more in depth, particularly

with the examples in the table that has been provided. Perhaps we now have something to work on further on this point.

**Senator Flynn:** The lump sum under section 36 would in all cases be a maximum. Whatever is the taxable income, it would be a maximum.

**Hon. Mr. Phillips:** Average over the previous three years.

**Senator Flynn:** Then it is not a maximum.

**Hon. Mr. Phillips:** No, it is an average of the three years.

**Senator Flynn:** If the taxpayer has other income, these amounts may not be true at all.

**Mr. King:** That is true.

**Senator Flynn:** They would vary in the same proportion as will the figures given in column 4.

**Mr. Hall:** Roughly speaking.

**Senator Flynn:** On the same basis that if you have other income it goes up.

**Mr. Hall:** Yes.

**Senator Flynn:** It is not a maximum.

**Mr. King:** No.

**Mr. Hall:** This is just considered as employees' income.

**Mr. Campbell:** Perhaps I could suggest that this would pertain to virtually all top management people, because presumably they have been getting more than an ordinary workman in salary and have other investments, so the government gets much more revenue.

**Senator Flynn:** I always thought that was the hidden purpose, if not the admitted purpose, of the tax reform proposals; but that is something else, I suppose.

**The Acting Chairman:** Are there any other questions?

**Hon. Mr. Phillips:** I think we have got the point, gentlemen.

**The Acting Chairman:** Gentlemen, we thank you very much indeed. This has been most informative and very helpful.

**Mr. Campbell:** We certainly thank you, Mr. Chairman.

**Mr. Diekman:** Mr. Chairman, instead of relying on what other people who have been before you have been asked to do, we have ourselves committed to paper a method by which the proposed act might be changed.

**The Acting Chairman:** Do you mean that you have drafted some amendments?

**Mr. Diekman:** Yes.

**The Acting Chairman:** Could you leave them with us?

**Mr. Diekman:** That is what we propose to do, with your permission.

**The Acting Chairman:** Thank you.



**The Acting Chairman:** Honourable senators, the next brief will be presented by the Insurance Bureau of Canada. We have as witnesses Mr. Hanly, Mr. Atkins and Mr. Piper. Mr. Hanly is chairman of the Federal Legislation and Liaison Committee, and President, Dominion of Canada General Insurance Company.

**Mr. H. Norman Hanly, Chairman, Federal Legislation and Liaison Committee, Insurance Bureau of Canada:** Mr. Chairman and honourable senators, perhaps I should put it this way: I am the President of the Dominion of Canada General Insurance Company; but, in addition, I am chairman of the Federal Legislation and Liaison Committee of the Insurance Bureau of Canada.

The Insurance Bureau of Canada is an organization of all the major general insurance companies in Canada, totalling 193 groups of companies or 90 per cent of the general insurance business in Canada.

**The Acting Chairman:** For the record, may I say that we had a representation here last week from the Canadian Life Insurance Association. Now you are representing the general insurance companies?

**Mr. Hanly:** Yes. We are perhaps the counterpart of the delegation which represented the life insurance companies, but our activities are confined to general insurance. About 10 per cent of the general insurance companies are not represented by the Insurance Bureau of Canada, and it is possible that one or more of those purely independent companies will be presenting briefs of their own or making recommendations.

**The Acting Chairman:** That is unlikely. This is likely to be the last public hearing, so you will have the floor and you will be making the presentation.

**Mr. Hanly:** Honourable senators, I have with me: Mr. David H. Atkins of MacDonald, Currie & Co., who is Tax Consultant for the Insurance Bureau of Canada; and Mr. E. H. S. Piper, Q.C., the General Counsel for the Insurance Bureau of Canada.

Our brief was forwarded to you about ten days ago. I do not know whether you would like us to read the various points we have raised, which are few in number, or whether there are any questions you would like to ask us regarding some of the clauses contained in our brief.

**The Acting Chairman:** Mr. Hanly, would you like to make a general statement summarizing the brief?

**Hon. Mr. Phillips:** With your approval, Mr. Chairman, I would like to make a suggestion. In the reading of the brief, I find that there are certain items which have been dealt with already in the interim report presented by the Chairman of this committee in the Senate last week. Some of the important items in your brief are: firstly consolidated tax returns—which item has been dealt with at length by this committee in its report.

**The Acting Chairman:** Have you read the report on consolidated tax returns?

**Mr. Hanly:** No, we have not.

**Hon. Mr. Phillips:** I would like to draw your attention to that. You have: firstly, consolidated tax returns; secondly designated surpluses—which you also dealt with . . .

**The Acting Chairman:** And which the report dealt with.

**Hon. Mr. Phillips:** Yes, which has been dealt with at length in this committee's report; and, thirdly, the roll-over provisions. These are three major items which were included in this committee's report last week. I suppose it is my fault. I should have been in touch with you, for it might have been desirable for you to read the report, to make certain whether there is anything you wish to say under these three headings that we have not already included in our report. We will study what you have to say under these headings, although it will be rather difficult to go back and deal with the same subject matter in a supplementary report. It would appear to me that if these three were eliminated you might wish to highlight some of the items in your presentations that have not already been dealt with.

**Mr. E. H. S. Piper, Q.C., General Counsel, Insurance Bureau of Canada:** Mr. Chairman, with respect to the consolidated tax returns, I have seen the interim report of the Senate committee. It has not yet been formally brought to the attention of the directors of the Insurance Bureau of Canada. I know that my personal recommendation will be that we endorse it completely.

**The Acting Chairman:** Then that eliminates that point.

**Mr. Piper:** In regard to designated surplus, I did not have a chance to go into it in sufficient depth to determine whether or not we had anything further to say, and I would not want to close the door on that point.

**Hon. Mr. Phillips:** Then, on roll-overs, on page 4.

**Mr. Piper:** On roll-overs, I think we are in complete accord with the interim report.

**The Acting Chairman:** It seems to me, Mr. Hanly, that what you have said in your brief about designated surplus does not touch any point that was not considered by the committee and perhaps dealt with in the interim report.

**Mr. Hanly:** We could waive designated surplus, under those circumstances.

**Hon. Mr. Phillips:** I would think so, and we might get better dividends out of the remainder of the brief and cover things not already studied and dealt with.

**The Acting Chairman:** Would you agree to proceed along those lines?

**Hon. Senators:** Agreed.

**Mr. Hanly:** In the matter of the regulations, the Insurance Bureau of Canada and its member companies are somewhat confused as to whether there will be a change in the regulations affecting the tax position of the companies. Of course, the regulations are the guiding factor. Therefore, we are in a position where we do not know whether the existing regulations will be perpetuated or whether there will be changes in them.

The first point we have to refer to is the question of business losses and carry-overs. Might I be permitted to have Mr. Atkins speak on that point? It is item number 2 on page 1.

**Mr. David H. Atkins, Tax Consultant, Insurance Bureau of Canada:** Mr. Chairman and honourable senators, the general insurance industry is one in which, in my view, one cannot adequately recognize the results of an entity within one year, in all cases. For example, catastrophes can occur, let us say, at intervals of some ten to twenty years, and in the intervening period profits may occur and reserves be set aside to meet future catastrophes.

I think it is true to say that the insurance cycle is somewhere in the region of six to eight years, being the valleys and peaks of the insurance industry. It could happen, and in some cases has happened, that an insurance company would incur a loss for tax purposes but, because of the time limitations under the existing Income Tax Act and the limitations under the tax reform bill, it would be unable to recover the benefit of those losses.

I think it was the Royal Commission on Taxation that recommended carrying forward losses to extinction.

**The Acting Chairman:** Yes.

**Mr. Atkins:** The Insurance Bureau of Canada, I believe, subscribed to that view. In a brief submitted to this committee on the White Paper on tax reform it was recommended by the Insurance Bureau of Canada that losses be carried forward for some ten years, because we recognized that there might be some administrative difficulties in keeping records longer, and we still press for a recognition of losses for a period longer than five years. Our brief does contain an optional treatment, a compromise, if you like, and this compromise is one which is akin to that accorded insurance agents and brokers, whereby the insurance company is given the option of claiming a deduction for its policy reserves.

**Senator Isnor:** How much longer than five years would you expect?

**Mr. Atkins:** We did ask for ten years.

**Senator Isnor:** It is a costly procedure, is it not, to carry a bad debt over the five-year period?

**Mr. Atkins:** It is, indeed, but I think that the fear of the insurance companies is that a major loss might have occurred at a point in time, and it would be extremely difficult to recoup that loss in the form of income tax savings over the ensuing five years. It would take some time longer than this five years to recover or to have profits to match that particular loss.

**The Acting Chairman:** You have made that point well, Mr. Atkins, and I think it is clear to the committee. On page 2 you have an alternative to the indefinite carry-forward, and that is the one you have just mentioned, that policy reserves be deductible by general companies in full or in part for any taxation year.

**Mr. Atkins:** That is correct.

**The Acting Chairman:** Are there any questions on that point?

**Hon. Mr. Phillips:** Mr. Chairman, I should like to make the further suggestion that this whole question of reserves and so forth, as indicated in the earlier part of the presentation, will relate itself to the income tax regulations. It is difficult to come to grips with it until the regulations come through. It is difficult to make recommendations. As a matter of fact, it is impossible. There are three items in this brief, however, that are new and that should give honourable senators food for thought.

**The Acting Chairman:** Senator Phillips, if I may just interject one point here, although we do not have the regulations, it seems to me to be useful that this committee should have remarks of witnesses, such as those present, in order to make them available to those who are going to write the regulations, so that they can take account of the recommendations that have been made.

**Hon. Mr. Phillips:** My understanding of the matter, and I think it was so reported, Mr. Chairman, is that the Department of Finance has asked this committee to forward to the department all briefs that have been submitted to the committee. You will remember that the committee, in order to save printing costs, agreed that briefs would not form part of the record. The department does receive the evidence and the discussions, because they are printed, but in addition all the briefs that have been presented to date, including the ones now being heard, will go to the Department of Finance.

Now, I would like to refer to the three interesting points that have been raised in this brief. The one of major importance, to my mind, is that which appears on page 4 of the brief. I refer to "Refundable Dividend Tax on Hand." It is a short statement, item No. 6, and I should like to discuss it with honourable senators for a minute.

The basic point here is that the Senate, in its report on the White Paper, took the position that there should be no difference between public companies and private companies, but its recommendation was not accepted, and we end up in the bill with exempt income from one Canadian company to another in so far as dividends are concerned, subject to a 33 1/3 per cent tax refundable when the exempt income is declared out by way of dividend.

The gentlemen before us have taken the position that it might suit their purpose to pay the tax, have the refundable credit and not pay out the dividends. They, therefore, recommend that the refundable dividend tax be regarded as an asset of the corporation in its declaration to the Superintendent of Insurance. I believe that is what you are asking, Mr. Atkins. Will you develop that, because that relates itself to your particular industry?

**Mr. Atkins:** We are not seeking that dividends be not paid out. The insurance industry, generally speaking, under the federal insurance acts, is limited as to the amount of dividends it may pay out. One good example is, I believe, section 103 of the Canadian and British Insurance Companies Act which prohibits a federal Canadian insurance company declaring dividends in excess of 75 per cent of the average profits of the three preceding years. Consequently, given these limitations, it is extremely difficult to recoup the taxes paid and placed in the tax refundable account. One law conflicts with the other.



**Hon. Mr. Phillips:** I think that is an important point. You find yourself in a position where you have a refundable asset, but you are not able to get it out because, under the statute law, you cannot declare the dividends out to get it back.

**Mr. Atkins:** That is right.

**Mr. Hanly:** That section of the insurance act, Mr. Chairman, is section 105. Section 103 is also affected.

**Hon. Mr. Phillips:** What is the section, please?

**Mr. Atkins:** Section 105 of the Canadian and British Insurance Companies Act is the 75 per cent rule. Section 103 is a further solvency limitation provision of that act. Therefore, we are bound by law as to dividends.

**Hon. Mr. Phillips:** You did not say that in your brief, did you?

**Mr. Atkins:** No. It is an innuendo contained in the last sentence of that paragraph.

**Hon. Mr. Phillips:** But this committee does not deal in innuendoes. It is much too important a committee for that. It is prohibited by law beyond 75 per cent. Thank you.

**Mr. Atkins:** Given these tests contained in the insurance acts which look to assets which are deemed to be admitted, a downward spiral might occur if the refundable tax account were not to be regarded as admitted assets, because that is the very instrument which enables an insurance company to pay a dividend.

**Hon. Mr. Phillips:** It is a simple point, but a very important one.

**The Acting Chairman:** It may be very simple, but I think it would be useful to have a practical example on the record to illustrate the points made in paragraph (6) "Refundable Dividend Tax on Hand." In fact, honourable senators, it might be useful were we to incorporate that particular paragraph at this stage. Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

*The paragraph reads as follows:*

*(6) Refundable Dividend Tax on Hand*

It is very likely that many insurers will have as an asset "refundable dividend tax on hand". This asset will become significant over the years as a result of the investment income from the substantial investment portfolio that the general insurers are required to maintain. It is recommended that this asset be accepted by the Superintendent of Insurance as an admitted asset. If this refundable tax is not admitted the solvency of insurers will be adversely affected. In addition, since dividend payments are by law tied to solvency, the very instrument required to recoup this refundable tax will be restricted.

**Senator Beaubien:** Mr. Chairman, should we not have a suggestion as to what should be done about it?

**The Acting Chairman:** Do you think, Senator Beaubien, that it would be helpful for us to have a practical example from Mr. Atkins illustrating this point, and then we can come to yours?

**Senator Beaubien:** All right.

**Mr. Atkins:** In this example we are dealing with a Canadian private corporation.

**Hon. Mr. Phillips:** Take the sum of \$75,000 because then, when using 33 1/3 per cent tax, you will have nice round figures.

**Mr. Atkins:** A Canadian private corporation is a general insurance company incorporated under the federal Insurance Act. Let us assume that this company has broken even on its underwriting account. Now let us assume that it has received \$75,000 of dividend income, and let us also assume that under the tests of section 103 of the Canadian and British Insurance Companies Act its assets are \$115,000 and its liabilities \$100,000.

If I may just in two sentences explain section 103, an insurance company must maintain at all times assets of 115 per cent of its liabilities at 100 per cent. Therefore, this particular company is at the minimum solvency limit. The company, having received the \$75,000 dividend income, pays the one-third tax, or \$25,000. Now let us assume that that \$25,000 is not to be regarded as an admitted asset.

**Senator Isnor:** How would you treat that \$25,000?

**Mr. Atkins:** From an accounting standpoint it would be treated as an asset, but from an Insurance Act standpoint we do not know, and I am assuming the worst—that under the insurance regulations it may not be regarded as an admitted asset.

**Senator Flynn:** But the \$25,000 is paid out as a tax?

**Mr. Atkins:** It is paid to the government as a refundable tax.

**Hon. Mr. Phillips:** Senator Isnor, it is a little easier to understand if you keep in mind that an asset is really an asset if it has no strings attached to it. But if it is a conditional asset, in the sense that you have to pay out dividends in order to get it back, it is hardly an asset in the ordinary sense of the term.

**Senator Flynn:** It is an eventual asset.

**Hon. Mr. Phillips:** It is not even an eventual asset, because it may not be possible to declare dividends.

**The Acting Chairman:** In any event, as the example unfolds, I think this will become clear. I think Senator Isnor will be helped by the completion of the explanation.

**Mr. Atkins:** The Board of Directors would meet to determine whether they should declare a dividend, and would receive, I hope, tax consultant advice in view of the tax reform bill. They would also naturally wish to recover as much tax existing in the tax refundable account as possible. Under insurance law the directors would be unable to declare a dividend of more than \$50,000 if insurance law does not regard the \$25,000 paid in the refundable account



as being an admitted asset. If the \$25,000 were treated as an admitted asset, then the directors would be able to pay a dividend of \$75,000 and to recoup the full amount included under the tax refundable account.

The point of paragraph 6 of our brief is that we would very much like to have any amounts contained under the tax refundable account as admitted assets and therefore forming part of the solvency tests which condition the payment of dividends.

**Senator Isnor:** The purpose of that would be to permit you to pay a larger dividend?

**Mr. Atkins:** Exactly, to permit the industry to recover taxes paid on dividends which it is entitled to recover under the tax reform bill.

**Senator Cook:** Would you care to express an opinion about the solvency tests? Do you think section 103 or section 105 could be further relaxed, or do you think they are at their minimum now?

**Mr. Hanly:** I would doubt if the Department of Insurance would be agreeable to any relaxation, as they are vitally concerned with the solvency of companies and any relaxation might create difficulties.

**Senator Beaubien:** Mr. Atkins, taking the figures that you have given us, what happens now before Bill C-259 goes through? How do you stand at the moment? Say you get \$75,000 in dividends, how does that work out so far as tax is concerned now?

**Mr. Atkins:** If the dividends are received from taxable Canadian corporations, the dividends would come in tax free and the pay-out to the shareholders would also be tax free. It would flow right through.

**Hon. Mr. Phillips:** We are back to the question where this Senate committee took the position that it would be most unfair and inequitable to draw a distinction between public and private companies. We discussed that last week and the week before. We are back now to the position where private companies are discriminated against in the terms of imposition of tax at 33 1/3 per cent, even if it is refundable, as against public corporations who get the exempt income and have no problems at all. It is aggravated for insurance companies because, by law, they are limited in their treatment of their asset position and of their dividend policy. Here they are facing the position of a 33 1/3 per cent tax refundable, conditional upon the payment out of the entire exempt dividends, which they cannot do because they may not meet the 115 per cent test on solvency in relation to 100 per cent liabilities; and they are caught also because they are not able to declare the entire exempt dividend because the Insurance Act prevents their doing so.

**Senator Cook:** There is a clear conflict between the two acts.

**Hon. Mr. Phillips:** Yes, so this is a very important item that has to be dealt with.

**Senator Flynn:** Inasmuch as our recommendation has not been accepted by the government, is the solution here or in the Insurance Act?

**Hon. Mr. Phillips:** I was thinking, whether it is relevant or not, that it would appear to me that reference should be made here in the report, because it does come under the revenue statute and the problem arises out of the revenue statute, and we cannot very well suggest an amendment in the revenue statute as related to the Insurance Act.

**Senator Flynn:** There is no sense in repeating our views on that subject.

**Hon. Mr. Phillips:** Yes, and then to indicate how inequitably it works out and how impossible the application of it is in instances such as this. We suggest consideration of appropriate remedies to meet this type of situation. We cannot very well take jurisdiction over the Insurance Act.

**The Acting Chairman:** Are there any other questions on that point, honourable senators?

**Hon. Mr. Phillips:** The other point is one which we thought had considerable merit, and the investment dealers dealt with it at the time of the White Paper. That is the suggestion regarding withholding taxes on certain types of bonds, whether they are Government bonds or not. You will find this on page 3. This question has always intrigued our committee, and it goes to the debatable area as to whether or not we want foreign investments coming into this country.

At the time of our discussion on the White Paper, we took the position that we should be encouraging foreign capital to come into our country, provided it comes in the form of a foreign debt, on the theory that if you have a debt you pay it back. I had the honour of being vice-chairman at the time of the White Paper; and I pointed out that in the nineteenth century the Americans were lucky that the British used to lend money to the United States which was paid back. The Americans used the profits to develop their own resources and came up here and were smart enough to buy equity stock rather than bonds. This nineteenth century debt has created part of the problem in our country—the twentieth century equity from America to Canada. This has been our economic problem in the last 150 years. One of the suggestions we made was that in order to attract foreign capital to Canada bonds could be purchased rather than equity stock; and we could eliminate the withholding tax on the interest to non-residents with respect to funded debts of Canadian debtor companies. This would be helpful to investors who live in countries where there are no tax treaties, or where there are particular benign forms of tax legislation. You have the flow of capital here in the form of a debt, you lose the withholding tax, but at the same time you stop the flow of equity money coming to Canada and you put out a teaser by saying, "If you want to buy our bonds and debentures, you are most welcome and there will be no withholding tax." Then the feeling was that we ought to do this only up to a certain amount, on the theory that we do not want to become Santa Clauses regarding new sums coming into Canada. The feeling was that there might be a ceiling on the amount.

**Senator Flynn:** These views were not accepted by the Government.

**Hon. Mr. Phillips:** No, they were not accepted at all. But this brief gives us the opportunity, if we desire, to deal with it again.

**The Acting Chairman:** I wonder if one of the witnesses would explain the statement on page 3, at the end of paragraph 4, which states:

At present the "withholding tax exempt" bond—  
Would you give an example of a withholding tax exempt bond?

**Senator Beaubien:** Mr. Chairman, when Churchill Falls was built \$500 million was raised in bonds by a special act and they were made tax-exempt bonds.

**Senator Molson:** You are speaking about withholding tax?

**Senator Beaubien:** Yes. Is this a good example?

**Mr. Keith Sandford, Special Consultant, the Royal Architectural Institute of Canada:** Yes, that is a good example. These were Government of Canada bonds.

**The Acting Chairman:** Government of Canada bonds which were designated as withholding tax—

**Senator Molson:** No, these were Churchill Falls bonds.

**Hon. Mr. Phillips:** These were allowed by a special statute.

**Senator Flynn:** Only the federal Government can do that.

**The Acting Chairman:** A special statute exempted these bonds from the normal provisions of the Income Tax Act.

**Senator Flynn:** This would be under federal legislation only?

**The Acting Chairman:** Yes.

**Hon. Mr. Phillips:** The question arises as to whether this committee feels that the principle of inviting foreign debt money should be accepted and that a withholding tax, up to a reasonable amount, be considered highly desirable. I do not think that this committee can name a certain figure, and we certainly cannot apply it to a particular industry.

**Senator Flynn:** Will you refresh my memory on the principle that there should be a ceiling?

**Hon. Mr. Phillips:** The feeling was that if we had large sums of money coming into Canada and finding a haven in terms of a yield, if Canada did not get something out of it, this would be undesirable. It was probably more a reaction of not wanting to be a haven for large sums of money coming into Canada, getting their yield from Canadian corporations, which yield is deductible as an expense to Canadian companies because it was an interest payment to a non-resident, without having some revenue go to the Crown.

**Senator Flynn:** You mean a ceiling for each venture?

**Hon. Mr. Phillips:** No, a ceiling for each debtor company.

**Senator Flynn:** —or for each venture?

**The Acting Chairman:** This would not be easy to draft.

**Hon. Mr. Phillips:** No.

**Senator Flynn:** For instance, let us take the James Bay project as an example. If you had to borrow \$1 billion or \$2 billion, they would want a ceiling in such a case.

**Hon. Mr. Phillips:** At this stage I would say that it would be highly desirable for this committee to accept and reiterate this principle, because there is much to be said in favour of the concept of eliminating a withholding tax on a funded debt owned by a non-resident.

**Senator Flynn:** I agree with you. I was just wondering whether the principle of a ceiling should be reiterated.

**Hon. Mr. Phillips:** No, I feel that we should just deal with the principle of inviting foreign capital into Canada in the form of an acquisition of a Canadian funded debt. In that way it would probably slow down investments in Canadian equity participation and give Canadians, through their savings, a greater chance to acquire equity.

**The Acting Chairman:** The conclusion of the section which is on page 3 is that the witnesses strongly recommend that withholding taxes levied on dividends and branch profits be retained at their present level of 15 per cent, and that the issuance of withholding tax exempt bonds be maintained.

**Senator Flynn:** But this would not be selective. You do not mean that this should be a privilege granted to certain classes of bonds?

**Mr. Atkins:** The existing section 106, subsection 1, clause (b) lists the various types of bonds which a non-resident may purchase and upon which there is no withholding tax.

**Senator Flynn:** Do you not think it would be better to apply it as a general rule, as we have already suggested?

**The Acting Chairman:** Across the board.

**Senator Flynn:** Yes, not selective, in order to attract all possible investments in this form.

**Senator Cook:** Care must be taken not to give the best of both worlds. In the situation of a project that will cost \$10 million, with \$250,000 wholly-owned shares and \$9,750,000-worth of tax exempt bonds, the exemption on the withholding tax would be received and after the debt is paid the concern would be owned anyhow.

**Hon. Mr. Phillips:** You are quite right. In relation to the equity it may be a \$50-million investment owned entirely by the non-resident with no Canadian participation. It must be dealt with on the principle that the importation of foreign money, following the exemption on funded debt in a Canadian company, be related to the encouragement to be given to Canadians to acquire equity.

**Senator Flynn:** Not tied to the equity investment.

**Hon. Mr. Phillips:** That is right.

**Senator Molson:** The transfer of the equity investment would have to take place the day after the bond deal was closed.



**Senator Beaubien:** Could it be left to the discretion of the minister?

**Hon. Mr. Phillips:** This brief presents an opportunity for us to bring back into consideration the point we previously made.

**The Acting Chairman:** Is that agreed?

**Hon. Senators:** Agreed.

**Mr. Atkins:** With regard to these particular types of bonds, I think the industry recognizes that where they are deployed in the Canadian business then, of course, normal income tax rates would apply. When I say "excess bonds," I refer to those which, in order to do business in Canada, one is required by insurance law to place on deposit with the federal Government. Those bonds may not necessarily be used in the day-to-day business of the Canadian operations.

**Hon. Mr. Phillips:** Frankly, I feel that that phase comes closer to the insurance act, as opposed to this legislation.

**Senator Gélinas:** Would that include convertible bonds?

**Mr. Atkins:** I think so, but there are limitations on equities for an insurance company. Upon conversion, the insurance company may find itself offside. That is my immediate reaction.

**Hon. Mr. Phillips:** The third point was with respect to ineligible investments. That is mentioned at page 5 of the brief.

**Mr. Atkins:** Under section 63 of the Canadian and British Insurance Companies Act, and similar sections of the provincial insurance companies acts, an insurance company is obliged to invest in certain types of securities, in the main long-term bonds, Government bonds and similar instruments. There are limitations as to the amount of equity that may be held.

A reading of the benefits, so-called, given to small business under the Tax Reform bill, reveals that where profits in a small business are re-invested in the business in the form of certain types of securities, there is a limitation on the small business incentive. Insurance companies, being obliged by law to invest in securities normally of a duration of over one year, will find themselves investing in ineligible investments under the small business section of the act and therefore unable to avail themselves of the small business deductions.

**Hon. Mr. Phillips:** This is another aspect of the point which we discussed with respect to the refundable tax. That which is eligible under the insurance laws becomes ineligible under the small business section of the Revenue Act.

In a nutshell the recommendation is at the end of the paragraph, honourable senators: "We recommend that investments which are allowed under the various Insurance Acts be regarded as eligible investments for small Canadian insurers."

Under the small business section certain of these investments would be ineligible.

**The Acting Chairman:** Because of the term of the investment.

**Hon. Mr. Phillips:** Yes; it falls under the same heading as the refundable asset we discussed. We can draw the attention of the Minister of Finance to the inconsistency.

**The Acting Chairman:** There is a conflict between the insurance act and the tax act.

Gentlemen, have you any other points to make, or conclusions to submit to the committee?

**Senator Flynn:** Does this apply to all insurance companies, including life insurance companies?

**The Acting Chairman:** At the outset, Senator Flynn, the witnesses stated that they were speaking exclusively to the problems of general, rather than life insurance. You will remember that last week representatives of the Canadian Life Insurance Association appeared before the committee.

Gentlemen, thank you very much indeed.

**The Acting Chairman:** The next submission is by The Royal Architectural Institute of Canada. Messrs. Lalonde, Rounthwaite, Salter and Sandford are here.

Mr. Lalonde, would you care to introduce your colleagues and make an opening statement?

**Mr. Jean-Louis Lalonde, President, The Royal Architectural Institute of Canada:** Thank you, Mr. Chairman. The Institute represents 3,200 architects throughout the country. Mr. Rounthwaite is its Vice-President; Mr. Salter is Director of Professional Services at the Institute headquarters; and Mr. Keith Sandford is our Tax Consultant.

The architects of this country are quite impressed by the work of this committee. This is mostly due to the fact that last year, when we presented our brief, it was well received and of the many points brought up quite a few are reflected in the text of the bill.

**The Acting Chairman:** Your brief indicates that of eight, five were dealt with.

**Mr. Lalonde:** That is right. We are thankful for that.

**Hon. Mr. Phillips:** Your track record is better than ours!

**Mr. Lalonde:** As architects, we feel that we fulfill an important role in society, a role which has been recognized, either in our professional capacity or as businesses. We have commented on what we understand the tax law will do to us, and there are two or three points with which we are not quite happy.

**The Acting Chairman:** Perhaps one of them is that you think the act should not be brought into force at the end of 1971, but that it should be delayed for one year.

**Mr. Lalonde:** Yes. I will go into that in more detail.

**The Acting Chairman:** Would you deal with that now, please?



**Mr. Lalonde:** Yes. We suggest that there should be more time to study and discuss the bill. We hope, with more time, to be in a better position to win our points and to understand and advise our members on how the new law will affect them. Mr. Sandford is better able to speak on the tax law dealing with the new partnership provisions. My contribution is that of a citizen rather than an architect. We approve of the basic intentions of distributing the load in a more just way, but we do not understand exactly how it is proposed to be done. As citizens we are not completely convinced that it is being done properly. When society needs 700 pages of text in connection with a particular law, and loads of literature to go with it to determine the method of imposing tax, something is wrong with our society.

**Senator Walker:** Or with the Government.

**Mr. Lalonde:** Some of you will remember that when we were in school we learned "Ce qui se conçoit clairement, les mots pour le dire viennent aisément." I do not know if there is an equivalent in English; it is difficult to translate. However, it does not seem to be a fact in relation to this law.

**The Acting Chairman:** We have complained time after time about that to tax experts and the draftsman. The last time we complained to them during the sittings of this committee they told us that the complications resulted from the interpretation of benefits to taxpayers. After sitting here for a month and a half listening to various groups, I am sure that it is very difficult for the general public to understand the bill. However, that is a fact of life.

**Senator Flynn:** Except that, the benefit to the taxpayer, if the bill is enacted, will be transferred mostly to trust companies and lawyers, because no one will be able to prepare his own income tax return.

**Mr. Lalonde:** There must be incentives in some part of our economy. I cannot avoid feeling that we have here the result of a tremendous effort on the part of technical people, but there is probably a lack of leadership in being able to present the material in an untechnical way, in a simple way, to enable citizens to understand it. I am trying that to our request for a delay in the enactment of the bill so that we might have more time to study and understand it, and so that the Government might have time to redraft it in a way that it can communicate properly with citizens. We are really offering the Government more time to make the bill more efficient.

**Senator Flynn:** In that you are joined with some provincial treasurers.

**The Acting Chairman:** To reach an Utopia we should have a tax act which could be comprehended by the majority of citizens.

**Mr. Lalonde:** Yes, but that would be stretching it too far.

**Senator Cook:** It would also be unfair to tax consultants!

**Mr. Lalonde:** Architects relate themselves to human values and social considerations. Mr. Chairman, that is the only contribution that I can make. I will now ask my confreres to continue.

**Senator Salter A. Hayden (Chairman)** in the Chair.

**Mr. Lalonde:** Mr. Chairman, I do not know how you would like us to proceed. Our brief is short, simple and straightforward.

**Senator Connolly:** I suggest, Mr. Chairman, that the main point appears to be the problem of dealing with partnerships. Perhaps the witnesses could direct their attention to that point.

**Mr. Sandford:** I propose to deal with the partnership requirements in conjunction with the new requirements regarding professional income. The provisions are complex, and solicitors and auditors who have been giving advice have been unable to advise architectural firms on what action they should take to accommodate the proposed tax law. There are certain retroactive features, there are inequities, depending upon what point in time the tax year ends, and we have to tie this in with the new partnership requirements and the adjusted cost basis. In determining all these things there a little time for preparation. In addition, there are corporations in the architectural profession that are subject to these very complex rules in regard to Canadian-owned private corporations.

There are certain idiosyncrasies of the profession in the way income flow is related to construction. There are variations in projects and payment procedures affecting various clients. Mr. Rounthwaite will be able to give you a good example of the complications that arise.

**Senator Connolly:** Are you familiar with the submissions we have had from the construction industry?

**Mr. Sandford:** Yes, I was present when the Canadian Construction Association appeared before your committee.

**Senator Connolly:** So you are aware of the fact that we have had considerable evidence in that regard?

**Mr. Sandford:** Yes, but the construction industry is usually incorporated; they do not have partnerships.

**Senator Connolly:** Yes. Perhaps you also should be made aware of the fact that this committee, in its interim report, proposed to deal with professional incomes on an accrual basis in a subsequent report. This is something you might direct your attention to.

Mr. Chairman, I do not want to continue in the Chair, but, in my view, it will help the flow of discussion if that is made clear.

**The Chairman:** Yes.

**Mr. C. F. T. Rounthwaite, Vice-president, Royal Architectural Institute of Canada:** Mr. Chairman, I would like to illustrate two practical points. Once a tax law is enacted then there are regulations under the act, and in our own instance, we had one partner die a number of years ago and it was agreed with the taxation people that no goodwill would be attached to his estate. This estate, by the way, was in the six figures. Some time later another partner, who had a far lesser portion of the partnership, died and the same ruling was investigated, the decision then being that goodwill did apply. It is difficult to conduct our affairs with a variation of this sort.

I would like to go further with respect to the question of accruals. One of the valves that the Government likes to manipulate with respect to speeding up or cooling off the economy is marked "construction industry". For example, many projects depend upon federal and provincial supporting funds for their on-going course. In this regard, two years ago we, in good faith, embarked upon a large hospital project. We are normally paid our fees in proportion to an agreed amount of work being done. For example, when the preliminary work is completed, you get your money, and so forth. In the case of the hospital project, we billed the client for some \$60,000, and the client said that their project had been arbitrarily put back three years so they did not have \$60,000. Under this new law it would appear that our firm had receivables of \$60,000. We doubt if we will see this money for another two or three years, and yet we would have to pay tax on it.

**Senator Everett:** Would you not be able to reserve your receivables if you really thought the account was in jeopardy for that length of time?

**Mr. Rounthwaite:** We did not know this.

**Senator Everett:** Did your clients not report to you that they had no money?

**Mr. Rounthwaite:** Only after the bill was received.

**Senator Walker:** Could you not withdraw it and say it was a mistake?

**Senator Flynn:** It is not a bad debt.

**Senator Everett:** I am not saying it is a bad debt. I am asking whether or not, in your judgment, you could have reserved the debt—not written it off, but reserved it. It is an entirely different accounting procedure.

**Mr. Rounthwaite:** We have not written it off at all.

**Senator Everett:** I realize that, but I am asking you whether you thought you could have reserved the debt.

**Mr. Rounthwaite:** By what action?

**Senator Everett:** By debiting receivables and crediting the reserve for bad debts.

**Senator Flynn:** If the department would accept it.

**Mr. Rounthwaite:** I am not prepared to call it a bad debt.

**Senator Everett:** You are not prepared to call it that and yet you are in jeopardy? I am not suggesting that you write it off; you are merely reserving it because you are concerned about whether you will get it. This is a normal business practice.

**Senator Connolly:** The account was rendered and it immediately became a taxation item?

**Mr. Rounthwaite:** That is correct, and the client says that when he gets his money we will be paid. Now, the expenses incurred in the production of that work have been dealt with on a previous occasion.

**The Chairman:** What do you suggest as a remedy?

**Mr. Rounthwaite:** Because we are in this rather special type of work, where we are subject to these fluctuations beyond our control, some provision must be made so that these difficulties can be avoided. On the old cash basis you paid when you received your money.

**The Chairman:** Let us forget the cash basis. What do you propose should be done to deal with your problem?

**Mr. Rounthwaite:** I feel we should have some provision whereby we can put such a reserve in abeyance until the transaction is completed and the money is paid. In other words, you simply say, "There it is, and when we get paid we will pay the tax".

**Senator Connolly:** You are not arguing about the accrual as against the tax propositions?

**Mr. Rounthwaite:** No.

**The Chairman:** For instance, Senator Connolly, if you render an account and you are told that your client is unable to pay it because the project has been deferred for two or three years, the question is: What is the value of the account at that time? I suppose one method of approach, which would help to some extent, would be to value the account at that time.

**Mr. Rounthwaite:** Mr. Chairman, our interpretation of the value of an account at that time would relate to the salaries that we paid in order to produce the work, but we have projects . . .

**Senator Everett:** May I ask you a question before you go on? Did you, in fact, pay tax on that amount?

**Mr. Rounthwaite:** No. We were on a cash basis.

**Senator Everett:** I would suggest to you that with respect to the particular instance you gave us, even if you were on an accrual basis, you could have reserved that account.

**Senator Flynn:** I doubt it.

**Hon. Mr. Phillips:** It all depends on when the bill is sent out. For example, supposing the end of the fiscal year is the calendar year and you send out your bill, say, at the end of 1971, not knowing whether it will be paid or not, if you are on a cash basis you have no problem if the debtor cannot pay because you can subsequently write it off as a bad debt or put it into reserve; one way or the other. On the other hand, if at the end of 1972 you send out that bill, again not knowing the status of the debtor, if you are on an accrual basis you are not taking the reserve because you have not been in touch with your debtor.

**Senator Everett:** I think we agree on that, but what I am saying is that in the particular case brought forward they would have been in a position to put the account in reserve.

**Hon. Mr. Phillips:** If, during the course of the year, you send the bill out and you know you will not be paid by the end of the year, then you are quite right in suggesting that you would settle for a reserve as against writing it off; but then you have the question, whether you write it off or whether you provide a reserve; as to whether the department will allow you to do so. It becomes a matter of



opinion on the reasonableness of the reserve or the legitimacy of the write-off as a bad debt.

**Senator Everett:** And that is the same position business is in.

**Hon. Mr. Phillips:** You immediately create a debatable area by an accrual system of this type, whereas if you were on a cash basis these two areas of dissent between the taxpayer and the tax collector will not arise with respect to professional people such as architects, lawyers, and so forth. If you are on a cash basis, you have no problem.

**Senator Flynn:** We recommended to retain the cash basis for professional people, did we not, in the report?

**Hon. Mr. Phillips:** Yes, we did. We were against the accrual basis. We did not come to it in relationship to this bill.

**Senator Connolly:** No, but we did with respect to the White Paper.

**Hon. Mr. Phillips:** The real problem of the accrual system is that professional people are not in the same position as are merchants in determining the credit standing of people where debit and credit situations arise. Professional men do their work and bill the client. Another problem with the professional people is with respect to whether or not the debtor will accept the amount as being the correct amount owing.

**Senator Connolly:** That is right. The bill does not necessarily represent the return.

**Hon. Mr. Phillips:** We raised that question. Sending out the bill does not create a debit and credit situation, but apparently we do not seem to be able to transmit elementary law in certain directions. The sending out of the bill, which will now be an account receivable for professional people, does not create a debit and credit relationship. It is an expression of view by the professional man that his client owes him that amount of money. Therefore, we said that it should not apply to professional people, because there is no debit and credit relationship on a legal basis.

**Senator Connolly:** I think this is a fairly important point, because it is basic to the law, and we should insist upon it.

**Hon. Mr. Phillips:** Then we said, firstly, that it is wrong because it does not comply with the law, to have an accrual system for professional people. Secondly, we said the point I am making now, that once you send out a bill on an accrual basis professional people are not competent enough to deal with the determination of the issue of whether they should have a reserve against it, leaving aside the question even if it is admitted. You are therefore taxable in the year in which you take it in as an account receivable, and you may later on be able to write it off as a bad debt, or set up your reserves. Then you get into a situation that you do not know in what particular year you may be caught; you may be caught in a high tax year professionally and you may get a credit in a low year and lose money.

**Senator Connolly:** Would you indicate how a professional man can set up a reserve of the type you describe?

**Hon. Mr. Phillips:** Oh yes. In the course of a year you send out a bill and you know your client's economic strength is weakening, he is dribbling along. You send him a bill for \$5,000, and he sends you a series of post-dated cheques for \$1,000 during the course of a year. You know he owes you \$4,000 at the end of the year and, having sent it out, it becomes an account receivable. I am speaking of 1972. Then you set up a reserve. Let us assume the debtor has admitted he owes you the \$4,000. Then you get into that delightful area between the tax collector and the taxpayer, where you take a \$2,000 reserve against the \$4,000 and you are asked, "What prompted you to regard that account receivable as worth only \$2,000 instead of \$4,000?" You cannot give the answer, other than that the dribble of small cheques has come in, that when you see the man he says business is bad, and so on. As soon as you have an accrual system for professional people, you immediately have a debatable area.

**Senator Flynn:** It is more difficult with the example given by the witnesses, because this is not a question of insolvency or doubting that you will be paid. In this example you will be paid; you are sure it is a corporation which will pay eventually, although it may be in three years' time. Of course, you could very well discount the amount by the interest—

**The Chairman:** I thought you were going to suggest the opposite, that he might endorse the cheque and hand it over to the National Revenue on account of his taxes.

**Senator Flynn:** Endorse the account?

**The Chairman:** Yes.

**Senator Flynn:** If they want to accept that. Some have tried that before. In estates tax, for instance, they have offered to turn over the assets, and the minister would not take them.

**Senator Connolly:** With respect, Mr. Phillips, could I suggest that in fact you are not describing the setting up of a reserve? What you are describing is a revaluation of an account rendered but not paid.

**Hon. Mr. Phillips:** That is right, but at the end of the year in one particular year, as I was mentioning to Senator Everett, you do not know whether you have to set up a reserve, so you will pay your tax in respect of your billings. For instance, take law firms. Leaving aside retainers where fiscal years are not calendar years, in the case of my firm 80 per cent is done at the end of the fiscal period; you send out your bills on an annual basis. If it is on a cash basis it makes no difference. But if your accounts receivable come into income, you do not know when you send them out whether you will get 100 per cent or not, and you are not justified in setting up a reserve because you do not know the facts. You owe the money based upon the accounts receivable position, and you only know that in a subsequent year, for better or worse, depending on tax rates applicable to individuals, and whether you are in a peak or a valley situation, whether you have made or lost money, depending upon your rate of taxation. I predict that this will go to the courts on the basic issue of whether with respect to professional people, certainly with respect to lawyers, doctors and dentists—I am not 100 per cent



sure about architects and the like, because they may have contractually bound arrangements as to the amount to which they are entitled—

**Mr. Lalonde:** In some cases.

**Hon. Mr. Phillips:** Generally speaking, for professional people it is not an account receivable at the time of billing, and the issue will be raised—

**Senator Cook:** It may not be admitted by the debtor.

**Senator Walker:** They can have the bill taxed.

**Hon. Mr. Phillips:** If there is no debit and credit relationship, it is not an account receivable.

**Senator Cook:** It is only your estimate of what he owes you, and he may say, "I don't owe that".

**Hon. Mr. Phillips:** Somebody will raise that issue.

**Mr. Rounthwaite:** There is a further complicating factor. It might interest you to know that we generally employ a fairly large proportion of highly paid people. For this reason it is most important, as far as your banker is concerned, to be able to show an encouraging set of accounts receivable. You see the dilemma one is in. You want to convince these sponsors that you are indeed in business and in good shape. You get it both ways. You may have to finance large salaries for a long period of time. Some jobs that we are still to be paid for were commissioned out in 1961. It is a long drawn-out sort of thing. The tax year run on a 12-month cycle. These programs move without any regard for a 12-month cycle; they can be on a 36-month cycle, a 5-year cycle or a 10-year cycle. With a big hospital it could be 10 years from the time you are commissioned until the client has the key.

There are many factors here. One fact is that staff, once you are committed to the mobilization of staff who will carry through that large hospital job, will insist upon being paid, so you have to work in between these difficulties. On top of that, if there is a fluctuating economy, a start-stop situation, it is extremely difficult. But you cannot say that responsible university clients, responsible hospitals who have been in being for hundreds of years, and so on, are not going to pay. They will eventually.

**The Chairman:** When we were conducting hearings on the White Paper we went through this, and as a result we recommended the rejection of the accrual basis in its entirety. Notwithstanding that—I do not know whether they were hard of hearing on the other side, or what it was—we have it in the bill. We know the problem. The question is whether we can, and if we can, how we deal with it. I should say at this stage to the committee that I have literally a heap of letters on my desk from doctors, mainly in general practice, all across Canada, raising this same issue, pointing out the difficulties, and the time lag between when a general practitioner sends out a bill and, if he gets paid, when he is going to get paid. The moment he sends out a bill, all this becomes an account receivable.

**Senator Flynn:** That would not apply so much in the case of a doctor's fee, since all the bills are insured now, under Medicare.

**The Chairman:** I will send you some of these letters.

**Senator Flynn:** They will find out after some time that their position is much better than in any other profession.

**The Chairman:** There is no Medicare for the architects or the lawyers.

**Senator Cook:** Would it be fair to say that no one has been able to give us a good reason why the change should be brought about? No one has been able to tell us what the advantages are.

**The Chairman:** The White Paper offered a reason for making the change. They said that there was no reason why professional income should not be on the same basis as inventory.

**Mr. Wilson A. Salter, Director of Professional Services, the Royal Architectural Institute of Canada:** Mr. Chairman, there is a point here which is very important. There is a vast difference between a professional man with respect to his client, and a man going out and buying a hundred bales of hay. It is quite a different situation.

**The Chairman:** Of course, we agree with you.

**Senator Flynn:** I have a solution for this, Mr. Chairman. We could get around the law very easily by never sending out a bill, unless you are sure you are going to be paid right away. As far as lawyers and architects are concerned, it is very simple: you ask your client for an advance before sending him a bill, you ask him for exactly the amount of the bill that you intend to send him. Once you have received it, you send him a receipted account.

**Mr. Lalonde:** Except that, as Mr. Rounthwaite was trying to say, we lose.

**Senator Flynn:** That is the way it works out.

**Mr. Lalonde:** Sometimes we need these bills or receivables in order to finance our operations through the bank.

**Senator Flynn:** That is where my solution comes in. You ask your client.

**Hon. Mr. Phillips:** It is an honest statement for the bank to get credit and an equally honest statement from a man to his executors, who can produce a statement to the executors authorities, which is quite dissimilar.

**The Chairman:** Is there any other point? I am not stopping you, but we seem to be like a cat chasing its tail. We have not caught up with the real problem and the answer to it yet. Apparently, just to say that we are against this method of accounting for professional income in its entirety, was not enough the last time. We have to find something more. Instead of expressing an opinion, it may be that we have to go into a factual situation.

**Hon. Mr. Phillips:** Mr. Chairman, may I make a suggestion?

**The Chairman:** Yes.

**Hon. Mr. Phillips:** There is only one thing that might work. Because of the special circumstances applicable to professional people who are on an accrual basis, my suggestion

is that by statute they be entitled to set up a reserve, say up to 25 or 33 1/3 per cent of their accounts receivable at the end of the fiscal year. That would cover the question as to whether it is an account receivable or not; and, secondly, the difficulties of professional people being in touch with their clients to determine whether they are solvent or able to pay. They could say, "We are all right. We are on an accrual basis, but we are not like the merchant who bills or the manufacturer who bills." Professional people who are being forced on an accrual basis should be entitled to set up a statutory percentage reserve of their accounts receivable at the end of the year. That would be my suggestion.

**Senator Cook:** If 25 per cent did not cover it, they could be overcharged, anyhow.

**The Chairman:** Is there any other point you wish to develop?

**Mr. Lalonde:** There are some points, which are self-explanatory.

**Mr. Rounthwaite:** For the record, we would like to say that the suggestion which has just been made, Mr. Chairman, is very welcome.

**Mr. Lalonde:** As you have said, Mr. Chairman, we had a batting average of 66, and it seems that this is mostly due to your collaboration and your knowledge of the situation, and we are now looking forward to an increase in it to 75 per cent.

**The Chairman:** Thank you very much. That is fine. We will give the best thought we can to that.

**Hon. Mr. Phillips:** Mr. Chairman, before these gentlemen leave, a question was raised in the brief on non-taxation of fellowships and the like. This is one which was taken up when we considered the White Paper. I think our chairman was against that, and supported the principle that there should be taxation on fellowships, bursaries, special prizes and so forth. Some of us took the contrary position—with the greatest respect, of course, to our chairman—that professional people, in the academic sphere and in the sphere of science and research and scholarship generally, should be exempt.

I have a situation on my desk where there is a particular major financial institution that gives \$50,000 annually to an outstanding Canadian, because of the great service rendered in particular fields. Cardinal Leger was one recipient; Dr. Penfield, the great neurologist, was another.

**Senator Flynn:** A kind of Nobel prize.

**Hon. Mr. Phillips:** Yes. These were non-taxable under the old law. They are to be taxable under the new law. I am merely suggesting to the chairman that this brief which has been submitted to us should give us the opportunity of reconsidering what was said in the White Paper. I did not bring a copy down, but I think we did not support the exemption.

**The Chairman:** I am not accepting that as being the way we went at it. I am looking it up to see.

**Hon. Mr. Phillips:** I thought you pinned my ears back on that.

**The Chairman:** Oh, never; I would never use a pin!

**Mr. Lalonde:** Mr. Chairman, may I look back at our position there, on these fellowships, scholarships and bursaries—including that \$50,000 that was granted this year to an architect, a fact of which we are very proud.

**Hon. Mr. Phillips:** That is correct.

**Mr. Lalonde:** We think the \$50,000 might be something else and I would put that aside. Normally, however; in the case of a fellowship or scholarship, if it becomes taxable it will have to be increased, otherwise it will not do the same job that it is intended to do.

**Senator Flynn:** It is like a scholarship; it is intended for learning and is usually deductible from income.

**Hon. Mr. Phillips:** With the brief, Mr. Chairman and honourable senators, we have a chance to deal with it again.

**Senator Cook:** Have we considered a limitation, in other words, extending it to a certain amount?

**Hon. Mr. Phillips:** Let me see.

**The Chairman:** One of the areas the Government looks at is that, if there is no limit, they are missing out on some tax revenue that they should get.

**Senator Connolly:** Would it help my friend here if I referred to page 70 of the Summary of 1971 Tax Reform Legislation, where it says that fellowships, scholarships and bursaries under the old law are "not taxable unless related to employment", and under the new bill are "taxable with an annual exemption of \$500." Also the Commons report recommends the same as the bill proposes, the Senate report recommended that these fellowships, scholarships and bursaries should not be taxable, and the White Paper suggested that they should be taxable, with no exemptions.

**The Chairman:** I would not accept the attribution that the hon. Mr. Phillips made.

**Mr. Sandford:** There is one additional point, Mr. Chairman. Some of these fellowships are travelling fellowships where expenses are incurred. At least, it would appear that if the recipient has to travel to Paris, or to some other place, to enjoy the benefit of the fellowship, the expenses incurred should be deductible.

**The Chairman:** We will look at that, too.

**Senator Flynn:** There should be a proportion of a scholarship that should not be taxable—possibly the amount which is paid for living expenses and for travelling and learning.

**Senator Connolly:** The exemption in the act is \$500, but that may not be enough. Perhaps the exemption cannot be related to a specific sum, but may have to be related to some such items of adjustment referred to, namely to exempt the cost of the expense incurred in enjoying the fellowship.

**The Chairman:** All right. Thank you very much.



**The Chairman:** We have one more submission to hear this morning. Representing The Teachers' Insurance and Annuity Association of America is Mr. John T. DesBrisay, Q.C., Counsel, and Mr. Wilfred Wilson, vice-president. We will now hear from Mr. DesBrisay.

**Mr. John T. DesBrisay, Q.C., Counsel, The Teachers' Insurance and Annuity Association of America:** Mr. Chairman, we are grateful for the opportunity of appearing before you, particularly in that our brief was submitted to you at the eleventh hour and we have been afforded the opportunity of this hearing on such very short notice. I am not sure whether honourable senators will have had an opportunity to read the brief, in view of the fact that it was only filed on Monday of this week.

**The Chairman:** Some of us have read it, Mr. DesBrisay. We have also talked with others about it.

**Mr. DesBrisay:** Thank you, Mr. Chairman. Perhaps I could just summarize it. The brief deals with certificates of exemption from non-resident withholding tax on interest paid from Canadian sources to the tax-exempt non-resident. Section 106, subsection 9 of the Income Tax Act, as it is now worded, provides that if a non-resident who is tax-exempt in his own jurisdiction satisfies the Minister of National Revenue as to that exemption in his own jurisdiction, he can qualify for a certificate that will exempt him from paying non-resident withholding tax on the Canadian debt obligations that the non-resident buys.

**Senator Connolly:** Right there, I think it would be very helpful to the committee if you could give us a specific example of the Canadian and American company involved.

**Mr. DesBrisay:** The American company which I represent, and of which Mr. Wilson is Vice-President, is The Teachers' Insurance and Annuity Association of America. It carries on a non-profit basis the business of funding retirement programs for educational institutions. Its activities are restricted to the retirement programs of universities, colleges and research organizations.

**Senator Connolly:** You mean, people who work in those colleges and organizations?

**Mr. DesBrisay:** Yes.

**Senator Connolly:** All right.

**Mr. DesBrisay:** The staff of those organizations.

**The Chairman:** This organization, as I understand it, is tax-exempt in its home territory.

**Mr. DesBrisay:** Yes.

**The Chairman:** Perhaps the senators would like to know the wording of the section in the act. Section 106 (9) says this:

The Minister may, upon application, issue a certificate of exemption to any non-resident person who establishes to the satisfaction of the Minister that

(a) an income tax is imposed under the laws of the country of which he is a resident; and

(b) he is exempted under the laws referred to in paragraph (a) from the payment of income tax to the government of the country of which he is resident.

**Senator Connolly:** Apparently this company qualifies.

**The Chairman:** Yes, it qualifies. Now, I have gone to the trouble of excerpting from the Commons *Hansard* and the Budget Speech in 1963 what the minister said in supporting this amendment. You will find it very interesting.

**Senator Flynn:** That was Mr. Gordon in 1963.

**The Chairman:** Yes. Even some of the Opposition commended him.

**Senator Flynn:** Oh, yes. Nobody suggests that there has been any improvement since then!

**The Chairman:** Well, that might be questionable. Perhaps I should read this to the committee now. This was clause 13 in the bill for the year 1963. When I went back and read what we said about the whole bill in the Senate, I discovered that I was the one who gave the explanation of the bill. I was prompted a few times to say to myself, "Did I say that?". However, here is what Mr. Gordon said:

This paragraph of the resolution proposes that interest paid to certain non-residents be exempt from withholding tax. The Income Tax Act imposes a tax of 15 per cent on interest paid by residents of Canada to non-residents. This tax is withheld at the source by the Canadian payer. This paragraph of the resolution proposes that non-resident persons such as pension trustees or charitable foundations that are exempt in their country of residence be granted an exemption from this withholding tax. The objective of this paragraph is to broaden the market for Canadian securities in other countries and in this way to help in the policy of keeping interest rates in Canada at as low a level as possible.

And then all the other members joined in.

So you have the net situation that an exemption was offered to attract a non-resident investor to enter the Canadian market in these fields. Now he is here. Perhaps he has dug himself in and it is difficult to get out, and he is faced with a tax situation.

**Senator Everett:** Not only that, but it would appear that it is retroactive.

**Senator Connolly:** Not only has he dug himself in, but he has dug himself in very deeply, as the brief would seem to indicate.

**The Chairman:** Mr. DesBrisay, we are taking over from you. Perhaps you had better go ahead.

**Mr. DesBrisay:** You are saying it for me, Mr. Chairman, which is obviously better than my saying it for myself.

**The Chairman:** The situation, as I understand it, is that you have \$135 million invested in Canadian bonds and securities, and now the bill says that the income on those—that is, the interest—is subject to a 15 per cent withholding tax on and after 1974. In other words, the certificate which



you now hold becomes invalid in 1974. As I understand the nature of the investments that you have, the primary purpose was not looking to marketability but was looking to security of investment. Therefore, there would be great problems involved in trying to prepare those for the market, to develop marketability, to clear with the Securities Commission and to deal with \$135 million all in a period of three years. So on and after 1974 they are subject to the 15 per cent, and since they have no off-setting taxes in the United States it is a tax they pay here.

**Senator Connolly:** If I may, Mr. Chairman, I would like to probe this matter a little more. I do not question the decision of the department to exempt this organization, but perhaps a further probing might give us the reason why this was imposed. As I understand it, what your organization does to a certain extent, is subsidize the retiring allowances of people in universities and other institutions engaged primarily in education and research on a non-profit basis. You make no profit yourselves, and your only expenses are the expenses of operating the business of your company. The ultimate beneficiary is not a charitable organization; the ultimate beneficiary is a person, a taxpayer and a learner. Is there something in the background to the thought behind the proposal in the bill that they should not take a benefit from an organization like this and have the organization escape the tax? I know it will be taxable in their hands when they get their retiring allowance, but the rate will be lower. So what about your tax-exempt companies that pay this retiring allowance? It is not like an educational institution, as such, where the benefits are to be distributed to a broad group like a group of students. The benefits are going to be had by former professors, researchers, teachers and people like that. So perhaps I should ask you first of all if it is relevant.

**Mr. Wilfred Wilson, Vice-President, the Teachers' Insurance and Annuity Association of America:** I think it is particularly relevant.

**The Chairman:** Why is it relevant? We are dealing with the question whether certain income in Canada going to a non-resident should not be subject to withholding tax.

**Mr. Wilson:** I think in the proposed statute the relevance is this, that the pension trust, the United Mine Workers or some organization like that, would be exempt. I think we are stuck, in a sense—I was going to say, "because of an accident of birth"—because when Carnegie shifted from the free pension system to T.I.A.A. the organization was set up in a certain way to provide supervision, and it seems to fall into a sort of a trap because of its form.

**The Chairman:** But your organization is not a pension trust.

**Mr. Wilson:** No, it is not, but it is organized as a legal reserve life insurer and is considered tax-exempt, unlike other insurers in the United States. I think Senator Connolly's point is particularly well taken, because every other similar type of organization—again, other than in the legal form—is considered exempt even under the proposed tax structure.

**The Chairman:** You mean in Canada?

**Mr. Wilson:** Yes. So, I think it is a technical error.

**The Chairman:** So there are two points, and the first point is that you should be tax exempt here. Have you applied?

**Mr. Wilson:** No.

**Mr. DesBrisay:** In 1963 we were told by the Department of National Revenue that they did not consider we were tax-exempt. Up until 1963 we had been exempt from withholding tax under article 10 of the tax treaty which provides that there will not be any tax on a charitable organization in the United States if that organization would also qualify as a charitable organization in Canada. So, until 1963 we had paid no tax either on dividends, if we had any—and I am not sure whether we did or not—or on interest. Then in 1963 the Department of National Revenue said, "We have reviewed your charitable status in Canada and we think that really you are benefiting the individuals rather than the educational institution."

**Senator Connolly:** That is the point I was making. It puzzled me, and that is the reason I raised the question.

**Mr. DesBrisay:** The United States has said that T.I.A.A. is benefiting the educational institutions by subsidizing their retirement programs. Canada has said, "You are benefiting the individuals." So it is really a difference in attitude.

**Senator Connolly:** It is a matter of what pocket you should take it out of.

**Mr. DesBrisay:** Yes. So in 1963 we were told that they would remove our article 10 exemption, but they would then issue us a certificate of exemption as a tax-exempt non-resident, so that as long as our investments were restricted to the purchase of debt obligations we would continue to be tax exempt. We went ahead and purchased \$113 million worth of debt obligations.

It is my information that there are no equity kickers attached to any of these investments and there are no participation features. They are straight fixed interest rate investments. It has been T.I.A.A.'s feelings that this is exactly the kind of money that Canada wanted coming in. In 1963 section 106(9) was enacted encouraging us to buy securities. We have done this, and now we are told that in 1974 we will have to pay a 15 per cent tax.

**Senator Everett:** Mr. DesBrisay, you say this is all debt money. Would you have any idea at what average rate of interest that \$113 million was loaned?

**Mr. DesBrisay:** I think it was around 6 per cent, because our return is about \$6 million a year.

**Senator Everett:** And that is without any equity kickers at all?

**Mr. DesBrisay:** That is correct.

**Senator Connolly:** This is not directly related to the point, but are any of the benefits that are paid to persons retiring from universities, research centres, and so on, paid in Canada, or are they all paid in the United States?

**Mr. DesBrisay:** There are benefits which are paid in Canada.

**Senator Connolly:** Paid to Canadians?

**Mr. DesBrisay:** Yes, to Canadians.

**Senator Connolly:** Paid to Canadians who are retiring from Canadian institutions?

**Mr. Wilson:** Yes, there are around 10 institutions that still participate.

**Senator Connolly:** In other words, your company is not simply a non-resident owned investment company—and I am using that in very broad terms—but you are actually conferring benefits to Canadians from these funds as well?

**Mr. DesBrisay:** In 1963 we had funded a number of Canadian organizations' pension plans.

**Senator Connolly:** Would you care to identify a couple of them?

**Mr. DesBrisay:** St. Francis Xavier University.

**Mr. Wilson:** Mount Allison, British Columbia Research Centre, Lethbridge University.

**Mr. DesBrisay:** St. Thomas University—and prior to that we had the University of British Columbia, the Universities of Toronto and McGill. Then article 10—Exemption—was lost. This meant that we would ordinarily start to pay income tax in Canada. In 1963 we arranged with the department that if we were to fund no more plans, if we did not issue new policies in Canada and gradually phased the existing policies out, they would unofficially exempt us from tax on the contracts we had already written up.

**Senator Connolly:** I do not think that we understand this aspect of it. This is not simply a gratuity which you offer to supplement the normal pension plan of an individual in a university situation. But you actually sell a policy and the beneficiary pays a premium to you. Is that correct?

**Mr. Wilson:** Perhaps I can answer that with a little history. Mr. Carnegie, when he set up the free pension system in Canada, the United States and Newfoundland, as it then was, in the early part of this century, intended to provide out of his own resources the pension benefits for faculty members at approximately 450 institutions in North America. He provided also the Carnegie Free Libraries, and so on.

It became clear to him at just about the time of the First World War that even he did not have sufficient money to do this. A committee of businessmen, educators and others was therefore appointed to examine the situation. They arrived at the idea of setting up the equivalent of a co-operative, which in a sense teachers' insurance is, to provide fully transferable annuity contracts for people of higher education in both countries. Contributions for the annuity contracts would be paid on the one hand by employers and on the other hand by the employees, or faculty members at the institutions. The secret of the success of the plan is that it is very inexpensive to operate.

The other thought, which is becoming more popular in both Canada and the United States today, is that these were fully vested and transferable contracts which give the faculty member an opportunity to move.

**The Chairman:** That is portability.

**Mr. Wilson:** Yes. Another great attraction, of course, is our tax exemption. In a sense, therefore, although it is a corporation it is run essentially as a foundation.

**Senator Everett:** Could you give us some idea as to how substantial Teachers' Insurance is?

**Mr. Wilson:** Teachers' has assets of approximately \$2 billion.

**The Chairman:** Let us consider Mount Allison as an illustration. You used the expression that there you fund their pension plan.

**Mr. Wilson:** Yes, the board and faculty there both contribute to the contracts. It is 5 per cent of salary.

**The Chairman:** Is that the entire contribution?

**Mr. Wilson:** No, I think the administration contributes another 10 per cent.

**Senator Connolly:** Does Carnegie provide anything?

**Mr. Wilson:** Yes; many of our old contracts and some of our overheads are still covered by original Carnegie grants.

**Senator Connolly:** Which you hold?

**Mr. Wilson:** That is correct. However, primarily the cost of running the system now comes out of current income.

**The Chairman:** To follow this up, we discussed Mount Allison. You funded the plan and receive contributions from the faculty and the administrative body itself. What do you do then?

**Mr. Wilson:** We issue a contract. The other outstanding feature of this contract, which is very popular, with regard to mobility, is that rather than have a vast "carrot and stick" pension contract, the faculty member at Mount Allison has one which is his own. Should he choose to move, all those years are not lost to him.

**The Chairman:** He has contributed from year to year.

**Mr. Wilson:** That is right.

**The Chairman:** The type of contract allows for that and builds up a pension.

**Mr. Wilson:** That is right.

**The Chairman:** He personally receives a policy or a contract.

**Mr. Wilson:** Yes, with the exception of a few institutions, such as Princeton which likes to hold its contracts, the man usually has it in his own safety-deposit box. He also has a piece of paper which I think is generally looked upon by all of us as being something symbolic.

**The Chairman:** May I add a few sentences from what the Minister of Finance said in 1963?

The purpose of this resolution is, of course, to make it easier or make it more desirable for pension funds in other countries to invest in Canadian bonds. As we all



know, we are primarily interested in thinking about the inflow of capital. Certainly, in totals and magnitudes, we are primarily interested in the sale of Canadian bonds abroad rather than Canadian equities.

That is the sum total of the effect of what he said. How it can lose that character now puzzles me.

**Senator Isnor:** Who made that statement?

**The Chairman:** The then Minister of Finance, Mr. Walter Gordon, in July, 1963, when introducing this amendment that is now being taken away.

**Senator Everett:** As I understand it, Teachers' was insuring professors and researchers in universities like UBC and Toronto, and by an action of the Department of Revenue they were asked not to.

**Mr. DesBrisay:** I do not think that is right. I believe that what happened was that, prior to this, interest rates in Canada were substantially higher than those in the United States, and the pension plans which Teachers' was funding for major Canadian universities were then being calculated actuarially on the United States interest rate rather than on a Canadian rate, so that for a period we really ceased to be competitive.

**Mr. Wilson:** I would like to avoid use of the word "competitive", but that is about right. It really started in the Second World War with foreign exchange problems.

**Mr. DesBrisay:** There was a gradual decline in the plans that we were funding, and in 1963 an agreement was struck whereby, in effect, we undertook not to expand the business there and gradually to phase it out.

**Mr. Wilson:** This is again up for discussion between some of the educational associations in Ottawa and ourselves. They would like to work out some kind of mechanism, associated directly with us, or perhaps by forming their own organization which might be patterned after ours, and we could consider whether we would transfer our Canadian liabilities and certain of our Canadian assets to cover them. There is an interesting facet of the phenomenon in that of \$113 million of Canadian investments, \$35 million represent liabilities that we have to Canadians, so in a sense that would be taxed.

**The Chairman:** What about the character of the investments? The incentive in acquiring these investments? The incentive in acquiring these investments is not necessarily that they must be highly marketable.

**Mr. Wilson:** One of the things that worries me about the current proposal is the basic proposition that they are not highly marketable. It seems to me also that we would be very vulnerable to any buyer. Obviously, if we have to go out of the market we would not be in a very good position.

**Mr. DesBrisay:** We have a number of Government and municipal bonds.

**Mr. Wilson:** Yes, about \$40 million.

**Mr. DesBrisay:** And I believe they are not taxed.

**Senator Connolly:** They are what?

**Mr. DesBrisay:** I believe they are tax exempt, in any event. When this concept of certificate of exemption was introduced in 1963, it was also provided that federal, municipal and provincial bonds would be tax exempt on their own. Even if we lose our certificate of exemption, we will not pay tax on those investments; but with respect to all of the others we would be exposed to withholding tax.

**The Chairman:** Have you a suggestion for relief?

**Mr. DesBrisay:** Mr. Chairman, I think there are really two parts to our submission. One is on behalf of the holders of all certificates of exemption. It seems wrong that the Canadian Government could withdraw, in effect retroactively, and exemption so that holders of such certificates will have to pay tax on the interest from investments which they purchased in good faith, assuming that they would continue to be tax exempt. That applies to \$113 million invested by Teachers' and also to the investments on the part of other non-residents who will likewise lose their exemption. Perhaps the best example is that of the United States Regulated Real Estate Trust. These trust have had a certificate of exemption, and they will now lose it. There are a number of those trust which have made significant investments in Canada.

Our first submission, Mr. Chairman, would be that there should be a provision in the bill which allows the interest from the investment which the non-resident now holds to continue to be tax exempt as long as the non-resident itself remains exempt in its own jurisdiction. We have attached to our brief a specific suggestion as to the actual amendment which might be made to the bill in this regard.

Secondly, Mr. Chairman, specifically on behalf of ourselves, we would ask this committee to consider that it is really a technical oversight that organizations such as ours will hereafter be unable to continue to purchase this type of Canadian debt. The urgency in this regard is that we now have an \$8 1/2 million commitment to finance the new Holiday Inn building in the Toronto Civic Square. That money is to be advanced towards the end of 1972, and we suddenly find that in 1975 we will lose the exemption which was really basic to our entering into that commitment. We have to review, whether or not we have some "out" clause with respect to that investment. This is going to reduce our yield by 15 per cent. We also have current negotiations for financing other Canadian projects, and we do not know what to do about those.

We are asking this committee to consider recommending an amendment which would allow us to qualify for a certificate of exemption in the same way as the pension trusts and certain other foreign tax-exempt organizations will continue to qualify in Canada.

**Senator Connolly:** That is given under the new bill.

**Mr. DesBrisay:** Under the bill this type of organization will continue to have a certificate of exemption.

**Senator Connolly:** That is right.

**Mr. DesBrisay:** I believe I have enumerated these organizations in our brief.

The proposed amendment now says that in order to qualify for a certificate of exemption, the non-resident



must show, as before, that he is exempt in his own jurisdiction.

**Senator Connolly:** Yes.

**Mr. DesBrisay:** And he must also show that if resident in Canada he would be exempt here.

**Senator Everett:** You are referring to section 212(14), I take it?

**Mr. DesBrisay:** Yes.

**Senator Connolly:** Section 212(14) of the bill?

**The Chairman:** Yes.

**Mr. DesBrisay:** Those exemptions are all listed in section 149. In other words, if you qualify under section 149 of the bill for exemption from tax in Canada, then you would qualify for this certificate of exemption. Those organizations that would qualify under section 149 include labour organizations, fraternal benefit societies, any type of non-profit organization. A mutual insurance company that receives its premiums wholly from the insurance of churches, schools or other charitable organizations would qualify for exemption. An insurer engaged during the period in question in the business of insuring farm properties and properties used in fishing, or residences of farmers or fishermen, as long as 50 per cent of their income comes from that source, will qualify. Unless we want to keep out Teachers' money, what is the point of allowing these other organizations to continue to invest in Canada and, in effect, prohibit Teachers'? We cannot imagine that it is deliberate, and we therefore assume it is a technical oversight in the bill.

**The Chairman:** You do not think you would come within the language of trusts or corporations?

**Mr. DesBrisay:** We do not think so.

**Senator Connolly:** In other words, what you are saying is that the broadening of the section, giving them tax exemption status, is not broad enough to catch you, and you are the sore thumb that sticks out and needs some kind of medication, the medication here being to put you in somehow in general language, so that other organizations who do the kind of work you do should be on the same basis as labour unions and these other groups you have referred to.

**Mr. DesBrisay:** Yes.

**The Chairman:** What you say is that what you do, in substance, can be equated to the pension trust.

**Mr. DesBrisay:** We are a pension trust with a number of different employer members. We receive the contributions of employer and employee. Then, instead of using the

accumulated benefits of those members to buy an annuity for them from some outside source, we actually fund our own annuities and issue our own policies.

**The Chairman:** Are there any questions?

**Senator Everett:** Mr. DesBrisay, would you mind dealing with just one more point, and that is paragraph 14 on page 6?

**Mr. DesBrisay:** We have been advised by the Department of Finance that, because of pressures on the Canadian dollar, their present policy is to try to reduce foreign investments of all sorts, whether it be debt or equity. In paragraph 14 of the brief we submit that the denying of exemption for Teachers', when foreign pension trusts, the Ford Foundation, and so on, will continue to have their exemption, is not really relevant to any problems we may have with the strength of the Canadian dollar relative to the United States dollar.

**Senator Everett:** In other words, you would be discriminated against as one of a vast number of people in the same business.

**Mr. DesBrisay:** Yes. Keeping us out is not relevant.

**The Chairman:** Are there any other questions, or is there anything more you would like to say?

**Mr. DesBrisay:** If I might make one very quick point on our suggested revision; on page 9 of the brief we have suggested the addition of a subparagraph to grant exemption to:

an association, society or corporation established or incorporated for the purpose of providing retirement annuities in connection with retirement programs of educational or research organizations, no part of the income of which association

is of benefit to anyone.

Perhaps we should suggest that there be added the word "religious" in connection with retirement programs of "religious," educational or research organizations. I am advised that there are certain pension trusts of various church organizations which operate in a similar way.

**The Chairman:** We shall note it. Are there any other questions? We thank you very much.

Honourable senators, this concludes our hearings on the reference. Your staff and your chairman are starting to prepare the second instalment of our report. We will try to have it ready within a week or ten days.

**Senator Cook:** The committee members will praise it. That is all we can do.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

STANDING SENATE COMMITTEE ON

## Banking, Trade and Commerce

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 50

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WEDNESDAY, NOVEMBER 24, 1971

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Preliminary Report *No. 2*

on

The Summary of 1971 Tax Reform Legislation

MEMBERSHIP OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*, and

The Honourable Senators:

Aird	Grosart
Beaubien	Haig
Benidickson	Hays
Blois	Isnor
Burchill	Lang
Carter	Macnaughton
Choquette	*Martin
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
*Flynn	White
Gélinas	Willis
Giguère	

*\*Ex officio members*

(Quorum 7)



## Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,

*Clerk of the Senate.*



Wednesday, November 24, 1971.

## INTRODUCTION

On September 14th, 1971, there was tabled in the House a document entitled "SUMMARY OF 1971 TAX REFORM LEGISLATION" and, by resolution of the Senate on the same date, consideration of same was referred to the Standing Senate Committee on Banking, Trade and Commerce.

For the purposes of brevity and identification, the "SUMMARY OF 1971 TAX REFORM LEGISLATION" will be referred to in this report as the "proposed legislation" and the Standing Senate Committee on Banking, Trade and Commerce will be referred to as "your Committee" or "the Committee".

On Thursday, November 4th, 1971, The Honourable Salter A. Hayden, Chairman of your Committee, submitted a preliminary report on the proposed legislation and, in such report, a number of recommendations were submitted with respect thereto.

In the report of November 4th, 1971, hereinbefore referred to, the following statement was made:

"Having regard to the urgency of the matter and the problem of time, your Committee is submitting for your approval at this time a limited number of recommendations but it is hoped that the Committee will still be in the position to make further recommendations before the proposed legislation reaches this House. Alternatively, the Committee will submit these further recommendations when the said proposed legislation reaches this House after having passed the other House."

Since the submission of the preliminary report, your Committee has heard a further number of representations and has received further written submissions on the proposed legislation. Having studied these further submissions and representations which were received in the period following the 27th day of October, 1971, to the 10th day of November, 1971, when the last hearing took place, your Committee has concluded that it is desirable to submit to the Minister of Finance, as expeditiously as possible, a number of further recommendations in respect to the proposed legislation which is presently being considered by Committee of the Whole of the other House. It is the hope that, upon receipt by the Minister of Finance of these further recommendations, the same will be accepted by him as again being pertinent and relevant, and to the extent so regarded, that appropriate amendments will be submitted by him to the other House while the said proposed legislation is still being considered in the Committee stage.

In your Committee's report of November 4th, 1971, and in the section captioned "EPILOGUE", your Committee recorded its intention to present a second report after the termination of its hearings covering submissions made subsequent to October 27th, 1971. Your Committee referred in such captioned "EPILOGUE" to some of the topics which it intended to cover in its second report. Having regard to the exigencies of time, your Committee has been able to deal with only some of the topics referred

to in the "EPILOGUE". The proposed recommendations with respect to these topics are hereinafter submitted.

## PULP AND PAPER INDUSTRY

### 1. General considerations

The pulp and paper industry plays a vital role in the economy of this country. It is because of this predominant role that your Committee has given special attention to the representations made by the Canadian Pulp and Paper Association.

Corporations in the natural resource industries are characterized by the following common factors:

- (a) development and processing of natural resources,
- (b) investment of large amounts of capital,
- (c) creation of substantial employment, and
- (d) sales on a world-wide basis.

Corporations in the natural resource industry are also characterized by a large degree of risk. Part of such risk is represented by the huge capital investment in machinery and equipment required in the pulp and paper industry.

From the information provided to your Committee, the following resume is submitted:

For the year 1970 the industry exported 12.54% of the total Canadian domestic exports and ranks as one of the largest exporters in Canada. In 1970 the industry employed 156,400 persons including permanent and seasonal woodland operators. In addition, a substantial number of persons are employed in related fields. The statistics submitted by the representatives of the industry indicate that the five major suppliers of wood pulp and newsprint in the world are Canada, United States, Scandinavia, Japan and Russia. United States and Scandinavia are Canada's main competitors in this industry.

The following table illustrates the change and the continuous deterioration in Canada's position in this field in relation to its major competitors over the last 20 years.

	Relative Percentage Share of Production			
	Wood 1950	Pulp 1970	Newsprint 1950	Newsprint 1970
Canada	28	23	72	58
United States	49	53	14	22
Scandinavia	23	24	14	20
	100%	100%	100%	100%

Representatives from this industry have expressed the view that this decline is caused by, among other factors, tax disadvantages suffered by Canadian corporations in relation to their major foreign competitors. These representatives prepared an analysis of comparative income tax payable by United States corporations and Canadian corporations for the 5 years ended



in 1969. This analysis indicates that these United States corporations incurred average taxes of 34% of income (taking into account both capital and income) whereas Canadian corporations incurred comparable average taxes of 49%.

As to Sweden's tax treatment, the current annual rate of corporate income tax payable is approximately 40% as compared with 51% to 54% in Canada. To this tax advantage Swedish corporations obtain more generous capital cost allowance (depreciation and depletion) and also investment reserves. In Finland, the currency devaluation of 31% which occurred in 1967, coupled with that country's fiscal policy has further placed its pulp and paper industry in a relatively advantageous competitive position as a world supplier.

It is therefore apparent that the Canadian pulp and paper industry is at a great disadvantage vis-a-vis its international competitors. It is therefore essential that special consideration be given to assist the industry to maintain and improve its international position.

This industry's reliance on world markets also has an important direct effect on employment in Canada.

It is generally acknowledged that Canadian corporations which sell their products in international markets are in a difficult competitive position if their tax burden is much greater than that applicable to their competitors. It is apparent that the incidence of tax on the pulp and paper industry in Canada deserves to be examined carefully and that some attempt should be made, if at all possible, to place this industry in a reasonably fair position vis-a-vis its foreign competitors if Canada wishes to promote its export trade and employment in this industry.

At the risk of repeating itself, your Committee would again quote part of a statement made by the Government in the White Paper Proposals for Tax Reform.

"6.9.—. Going international is frequently necessary to enable Canadian companies to achieve the economies of scale which are otherwise denied them by the relatively small size of the Canadian domestic market. Such companies would find it hard to compete on the international scene if they were subject to more onerous taxes than those which apply to their competitors.—."

Your Committee concurs with this statement but deplores the fact that no recognition has been given to this very problem in respect of the pulp and paper industry under the proposed legislation.

The pulp and paper industry is subject to high capital requirements. As a consequence, carrying charges and amortization costs have a very great effect on the cost of production. For this reason, your Committee is of the opinion that any alleviating measures should be related to this factor, and that a concept of "earned depreciation" should therefore be given consideration in the proposed tax legislation.

The concept of "earned depreciation" could be formulated in the following manner: a corporation would earn the right to claim a special deduction based upon amounts incurred in respect of any qualified expenditures made after the commencement of the new system.

Earned depreciation would be in addition to the normal capital cost allowances. It would not reduce undepreciated capital cost and would not be subject to recapture of capital cost allowance. The corporation would have the right to claim all, or part, of this earned depreciation in the year in which its capital expenditures are made or to defer all, or any part, until some subsequent year. Appropriate safeguards could be introduced to prevent abuses.

In order not to discriminate against corporations which embarked upon a modernization or expansion program prior to the commencement of the new system, it would be necessary to establish a deemed earned depreciation. The amount of this deemed earned depreciation could be calculated as a certain percentage of the undepreciated capital cost of qualified expenditures on hand at the commencement of the system. If necessary, a limit could be placed on the maximum amount deductible in any year.

## 2. Pollution abatement and control

Apart from the tax disadvantages mentioned above, a new factor has recently been added to the industry's operating costs. This is the requirement to install and improve equipment and measures for the abatement and control of pollution.

Pollution abatement and control is not merely a local problem: it is primarily a national problem. The need for anti-pollution measures cannot be overemphasized, however. At the same time as Canada is endeavouring to improve the general environment for all Canadians, it would be short-sighted to overload the costs of some of our exporting industries which are competing in world markets.

Without debating the relative effectiveness or fairness of the use of tax incentives for the purpose of abatement or control of pollution generally, the nature of the pulp and paper industry is such that it must be located near large bodies of water for both production purposes and for direct, inexpensive transportation. Apart from the requirement of adequate hydro-electric power, such locations are usually somewhat remote from centres of population except where the concentration of people and ancillary businesses have developed in that particular area. The importance of the contribution to the national wealth produced by this industry clearly appears to warrant some spreading of the cost to include more than local communities and the pulp and paper industry.

With a view to correlating the national and local objectives of pollution abatement and control and to obtain a fair sharing of the cost burden, it appears advisable to supplement existing grant programs and tax incentive programs by developing a special loan program for the pulp and paper industry. This could consist of long-term federal loans without interest or federally guaranteed loans to pulp and paper corporations.

Alternatively, if interest be charged, part or all of such interest might be rebated from year to year. This could be achieved by allowing an annual additional capital cost allowance whereby the original capital cost could be increased by a percentage factor sufficient to accomplish the desired after-tax effect equivalent to a rebate of interest.

Your Committee considers that the foregoing would prevent an undue loading of additional costs on production by distributing some of the burden on a national basis.

While loan programs, forgiveness of loans and rebate of interest cannot be expected to fall directly within the scope of fiscal policy, your Committee is of the opinion that equivalent results could be produced by translating the after-tax effect into special capital cost allowance (depreciation) measures and rates in the proposed legislation.

Such measures are now available under the present legislation. As a matter of fact, in the government's budget tabled on December 3, 1970, additional capital cost allowances were created whereby manufacturing and processing enterprises are permitted to value new investments in machinery, equipment and structures at 115 per cent of their actual cost as a base for calculating capital cost allowances. This is applicable to new capital investments acquired during the period commencing December 4, 1970, and ending March 31, 1972.

Having regard to the foregoing factors and special disabilities affecting this industry *YOUR COMMITTEE RECOMMENDS:*

1. that a concept of "earned depreciation" be introduced in the proposed legislation or, alternatively, that additional capital cost allowances be granted by one of the following methods:
  - (a) increasing the present rate of capital cost allowances,
  - (b) introducing additional yearly capital cost allowance through permitting the original capital cost or the undepreciated capital cost as at the commencement of the new system to be valued at more than 100 per cent, and
  - (c) granting accelerated capital cost allowance.
2. that expenditures by corporations in the pulp and paper industry for the control and abatement of pollution be financed and assisted by one of the following methods:
  - (a) government grants or long-term interest-free loans, or
  - (b) special capital cost allowances such as those referred to above.

### 3. Logging tax credit

It was submitted to your Committee that there exists an element of double taxation for some corporations because the abatement for the provincial logging tax is not 100 per cent. This is caused by the fact that the credit for federal abatement is not calculated on the same basis as that calculated for the logging tax itself. This present anomaly, far from being cured by the proposed legislation, has been compounded by a further limitation in calculating the logging tax credit, namely the required inclusion of taxable capital gains in the tax base, which gains are to be excluded from the taxable income available for the logging tax credit (although such gains could be included in the calculation of the logging tax itself). This double taxation becomes very severe in a loss year or when the non-logging operations suffer a loss.

Furthermore, there are provinces which do not levy a logging tax as such, but instead levy other taxes corre-

sponding to the logging taxes of other provinces. It is suggested that the government should examine the various taxes levied on the pulp and paper industry in provinces which do not have a formal logging tax, and determine if some provinces or municipalities are levying taxes which are in substance similar to logging taxes but which are nevertheless not deductible from income tax payable.

### *YOUR COMMITTEE RECOMMENDS:*

1. that the amount of provincial logging tax paid be credited against federal income tax payable within specified limits and with the following additions:
  - (a) that the base upon which the logging tax credit is calculated for federal purposes should be the same as that upon which the provincial logging tax was imposed, and
  - (b) that any creditable logging tax not deductible in a taxation year be carried forward and be deductible against future federal income tax payable.
2. that the government consider the possibility of granting similar relief to those corporations that are paying provincial or municipal taxes on their logging operations not levied as logging taxes but which are in substance similar to a logging tax (and are not subject to the federal abatement).

### TAX-EXEMPT NON-RESIDENT INVESTORS

Under the present Income Tax Act the Minister of National Revenue is authorized to issue a "certificate of exemption" to any non-resident person who establishes that he resides in a country which imposes an income tax and that he is exempt from such tax under the laws of that country. The effect of obtaining a certificate of this kind is that the non-resident person is exempt from Canadian non-resident withholding tax in respect of interest payable on any bond, debenture or other similar debt obligation that was issued to him after June 13, 1963.

The obvious purpose of this provision (as hereinafter noted) was to encourage the sale of Canadian debt obligations to tax exempt non-residents by removing the tax disadvantage which such persons otherwise would suffer if they reinvest in Canada rather than in their country of residence. Unlike the non-resident person who is subject to tax in his country of residence and who is generally able to recover part, if not all, of the Canadian income tax payable on Canadian source income by way of credit against the income tax otherwise payable by him, the tax-exempt non-resident is unable to recover any part of the Canadian income tax which he may be required to pay. Therefore, but for the "certificate of exemption" provisions, a tax-exempt non-resident would suffer a tax disadvantage by investing in Canadian debt obligations rather than in securities issued by persons resident in his country of residence (the income from which would be exempt from tax).

In order to qualify for a certificate of exemption under the proposed legislation, a non-resident must not only be exempt from income tax in the country in which he resides but must also be

1. a person who would be exempt from Canadian income tax under the relevant exempting provisions of the proposed legislation if he were resident in Canada, or



2. a trust or corporation established solely in connection with an employee's superannuation or pension fund or plan.

Any non-resident person failing to qualify under these new requirements who holds a certificate of exemption which was issued under the provisions of the present Income Tax Act and which is still in force on December 31, 1971, will continue to be exempt from Canadian non-resident withholding tax in respect of interest payable to him on or before December 31, 1974—provided that he continues to be exempt from tax in his country of residence. Interest received by him thereafter will be subject to the normal withholding tax provisions unless he is able to meet the new requirements of the proposed legislation.

In considering the effect of these new provisions, your Committee heard evidence presented on behalf of a major non-resident investor who now holds a certificate of exemption but who will fail to qualify for a similar certificate under the proposed legislation. This organization has invested substantial amounts in long-term Canadian debt obligations and has entered into commitments to purchase additional Canadian bonds, in each case on the assumption that its exemption from Canadian non-resident withholding tax would remain in force as long as it continued to qualify as a tax-exempt person in its country of residence. Having regard to the amount invested in Canada and having regard also to the fact that many of the debt obligations were purchased privately (consisting of securities in respect of which no prospectus has been filed), this particular organization appears to have valid reasons to believe that it will encounter considerable difficulty in selling its Canadian securities and thereby avoid the tax disadvantage which it would suffer if it continued to own such investments after December 31, 1974.

This particular situation is presumably by no means unique and your Committee considers it inequitable that the exemption should be withdrawn with respect to investments or commitments which have already been made—and on such short notice. In fact, your Committee believes that the sale of Canadian debt obligations (as distinct from Canadian equities) to non-residents should be encouraged by extending the present exemption from withholding tax provisions instead of restricting it.

When the exemption presently accorded to tax-exempt non-residents was first introduced, the Honourable Mr. W. Gordon, the then Minister of Finance, stated as follows:

"The purpose of this resolution is, of course, to make it easier or make it more desirable for pension funds in other countries to invest in Canadian bonds. As we all know, we are primarily interested in and thinking about the inflow of capital: Certainly, in totals and magnitudes, we are primarily interested in the sale of Canadian bonds abroad rather than Canadian equities."

In the opinion of your Committee the circumstances above described have not changed and indeed are perhaps more necessary than ever.

**YOUR COMMITTEE RECOMMENDS** that the exemption accorded to tax-exempt non-resident persons under the present Income Tax Act should be continued in the proposed legislation.

## MINING AND PETROLEUM (NON-OPERATORS)

Your Committee stated in its preliminary report of November 4, 1971, that the 3 31/3% automatic depletion which is allowed under present law to an operator of a resource property will be abolished under the proposed legislation at the end of a five year transitional period (i.e. after 1976) and will thereafter be replaced by an earned depletion allowance equal to \$1 for every \$3 of eligible expenditures incurred on exploration and development after November 7, 1969. The Committee recommended in this connection that the transitional period be extended to the end of 1980 or, alternatively, that taxpayers be allowed to "bank" for earned depletion purposes an amount equal to all eligible expenditures incurred, whether incurred before or after November 7, 1969, but that all depletion previously allowed be deducted in determining the balance of the "bank" available for earned depletion allowance.

As a result of its continuing study of the tax reform measures, your Committee has noted that the proposed legislation would also remove, as of the end of 1976, the 25% automatic depletion that is now allowed to non-operators in respect of income such as royalties which they may derive from resource properties. Royalty income received after 1976 is to be treated in the same manner as production profits and therefore, will be eligible for the proposed 3 31/3% earned depletion.

Your Committee is of the view that it is equally important that the five year transitional period relating to the withdrawal of the automatic depletion allowance should also be extended to non-operators, at least in respect of income derived from a royalty or other similar interest in a resource property which the taxpayer acquired prior to June 18, 1971, or which he was obligated at that date to acquire. The alternative recommendation which the Committee put forward in its preliminary report with respect to the basis of computing earned depletion for operators of a resource is unlikely to afford much relief to non-operators in respect of interests acquired prior to June 18, 1971, as these taxpayers will not have incurred as extensive exploration and development expenditures as operators. They will therefore not be entitled to a comparable amount of earned depletion if the Committee's alternative recommendation is implemented.

**YOUR COMMITTEE RECOMMENDS** that the 25% automatic depletion now allowed to non-operators in respect of income derived from a royalty or other similar interest in a resource property be continued for royalties received prior to 1981 in respect of interests which the taxpayer owned at June 18, 1971, or which he was obligated at that date to acquire.

## TRANSITIONAL AVERAGING PROVISIONS CONCERNING LUMP SUM PAYMENTS OUT OF PENSION PLANS AND DEFERRED PROFIT SHARING PLANS

Single payments out of a pension plan or deferred profit sharing plan which are received in a taxation year ending after 1973 will be eligible for relatively generous averaging provisions presently afforded by section 36 of the Income Tax Act to the extent of amounts vested up to January 1, 1972. The proposed legislation would restrict the right to



such averaging by providing that once a taxpayer has elected to utilize section 36 averaging in respect of amounts vested up to January 1, 1972, he is precluded from invoking the general and forward averaging provisions of the proposed legislation in the same year in respect of amounts vested after 1971. The amount available for section 36 averaging is thus limited to that portion of the lump sum payment which accrued up to January 1, 1972.

It is apparent that as the benefits under pension and deferred profit sharing plans which vest after 1971 increase in relation to those which vested prior to 1972, the benefit afforded by section 36 averaging will decline in respect of lump sum payments received after 1973, until the point is reached when section 36 averaging will become unattractive.

#### **YOUR COMMITTEE RECOMMENDS that**

(a) section 36 averaging should be available in respect of the portion of a lump sum payment received in a taxation year ending after 1973 out of a pension plan or deferred profit sharing plan which the taxpayer would have received pursuant to such a plan if he had withdrawn therefrom on January 1, 1972, and also

(b) the general and forward averaging provisions of the proposed legislation should be available in respect of the portion of such payments which have vested after 1971.

Single payments received out of a pension plan or a deferred profit sharing plan made in a taxation year ending after 1971 and before 1974 are to be entitled to section 36 averaging in their entirety. Your Committee considers such treatment to be equitable.

#### **NON-RESIDENT-OWNED INVESTMENT CORPORATIONS (N.R.O.'s)**

The effect of the provisions of Section 70 of the present Income Tax Act (which relates to non-resident-owned investment corporations) is, in general, to treat non-resident who hold Canadian investments indirectly through the medium of a Canadian holding company in substantially the same manner as they would have been taxed if they had owned such investments directly—provided, of course, that the Canadian holding company qualifies as a non-resident-owned investment corporation (referred to hereinafter as an N.R.O.).

Certain exceptions to this general rule do exist in the present Income Tax Act. For example:

1. A non-resident who owns shares of a corporation which has a degree of Canadian ownership (as defined in Section 139A of the Act) is subject to a 10 per cent Canadian non-resident withholding tax on dividends received from that corporation whereas all dividend income flowing through an N.R.O. attracts a 15 per cent tax under Section 70.
2. Interest payable to non-residents on certain types of Canadian debt obligations (e.g. certain federal and provincial bonds) is now exempt from Canadian non-resident withholding tax but is subject to the 15 per cent N.R.O. tax if paid to an N.R.O.

3. Any investment income which an N.R.O. may derive from non-Canadian sources is subject to Canadian tax under the N.R.O. provisions whereas such income would not be subject to Canadian income tax if paid to the non-resident directly.

However, these and the various other exceptions which exist under the present Income Tax Act have generally been considered relatively insignificant and have not discouraged non-residents from investing in Canada through the medium of an N.R.O.

It is implied on page 58 of the "Summary of 1971 Tax Reform Legislation" that this neutrality in the taxation of non-resident investors, whether they invest directly in Canada or indirectly through an N.R.O., would be continued under the new system; and, in particular, that non-resident shareholders of an N.R.O. would not be subject to Canadian income tax in respect of any capital gains which would not be taxable in Canada if realized personally by a non-resident investor. However, contrary to the statements contained in the Summary, the tax position of a non-resident shareholder of an N.R.O. is not equated with the treatment accorded to non-residents who invest directly. For example:

1. Capital gains realized by an N.R.O. on the disposition of capital property other than "Canadian property" will be subject to Canadian non-resident withholding tax when ultimately distributed by way of dividend to the N.R.O.'s non-resident shareholders. This treatment is clearly anomalous and the proposed legislation should be amended to provide that any net gains realized on the disposition of non-Canadian property should form part of an N.R.O.'s "capital gains dividend account" which may ultimately be distributed to shareholders free from Canadian non-resident withholding tax.
2. Any capital gain realized by a non-resident on the disposition of shares of an N.R.O. (including a gain arising on death) will be subject to Canadian income tax under the proposed legislation. This treatment is inequitable as it could result in double taxation or in the taxation of amounts which should not attract Canadian income tax. For example, part or all of the gain realized by non-resident shareholders could be attributable to gains realized by the N.R.O. on the disposition of taxable Canadian property which had not been distributed to shareholders at the date on which the particular shareholder disposed of his shares of the N.R.O. These gains would have been taxed in the N.R.O.'s hands and would accordingly be available for distribution as a tax-exempt dividend out of the N.R.O.'s "capital gains dividend account". Therefore, the non-resident shareholder should not be subject to Canadian income tax on any portion of the gain realized on the disposition of his shares of the N.R.O. that is attributable to gains previously realized by the N.R.O. on the disposition of taxable Canadian property.

Similar problems exist where the gain realized by the non-resident shareholder is attributable to:

- (a) undistributed capital gains which the N.R.O. previously realized on the disposition of any other type of capital property,
- (b) any unrealized appreciation in the value of the N.R.O.'s capital property, and

(c) any accumulated income already taxed in the N.R.O.'s hands.

It follows that, unless appropriate amendments are made to the proposed legislation so as to ensure that N.R.O.'s and their shareholders are treated in a manner consistent with the treatment accorded to non-resident persons who invest directly in Canada, non-resident investors will no longer look upon N.R.O.'s as a suitable investment vehicle and many of these corporations will be wound up. In the result, a considerable amount of the capital now invested in Canada through the medium of N.R.O.'s may be lost. Such a consequence would be most unfortunate having regard to the importance of the role played by N.R.O.'s as a source of capital in Canada and to the contribution which such corporations otherwise make to the Canadian economy.

**YOUR COMMITTEE RECOMMENDS** that further consideration be given to the provisions of the proposed legislation relating to non-resident-owned investment corporations and appropriate amendments be made to ensure that there is neutrality (similarity) of tax treatment as between non-residents who invest directly in Canada and those who choose to invest through the medium of a non-resident-owned investment corporation, particularly with respect to the treatment of capital gains.

## INSURANCE CORPORATIONS

### A. Life insurance corporations

There was referred to your Committee a matter which does not arise directly out of the proposed legislation but, rather, represents a problem which exists under the present Income Tax Act and which will continue to exist under the proposed legislation. In view of the fact that this matter will continue to represent a problem under the new legislation, the Committee considers it appropriate and proper to raise this issue at this time.

The problem which has been raised relates to the income tax treatment of dividends received by life insurance corporations in respect of investments in shares of other taxable Canadian corporations and which are acquired out of non-segregated funds. These funds (which, for the sake of simplicity, are hereinafter referred to as the "General Funds" of a life insurance corporation) are invested and held for the benefit of the following groups of persons:

1. tax exempt policyholders, e.g., any person who owns a policy which is registered with the Department of National Revenue as a registered retirement savings plan or which is issued pursuant to a registered pension plan;
2. other policyholders (excluding those persons owning policies, the reserves for which are invested in "segregated funds"), and
3. the corporation itself or, in the case of corporations other than mutual life insurance corporations, the corporation's shareholders.

In order to determine the amount of the corporation's liability for income tax, it is necessary to allocate the corporation's total investment income amongst these

groups in accordance with a formula set out in the Income Tax Act and the Income Tax Regulations.

In examining this matter, your Committee was advised that the total amount of investment income allocable to each group under the provisions of the present law is reasonable in the circumstances and that no objection is taken to the use of a statutory formula for this purpose. The problem lies in the fact that each group is deemed under the allocation formula to share proportionately in each type of investment income earned by the General Funds (including dividends received from taxable Canadian corporations even if such corporations are subsidiaries of the life insurance corporation in question). As a result, part of such dividends are allocated to tax exempt policyholders, thereby reducing the amount of the deduction allowable in computing the corporation's taxable income in respect of dividends received from other taxable Canadian corporations. This also holds true under the proposed legislation.

As is often the case, the assumptions made in devising statutory formulas such as this can be in error. In the case of life insurance corporations, the policyholders' funds must be invested in such a manner as to ensure that policy guarantees can be made and that such obligations can be met when the policies mature. Therefore, policyholders' funds are generally invested in fixed-interest type securities rather than in shares of other corporations. Most, if not all, of the investments in corporate shares are acquired out of the corporation's (or shareholders') funds and it follows that any allocation of dividend income contrary to this fact will result in the life insurer being effectively denied all of the dividend deductions to which it should properly be entitled. Most certainly, such a problem does not exist with respect to other corporations such as banks, trust companies and other similar financial institutions.

**YOUR COMMITTEE RECOMMENDS** that corporate dividend income received and arising from investments made by a life insurance corporation out of its non-segregated funds in shares of capital stock of corporations be excluded from the allocation of investment income formula set forth in the proposed legislation.

## PRIVATE GENERAL INSURANCE CORPORATIONS

Under the proposed legislation there exists in at least two respects, a distinction between a private and public corporation. That is to say, depending on whether a corporate taxpayer is public or private, the income tax treatment of transactions may differ. These two differences may be summarized as follows:

1. A public corporation may receive dividends from other corporations without payment of tax, while a private corporation receiving a dividend from a non-controlled corporation, is subject to a tax of 33 1/3 per cent. This tax however is refundable to the corporation upon the payment of a further dividend to its shareholders.
2. A public corporation will not be entitled to any preferential tax treatment in respect of its taxable business income, however, a small private business corporation will be entitled to preferential tax treatment on its first \$50,000 of taxable business income. This preferential treatment is subject to a number of restrictions. One of



these restrictions is that the after-tax profits of such a corporation must not be applied towards defined "ineligible investments" otherwise the corporation will be subject to a tax for so doing.

At the outset, your Committee wishes to commend the Government for retaining the concept of a preferential tax treatment for the small business corporation. However, as will be noted, your Committee believes that, first, the requirements are unusually restrictive and may defeat the purpose of the relieving provision; and secondly, little account appears to have been taken of other statutory provisions, both Federal as well as Provincial, relating to the business conduct of corporations, which provisions may be in conflict with the restrictions as set forth in the relieving provisions. Private general insurance corporations are but one example of this latter category.

Moreover, the private general insurance corporation may not only be at odds with the proposed legislation in respect of "ineligible investments", because of other legislation that is imposed upon it, but such a corporation may also be unable to comply with the proposed "33 1/3 refundable tax" rule, for the same reason. Both of these matters are hereinafter dealt with.

Your Committee would turn first to the question of the "33 1/3 per cent refund tax" rule and its application to a private corporation. In the case of private general insurance corporations, your Committee has ascertained that the *Canadian and British Insurance Companies Act* (R.S.C., 1970, Chap. 1-15) will severely limit such a corporation from applying this rule in its favour. There are two reasons:

1. Pursuant to Section 105 of this Act, a federal Canadian insurance company is prohibited from declaring and paying dividends in excess of 75 per cent of its average profits for the three preceding years.
2. Further, pursuant to Section 103 of this Act, a federal Canadian insurance company must maintain at all times, assets of 115 per cent in relation to 100 per cent of

its liabilities as a solvency test, this test conditioning as well, the payment of dividends. Unfortunately, "refundable tax" would not be treated as an admitted asset for the purpose of the solvency test under this Act.

The only comment which your Committee can make with regard to this question is that it represents an almost classic example of income tax theory being contrary to the required practice of the everyday business world.

Similarly, and as already noted, there is danger that an analogous result may also occur in respect of the private general insurance corporation and the tax to be levied where a corporation has made an "ineligible investment". Pursuant to Section 63 of the *Canadian and British Insurance Companies Act* (R.S.C., 1970, Chap. 1-15) an insurance company is obliged to invest in securities that would otherwise be considered as "ineligible" for the purpose of the proposed legislation. In this respect the proposed legislation is therefore possibly in conflict with and inconsistent with, another federal statute known as the *Canadian and British Insurance Companies Act* (R.S.C., 1970, Chap. 1-15). A similar result will also prevail in respect of the various Provincial acts.

**YOUR COMMITTEE RECOMMENDS** that special provisions be introduced to alleviate the position of those private corporations which cannot take advantage of "refundable tax" by reason of any conflicting or inconsistent statutory law governing their conduct.

Similarly, that special provisions be introduced to provide that in the case of a private general insurance corporation, compliance with the investment requirements of governing federal or provincial legislation shall not constitute "ineligible investments".

Respectfully submitted,

Salter A. Hayden,  
Chairman.





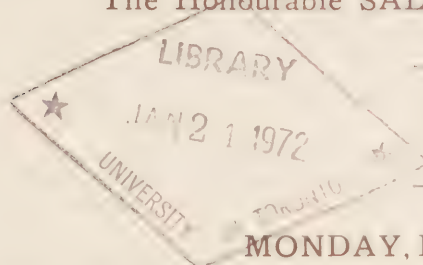


THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON  
**BANKING, TRADE AND COMMERCE**

The Honourable SALTER A. HAYDEN, *Chairman*



No. 51

MONDAY, DECEMBER 13, 1971

Thirteenth Proceedings on:

“Summary of 1971 Tax Reform Legislation”

FINAL REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
Gélinas	White
Giguère	Willis—(28)

*Ex officio members:* Flynn and Martin

(Quorum 7)



## Order of Reference

Extract from the Minutes of the Proceedings of the Senate, September 14, 1971:

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the Summary of 1971 Tax Reform Legislation, tabled this day, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Monday, December 13, 1971  
(67)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 2.30 p.m. to further examine and consider:

"Summary of 1971 Tax Reform Legislation".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Carter, Choquette, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguère, Grosart, Haig, Isnor, Lang, Macnaughton, Martin, Molson, Smith and Welch. (21)

*Present, but not of the Committee:* The Honourable Senators Argue, Basha, Boucher, Bourget, Duggan, Ferguson, Forsey, Fournier (*de Lanaudière*), Inman, Kinneer, Lafond, Langlois, McGrand, McNamara, O'Leary, Paterson, Phillips, Quart and Rattenbury. (19)

## WITNESSES:

### *Department of Finance:*

The Honourable Edgar J. Benson, P.C.,  
Minister.

Mr. M. A. Cohen,  
Assistant Deputy Minister.

At 4.05 p.m. the witnesses departed and the Committee then proceeded *in camera*.

The Chairman read to the Committee a draft of the Final Report on the above Summary and after discussion and certain revisions being made thereto, it was *Resolved* that the said Report be tabled this night.

At 4.25 p.m. the Committee adjourned to the call of the Chairman.

ATTEST.

Frank A. Jackson,  
*Clerk of the Committee.*

### FINAL REPORT OF THE COMMITTEE

The Standing Senate Committee on Banking, Trade and Commerce having completed its examination and consideration of the Summary of 1971 Tax Reform Legislation and bills based on the Budget Resolutions in accordance with its terms of reference of September 14, 1971, now makes its final Report, as follows:

Two earlier reports called Preliminary Report and Preliminary Report No. 2 were tabled in the Senate on November 4, 1971, and November 30, 1971, respectively.

Attached to this Report is a statement prepared by our advisers setting out a list of technical changes required in Bill C-259 to clarify or correct the language of many provisions of the said bill.

Also attached is a list of the persons who made submissions to and appeared before your Committee to present their case for changes in the said Bill to avoid hardship in their operations. There is also set out a list of those who made submissions but did not personally appear.

Earlier today your Committee held its final meeting in connection with the reference made to it by the Senate. At this meeting the Minister of Finance appeared in response to an invitation extended by your Committee. Prior thereto the Chairman, with the approval of the Committee had several interviews with the Minister of Finance to discuss the recommendations made by the Committee in its several reports to the Senate and to obtain, if possible, some indication of the attitude of the Minister in relation thereto.

With the approval of the Committee, a list of top priority items among the recommendations in our two Reports was submitted to the Minister, together with amendments which in the view of our expert advisers and our Committee would incorporate the substance of the top priority recommendations contained in your Committee's Reports. This list is also attached hereto. In speaking by way of explanation to the Senate the Chairman of the Committee will discuss these items indicating how many have already been dealt with and the reaction of the Minister to other of these items expressed in the House of Commons on December 10, 1971, and to your Standing Committee earlier this day.

The Minister of Finance stated in the House of Commons and before our Committee that an amending Bill would be put forward in the next session. In the House of Commons he said:

"There are a number of areas that the Government is actively studying at this time and I want to give the House some indication of our present thinking—there will undoubtedly be a number of important amendments introduced next year and I think it is only fair that people should be aware of the direction of our planning."

In the Committee the Minister repeated what he said in the House of Commons and dealt in a particular way with the subject matter of the recommendations in your

Committee's several Reports. These will be referred to in the course of the explanations given by the Chairman and will appear in the printed report of proceedings this day of the Committee.

Your Committee would direct your attention to the printed reports of its proceedings, particularly numbers 35 and 39. There you will find clear explanations of the principal subjects dealt with in Bill C-259, namely:

- |   |                             |
|---|-----------------------------|
| (1) Changes in personal Tax                                   | Report P. 35-5 to P. 35-16  |
| (2) Capital gains (with Summary at P. 35-16)                  | Report P. 35-16 to P. 35-42 |
| (3) Valuation and Tax Free Zone                               | Report P. 35-39 to 40       |
| (4) Partnerships and Professional Income                      | Report P. 35-43 to 51       |
| (5) Corporations and Distributions to Shareholders            | Report P. 35-51 to 61       |
| (6) Dividend Tax Credit                                       | Report P. 35-52             |
| (7) Small Business  | Report P. 35-54             |
| (8) Inter Corporate Dividends                                 | Report P. 35-54             |
| (9) Designated Surplus  | Report P. 35-54 to 55       |
| (10) Investment Income of Private Companies                   | Report P. 35-55             |
| (11) Complexity   | Report P. 35-56 and 57      |
| (12) International  | Report P. 35-17 to 25       |
| (13) Taxation with Summary                                    | Report P. 39-17             |
| (14) Estates and Death Duties (Summary at P. 39-5) and Trusts | Report P. 39-5 to 16        |

The above references are to a series of lectures or explanations on the various provisions of Bill C-259 with section references. Your Committee wishes to express its great appreciation to Mr. Arthur R.A. Scace and Mr. Stephen Smith and for their assistance. It should be noted that their services were given without remuneration—expressly so stipulated.

In many of its aspects this Bill C-259 is very beneficial to taxpayers in Canada. The elimination from the tax rolls was estimated in 1970 at approximately 750,000 persons\* now subject to tax and the increase in personal exemptions of all the taxpayers, the improved deductions for wage and salary earners, the incentives to small business, the deductibility of interest on money borrowed by one company to buy shares in another company, the ability of a corporation to distribute its 1971 undistributed income on hand on payment of a special 15% tax and thereupon to distribute without further tax its 1971 capital surplus on hand, the elimination of gift taxes and estate taxes, the continuance of dividend tax credit although different in form but beneficial—all these are some of the beneficial features of Bill C-259.

\*Source: Senate Report on White Paper Proposals for Tax Reform.



In addition to the above sources of information available to Senators, Senate Hansard of November 24 and December 1, 1971, contain statements in narrative form of the meaning and scope and effect of the various provisions in Bill C-259 referred to in the several reports of your Committee.

Further however, there is the Report of your Committee to the Senate on the White Paper Proposals for Tax Reform, dated September 1970. Therein you will find all the subject matter of the White Paper Proposals dealt with. Many of the headings are carried through to the Summary of 1971 Tax Reform Legislation and Bill C-259.

Your Committee wishes to acknowledge in a particular way the contribution of the Honourable Lazarus Phillips to our study of this Tax Reform Legislation and Bill C-259 as Chief Counsel to the Committee. You will recall he was Vice-Chairman of the Committee in its study of the White Paper Proposals. In the drafting of the Report of the Senate thereon and in the preparation of the several reports of the Committee on its examination and consideration of Bill C-259, his advice and direction were invaluable.

Mr. Alan Irving and Mr. Douglas Ewens were part of our team of legal advisers. We were very fortunate in securing Mr. Irving's services at this time as he had

worked with your Committee throughout the study of White Paper Proposals. Mr. Ewen's services were valuable to your Committee in the analysis of the submissions received and as an adviser to the Chairman. Both these men worked on the preparation of our several Reports and in the drafting of amendments. We wish to acknowledge the skill and judgment they brought to bear on the consideration of these matters.

Your Committee retained the services of Mr. Albert Poissant and Mr. Charles B. Mitchell, senior partners in the accounting firm of Thorne, Gunn, Helliwell and Christenson. Their services were invaluable in every phase of the work of your Committee.

As a result of all this work and the information thereby available to Senators, the consideration of this bill should be greatly facilitated. The introduction of an amending bill next year, which the Minister's statement would indicate, will afford the opportunity to the Senate to propose further amendments at that time, the nature and extent of which may be governed by such further and amending provisions as are incorporated in the amending Bill.

Respectfully submitted,

Salter A. Hayden,  
*Chairman.*

## APPENDIX "A"

THE STANDING SENATE COMMITTEE ON BANKING,  
TRADE AND COMMERCE

October 28, 1971 45 (A.M.) Canadian Petroleum Association;  
Mining Association of Canada;  
The Canadian Mutual Funds Association.

SUBJECT: Summary of 1971 Tax Reform Legislation

BRIEFS SUBMITTED AND HEARD BY  
THE COMMITTEE

Date	Proceeding Number	
October 6, 1971	36	The Canadian Chamber of Commerce.
October 13, 1971	40 (A.M.)	Canadian Federation of Agriculture.
October 13, 1971	40 (P.M.)	Canadian Construction Association.
October 14, 1971	41	National Association of Canadian Credit Unions; Co-Operative Union of Canada; Allstate Insurance Company of Canada.
October 20, 1971	42 (A.M.)	Massey-Ferguson; Canadian Jewish Congress.
October 20, 1971	42 (P.M.)	Aluminium Company of Canada Limited.
October 21, 1971	43 (A.M.)	Canadian Bar Association.
October 21, 1971	43 (P.M.)	Simpsons Sears Ltd. and Simpsons Limited; Independent Petroleum Association of Canada.
October 27, 1971	44 (A.M.)	Noranda Mines Limited; Bethlehem Copper Corporation Ltd.; The Canadian Gas Association.
October 27, 1971	44 (P.M.)	ad hoc Committee of Voluntary Agencies.

October 28, 1971 45 (P.M.) The Canadian Pulp and Paper Association.

November 3, 1971 46 (A.M.) Hollinger Mines Limited; The Canadian Life Insurance Association; Dominion Foundries and Steel Limited.

November 3, 1971 46 (P.M.) The Canadian Institute of Chartered Accountants.

November 3, 1971 8:00 (P.M.) *In camera Meeting.*

November 10, 1971 49 Institute of Profit Sharing; Insurance Bureau of Canada; The Royal Architectural Institute of Canada; Teachers Insurance and Annuity Association of America; Mining Association of British Columbia; Texaco Canada Limited.

BRIEFS SUBMITTED BUT NOT HEARD BY  
THE COMMITTEE

Investment Dealers Association of Canada;  
Canadian International Power Company Limited;  
Trans Canada PipeLine Limited;  
Trust Companies Association of Canada;  
Vancouver Board of Trade;  
John Labatt Limited.

September 29, 1971 and

September 30, 1971

Education Sessions on Bill C-259 with Messrs. Scace and Smith.

## APPENDIX "B"

Top Priority Recommendations by the STANDING COMMITTEE ON BANKING TRADE AND COMMERCE OF THE SENATE in its consideration of the Summary of 1971 Tax Reform Legislation.

1. Gifts, Bequests and Devises to Charities (1st Senate Report P. 47-10)
2. Employees Profit Sharing Plans (1st Senate Report P. 47-8)
3. Deferred Profit Sharing Plans (1st Senate Report P. 47-8)
4. Passive Income (1st Senate Report P. 47-5)
5. De Minimis Rule (1st Senate Report P. 47-7)
6. Tax-Exempt Non-resident Investors (2nd Senate Report P. 50-7)

7. Non-Resident owned Investment Corporations (2nd Senate Report P. 50-9)
8. Private General Insurance Corporations (2nd Senate Report P. 50-10)
9. Deemed Realization on Ceasing to be a Resident of Canada (1st. Senate Report P. 47-9)

Secondly—An Assurance that further consideration will be given to items recommended in the Senate Reports but not set out in the list of Top Priority Recommendations, more particularly in relation to rollovers (1st Senate Report P. 47-4) Consolidated Returns (1st Senate Report P. 47-15) Mining and Petroleum (1st Senate Report P. 47-10) (2nd Senate Report P. 50-8).

## APPENDIX "C"

## TAXATION OF INDIVIDUALS

1. Section 6(1)(e) and 15(5)—standby charge for automobile

Section 15(6) provides that the formula set out in Section 6(2) for determining the amount that would be a reasonable standby charge for an automobile that was made available to an employee by his employer shall also apply where a company car has been made available to a shareholder. These subsections fail to consider the situation where one car is made available for several shareholders and/or employees and appropriate amendments should be made.

2. Section 62(3)—Moving expenses (C.I.C.A.)

Subsection (3) of Section 62 provides that the cost of cancelling a lease on one's residence is an allowable moving expense for purposes of determining the amount deductible under Section 62(1) in respect of expenses incurred in moving to a new work location. There is no similar provision for bona fide costs incurred in connection with the assignment of such a lease. As all landlords may not be prepared to cancel a taxpayer's lease and the taxpayer may therefore be forced to sublet (incurring costs in connection therewith), the definition of the term "moving expenses" should be extended by amending paragraph (d) of Section 62(3) to read as follows:

"(d) the cost to him of cancelling or otherwise disposing of the lease, if any, by virtue of which he was the lessee of his old residence".

3. Section 63—Child care expenses (C.B.A.)

Where a taxpayer is employed by his spouse, the taxpayer's remuneration from such employment is to be included in the spouse's income for tax purposes under the provisions of Section 74(3) of Bill C-259 and excluded from the taxpayer's income for tax purposes. Because of this and because one of the limitations on the amount allowable as a deduction under Section 63 in respect of child care expenses is that the deduction cannot exceed two-thirds of the taxpayer's earned income for the year, a married woman who is employed by her husband may be unable to take advantage of the child care expense deduction. Further, no deduction will be allowed to the husband in these circumstances as he will not comply with the conditions contained in paragraph (b) of Section 63(1) because his wife was not incapacitated or confined to prison. Provision should be made to allow the husband a deduction in these circumstances, at least in those cases where it can be established that his wife was a bona fide full-time employee for the period in respect of which the expenses were incurred.

A similar problem arises as a result of the attribution rules in Section 74(4) where a married woman is employed by a partnership of which her husband is a partner.

In addition, where a husband and wife are partners in a business and the Minister of National Revenue exercises his discretionary power under the provisions of Section 74(5) and thereby attributes all of the firm's income to the husband, one of the effects may be to deny any deduction for child care expenses even though the expenses were incurred to enable the taxpayer's wife to devote her time and energies to the partnership business.



## APPENDIX "D"

## CAPITAL GAINS

## 1. Section 2(3)(c)—Tax payable by non-resident persons (C.A.B.)

The first specific clause in Bill C-259 which deals with disposition of properties on which a taxable capital gain may be realized by non-residents is Section 2(3)(c). This provision appears to define persons not resident in Canada who can fit within the categories outlined in Division D of the Bill and implies that any person who at any time in the past disposed of "taxable Canadian property" (as defined in Section 115(1)(b)) is subject to the provisions of Division D—even though he may have no taxable income for purposes of Division D and, hence, not be subject to tax in any event. There seems to be no apparent necessity for drawing the net so wide.

## 2. Section 13(4)—Insurance proceeds and other compensation in respect of the loss or destruction of property (C.I.C.A.)

Section 13(4) of Bill C-259 has the same technical defect as its predecessor in the present Income Tax Act (viz. Section 20(5a)).

The purpose of this provision is to allow taxpayers an additional period of grace in which to expend insurance proceeds or other compensation received in respect of the loss or destruction of depreciable assets without being subject to tax on recaptured capital cost allowance. Ordinarily, where a class of depreciable assets is in credit balance at the end of a taxation year because the taxpayer disposed of assets for an amount in excess of the undepreciated capital cost of property in that class and did not expend a sufficient portion of the proceeds in that same year to bring the class into debit balance at the end of the year by acquiring additional depreciable assets of that class, the amount of the credit balance is included in income as recaptured capital cost allowance. However, where the credit balance arises because of insurance proceeds or other compensation receivable in respect of the loss or destruction of depreciable assets, then, by virtue of Section 13(4) the amount of the credit balance will not be treated as recaptured capital cost allowance to the extent that it is expended by the taxpayer in the immediately following taxation year on the acquisition of depreciable property of the same class as that lost or destroyed.

Where the asset destroyed is a building, the taxpayer will obtain the benefit of this relieving provision to the extent that any credit balance in the relevant class of buildings at the end of the taxation year in which the insurance proceeds or other compensation becomes payable is expended by him in the immediately following taxation year on the acquisition of a building of any class, whether or not it is of the same class as the building that was destroyed. However, because of an anomaly in the Bill (and in the present Act), where a taxpayer chooses to replace a destroyed building by a building of another class and he does so by acquiring such other building in the taxation year in which the proceeds of

insurance or other compensation becomes payable (rather than in the immediately following taxation year) he will, upon a technical interpretation, be subject to tax on recapture.

In order to remove this anomaly, it is recommended that paragraph (c) of Section 13(4) be amended to read as follows:

"(c) the amount shall, to the extent that it has been expended by the taxpayer

(i) in the taxation year immediately following the initial year on acquiring property of the same class,

(ii) in the initial year or in the taxation year immediately following the initial year on acquiring, if the property so lost, destroyed, taken or sold was a building, a building of a prescribed class, or

"or . . . . ."

## 3. Section 44—Deferral of gain on involuntary dispositions (C.C.C.)

Section 44 provides for a deferral of gain on involuntary dispositions of capital property where the gain arises by virtue of the fact that the taxpayer has received (or is entitled to receive)

(a) proceeds of insurance or other compensation in respect of the loss or destruction of capital property,

(b) compensation for capital property taken under statutory authority, or

(c) the proceeds of sale of capital property which was sold to a person by whom notice of intention to take under statutory authority was given,

and the taxpayer has expended an amount at least equal to the gain before the end of the immediately following taxation year acquiring a replacement for the former property.

It is recommended that these deferral provisions be extended to apply to a gain realized where capital property is unlawfully taken and the taxpayer becomes entitled to receive compensation therefor. This amendment may be accomplished by changing Section 44 to read as follows:

"Where in a taxation year a taxpayer has received proceeds of disposition described in subparagraph 54(h)(ii), (iii) or (iv) of any property . . ."

## 4. Section 53(2)(a)(i)—Adjustments to the cost base of capital property (C.C.C.)

Subparagraph (i) of Section 53(2)(a) provides that any amount received by a taxpayer after 1971 as a dividend (other than a taxable dividend or a capital dividend) on the share of the capital stock of a corporation resident in Canada shall be deducted in computing the adjusted cost base to the taxpayer of such share. Any dividend received from a mutual fund corporation that is deemed under Section 131(1) to be a capital gains

dividend should also be excluded, along with taxable dividends and capital dividends, from the amounts that are to be deducted under Section 53(2)(a)(i) in computing the adjusted cost base of shares to the taxpayer. A capital gains dividend is deemed to be a capital gain in the year in which received and is taxed accordingly. Therefore, it should not reduce the adjusted cost base of shares since such an adjustment would result in double taxation.

**5. Section 53(2)(m)—Adjustments to cost base of capital property (C.B.A.).**

Section 53(2)(m) provides that, in computing the adjusted cost base to a taxpayer of capital property at any time, there shall be deducted

"such part of the cost to the taxpayer of the property as was deductible (otherwise then by virtue of this subdivision) in computing the taxpayer's income for any taxation year commencing before that time."

It is to be noted that the deduction to be made under this paragraph is based on the deductibility of the amount specified therein regardless of the amount actually deducted in computing income. It is recommended that the paragraph be amended to read as follows:

"(m) such part of the cost to the taxpayer of the property,

(i) as was deducted (otherwise than by virtue of this subdivision) in computing the taxpayer's income for any taxation year that ended on or before that time, or

(ii) where the adjusted cost base in being computed as of a date other than the end of a taxation year, as was deductible (otherwise than by virtue of this subdivision) in computing the taxpayer's income for the first taxation year ending after that date."

**6. Section 54(g)—Principal residence (C.B.A.)**

It is recommended that the definition of the term "principal residence" be amended specifically to include,

(a) a condominium unit (which may not fall within the present definition), and

(b) a dwelling-place located on property which is held under a long term lease rather than owned by the taxpayer

**7. Section 74—Income or gains from property transferred to one's spouse**

Subsections (1) and (2) of Section 74 provides that a taxpayer must include in his or her income for tax purposes any income and net taxable capital gains (i.e. taxable capital gains less allowable capital losses) which his or her spouse may derive from property transferred to the spouse by the taxpayer (or from property substituted therefor). The purpose of this provision is to prevent a taxpayer from reducing his income for tax purposes by transferring income-producing properties to his spouse.

It has been suggested that Bill C-259 be amended specifically to provide that these attribution rules will not apply in respect of property transferred to a spouse more than one year prior to the date on which the transferor first became a resident of Canada. This suggestion appears to have merit and it is recommended that the following amendment be made:

**Section 74(6)**

"Subsections (1) and (2) of this section do not apply in respect of property transferred to a spouse more than one year prior to the date on which the transferor first became resident in Canada or in respect of property substituted for such transferred property."

A similar amendment should be made to the attribution rules contained in Section 75 which relates to property transferred

(a) to a person under eighteen years of age, and  
(b) to certain inter vivos trusts.

## APPENDIX "E"

### Corporations and their shareholders

**1. Section 83(2)—Capital dividends (C.B.A.)**

Section 83(2) provides

(a) that a private corporation may elect, subject to specified conditions, to treat a dividend payable by it to its shareholders after 1971 as a capital dividend if the amount does not exceed the corporation's capital dividend account immediately before the date on which the dividend becomes payable,

and

(b) that no part of such a dividend shall form part of the recipient shareholder's income.

Under Section 89(1)(b), a corporation's capital dividend account at any particular time is defined to include only amounts attributed to such account in taxation years ending before that time. Accordingly, if a corporation paid a dividend in kind by distributing part of its capital assets and the fair market value of the property distributed exceeded the adjusted cost base of the assets to the corporation, gain would only accrue on payment of the dividend and the corporation could not elect to treat the dividend in kind as a capital dividend out of the one-half non-taxable portion of that capital gain. It is recommended that provision be made to enable a private corporation to treat the one-half non-taxable portion of any



capital gain arising from the payment of a dividend in kind as part of its capital dividend account at the time the dividend became payable.

## 2. Section 87(1)—Definition of an amalgamation (C.C.C.)

The definition of the word "amalgamation", as defined in Section 87(1) of Bill C-259, is similar to that contained in Section 851 of the present Act in that, in order to qualify for the treatment set out in Section 87 of the Bill (previously Section 85I), it will still be necessary that all of the assets and liabilities of the amalgamating corporations become assets and liabilities of the amalgamated corporation. This requirement often causes corporate taxpayers an undue amount of trouble and expense arranging to settle amounts owing between amalgamating corporations immediately prior to an amalgamation so as to ensure that the amalgamation will in fact be treated as such for income tax purposes.

It is accordingly recommended that paragraphs (a) and (b) of Section 87 be amended to read as follows:

- "(a) all of the property of the predecessor corporations immediately before the merger (other than amounts receivable from, or investments in shares of the capital stock of, any of the other predecessor corporations) becomes property of the new corporation by virtue of the merger,
- (b) all of the liabilities of the predecessor corporations immediately before the merger (other than amounts owing to one predecessor corporation to another predecessor corporation) becomes liabilities of the new corporation by virtue of the merger, and"

## 3. Section 87(2)(r) ) Amalgamated corporation's 1971 capital surplus

## 4. Section 87(2)(s) ) on hand or paid-up capital deficiency (C.C.C.)

Paragraphs (r) of Section 87(2) provides that, in computing the 1971 capital surplus of an amalgamated corporation, any 1971 capital surplus which the amalgamated corporation may itself have on hand shall be increased by the amount, if any, by which

- (a) the aggregate of each predecessor corporation's 1971 capital surplus on hand, if any, immediately before the amalgamation exceeds
- (b) the aggregate of each predecessor corporation's paid-up capital deficiency, if any, immediately before the amalgamation.

There is no provision to the effect that, where the amount described in (b) above exceeds the amount described in (a), the excess must be deducted from the amount otherwise determinable in computing the amalgamated corporation's 1971 capital surplus on hand. Unless such a provision is introduced, it may be possible to eliminate a corporation's paid-up capital deficiency by means of an amalgamation without decreasing the 1971 capital surplus of the amalgamated corporation by a like amount. It is therefore recommended that a new

paragraph be added to Section 87(2) to the following effect:

- "(r. 1) where the amount described in subparagraph (r)(ii) exceeds the amount described in subparagraph (r)(i), there shall be deducted from the aggregate of the amounts determined under subparagraphs 89(I) (i) to (iv) for the purpose of computing the 1971 capital surplus on hand of the new corporation at any particular time an amount equal to such excess."

A similar problem exists with respect to subparagraph (s) of Section 87(2), relating to the computation of an amalgamated corporation's paid-up capital deficiency.

## 5. Section 87(2)(aa)—Amalgamated corporation's refundable dividend tax on hand for purposes of determining its cumulative deduction account (C.C.C.)

Section 87(2)(aa) provides for the flow-through to an amalgamated corporation of any refundable dividend tax which each predecessor corporation may have on hand immediately prior to the amalgamation. It is not clear, however, whether the amalgamated corporation will be deemed to have inherited such amounts as of the end of a taxation year immediately preceding its first taxation year, or whether such amounts will not be included in computing its own refundable dividend tax on hand until the end of its first taxation year (following the amalgamation). If the latter interpretation is correct and the amalgamated corporation is, therefore, not entitled to deduct the predecessor corporation's refundable dividend tax on hand for purposes of computing its cumulative deduction account immediately prior to the amalgamation (see Section 87(2)(y)), an amalgamated corporation which qualifies as a Canadian-controlled private corporation (as defined in Section 125(6)(a)) could be deprived of a small business deduction for its first taxation year even though it should, in equity, be entitled to such a deduction.

To ensure that there is no anomaly in this regard, it is recommended that Section 87(2)(aa) be amended to read as follows:

- "(aa) in the case of a new corporation that is a private corporation for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the new corporation at the end of a taxation year immediately preceding its first taxation year or at the end of any subsequent taxation year, where a predecessor corporation had refundable dividend tax on hand immediately before the amalgamation the amount thereof shall be added to the aggregate determined under subsection 129(3) from which the new corporation's dividend refunds are to be subtracted,"

## 6. Section 129(3)(a)—Refundable dividend tax on hand (C.C.C.)

Section 129 provides that a corporation "Canadian investment income" and "foreign investment income" are to be computed separately but it does not provide that a loss obtained from one or other of these "sources" is to be deducted from income derived from the other "source"



in computing the amount described in paragraph (a) of Section 129(3). As a result, the amount of refundable dividend tax which may be credited to a private corporation's refundable dividend tax account in respect of a particular taxation year could be greater than the amount properly creditable thereto.

It is suggested that this anomaly could be eliminated by making the following amendments:

(a) Paragraph (a) of Section 129(3) would be amended to read as follows:

"(a) 25% of the amount, if any, by which its 'total investment income for the year', as defined in paragraph (4)(c), exceeds the amount deductible under paragraph 111(1)(b) from the corporation's income for the year,"

(b) Subsection (h) of Section 129 would be amended by the addition of the following paragraph:

"(c) 'total investment income' of a corporation for a taxation year means the amount, if any, by which the aggregate of

- (i) the aggregate of the amounts described in subparagraphs (a)(i) to (iii) in respect of the corporation for the year, and
- (ii) the amount that would be determined under subparagraphs (a)(i) to (iii) in respect of the corporation for the year if the references in subparagraphs (a)(i) to (iii) to 'in Canada' were read as references to 'outside Canada',
- exceeds the aggregate of
- (iii) the aggregate of amounts each of which is a loss of the corporation for the year from a source that is a property or business other than an active business, and
- (iv) the aggregate of all amounts deductible under section 113 from the corporation's income for the year."

#### 7. Section 129(3)(b)—Refundable dividend tax on hand (C.C.C.)

Any inactive business income from foreign sources will form part of "foreign investment income" for purposes of the refundable dividend tax provisions but any foreign tax credit relating to such income (being a credit allowed under Section 126(2) will not be taken into account in determining whether the limitation contained in Section 129(3)(b) is applicable. Thus, even though no Canadian income tax is payable on inactive business income from foreign sources after deducting the provincial tax abatement and the foreign tax credit, an amount equal to 25% thereof could be credited to the refundable dividend tax account.

#### 8. Section 189(4)(b)—Ineligible investments (C.C.C.)

Further statutory clarification is required to minimize the number of problems which could be encountered in determining the cost of ineligible investments on hand at any time. For example:

1. Where there is a change in the use made of a capital asset, will the use to which it was originally put govern its classification for the purpose of Section 189(4)(b) for all subsequent years?
2. If a capital asset, such as a building, is used in part for active business purposes and in part for rental purposes, will the entire cost be treated as not falling within the ineligible category?
3. If, for example, a Canadian-controlled private corporation owned a minority interest in another company at December 31, 1971, and it acquired a further 100 shares of that company but disposed of the latter before the end of its 1972 year should not be treated as an ineligible investment?

## APPENDIX "F"

### BUSINESS AND PROPERTY INCOME

#### 1. Section 16—Debt obligations issued at at discount (C.I.C.A.)

Subsections (2) and (3) of Section 16 provide that, where a debt obligation is issued at a discount by a tax-exempt person, a non-resident person not carrying on business in Canada, a government or certain other public bodies, the amount of the discount is, under certain circumstances, to be included in the investor's income for tax purposes. Subsection (2) relates to debt obligations which are issued before June 18, 1971 and subsection (3) deals with debt obligations issued after that date. Neither deals with debt obligations which are issued on June 18, 1971. Subsection (2) should accordingly be amended to apply to debt obligations issued on that date as well as to those issued prior thereto.

#### 2. Section 24—Deduction in respect of eligible capital amounts (goodwill and other "nothings") on ceasing to carry on business (C.C.C.)

The combined effect of subsections (1) and (2) of Section 24 in a situation where an individual ceases to carry on business and the business is thereafter carried on by his spouse or by a corporation controlled by him appears to prevent any deduction under Section 20(1)(b) (relating to the amortization of goodwill and other "nothings") for either the individual, or his spouse or the controlled corporation for the year in which the business is transferred if both the transferor and the transferee have the same fiscal year end or if the fiscal year of the transferor ends at a later date in the year than the transferee's.

In order to remedy this inequity, it is recommended that subsection (2) of Section 24 be amended to read as follows:

#### Section 24

"(2) Notwithstanding subsection (1), where an individual has ceased to carry on a business and thereafter his spouse, or a corporation controlled directly or indirectly in any manner whatever by him, has carried on the business,

(a) in computing the individual's income for his fiscal period in which he so ceased to carry on the business, the following rules shall apply:

(i) the provisions of subsection (1) shall be read without reference to paragraphs (a) and (b) thereof and as if the reference in paragraph (c) thereof to 'the time he so ceased to carry on the business' were read as a reference to 'the end of the fiscal period in which he so ceased to carry on the business'; and

(ii) the amount allowed as a deduction under paragraph 20 (1)(b) in respect of the business shall not exceed that proportion of the maximum amount otherwise allowable that

(A) the number of days in the period from the commencement of the fiscal period to date on which he ceased to carry on the business,

is of

(B) 365;

(b) in computing the cumulative eligible capital in respect of the business of the spouse or the corporation, as the case may be, at any time after the end of the fiscal period in which the individual so ceased to carry on the business, there shall be included the amount of the individual's cumulative eligible capital in respect thereof at the end of that fiscal period; and

(c) in computing the income of the spouse or the corporation, as the case may be, for the fiscal period in which the spouse or corporation commenced to carry on the business, the amount allowed as a deduction under paragraph 20 (1) (b) in respect of the amount included in the spouse's or corporation's cumulative eligible capital amount under paragraph (b) shall not exceed that proportion of the maximum amount otherwise allowable in respect thereof that

(A) the number of days in the period from the date on which the spouse or corporation commenced to carry on the business to the end of the fiscal period,

if of

(B) 365."

#### APPENDIX "G"

Certain of the proposals made by the Canadian Bar Association

#### Subdivision K—Trusts and their Beneficiaries

##### Sec. 104. Reference to trust or estate.

(1) In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall be read as a reference to the trustee or the executor, administrator, heir or other legal representative having ownership or control of the trust property.

##### Sec. 104 (2)

(2) Taxed as individual. A trust shall, for the purposes of this Act, and without affecting the liability of the trustee or legal representative for his own income tax, be deemed to be in respect of the trust property an individual; but where there is more than one trust and

(a) substantially all of the property of the various trusts has been received from one person, and

(b) the various trusts are conditioned so that the income thereof accrues or will ultimately accrue to the same beneficiary, or group or class of beneficiaries,

such of the trustees as the Minister may designate shall, for the purposes of this Act, be deemed to be in respect of all the trusts an individual whose property is the property of all the trusts and whose income is the income of all the trusts.

(See also S. 128 (1); S. 248 (1); Regs. Part 11.)

##### Sec. 104 (3)

(3) Deductions not permitted. No deduction may be made under section 109 or paragraph 110 (1) (d) from the income of a trust.

(See also S. 109 (1); S. 110 (1) (d).)

##### Sec. 104 (4)

(4) Deemed disposition of property by a trust. Every trust shall, on each of the following days, be deemed to have disposed of each capital property of the trust, other than depreciable property, for proceeds equal to its fair market value on that day, and to have reacquired such property immediately thereafter for an amount equal to



that fair market value; and for the purposes of this Act those days are:

- (a) where the trust is a trust created by a taxpayer, whether during his lifetime or by his will, under which
  - (i) his spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and
  - (ii) no person except the spouse may, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust, the day on which the spouse dies;
- (aa) Where the trust is a classified trust the day prescribed by regulation.

[Comment: This amendment is designed to permit the Minister to prescribe alternative rules for trusts such as protective trusts which are worthy of special treatment.

- (b) that day that is 21 years after the latest of
  - (i) January 1, 1972,
  - (ii) the day on which the trust was created, and
  - (iii) where applicable, the day referred to in paragraph (a); and
- (c) the day that is 21 years after any day that is, by virtue of this subsection, a day on which the trust is deemed to have disposed of each such property.

#### Sec. 104(5)

(5) Idem. Every trust shall, on each day described in subsection (4), be deemed to have disposed of all depreciable property of a prescribed class of the trust for proceeds equal to,

- (a) where the fair market value of that property on that day exceeds the undepreciated capital cost thereof to the trust on that day, the amount of that undepreciated capital cost plus  $\frac{1}{2}$  of the amount of the excess, and
- (b) in any other case, the fair market value of that property on that day plus  $\frac{1}{2}$  of the amount, if any, by which the undepreciated capital cost thereof to the trust on that day exceeds that fair market value,

and to have reacquired each such depreciable property of that class immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that proportion of the proceeds determined under paragraph (2) or (b), as the case may be, that the amount that was the fair market value of that property on that day is of the aggregate of the amounts that were the fair market values of all properties of that class on that day, except that

- (c) where the amount that was the capital cost to the trust of any particular property of that class exceeds the deemed capital cost to the trust of the property, for the purposes of sections 13 and 20

and any regulations made under paragraph 20(1) (a) as they apply in respect of the property at any subsequent time,

- (i) the capital cost of the trust of the property shall be deemed to be the amount that was the capital cost to the trust of the property, and
- (ii) the excess shall be deemed to have been allowed to the trust in respect of the property under paragraph 20(1)(a) in computing income for taxation years before the reacquisition by the trust of the property, and any other amount allowed to the trust in respect of the property under that paragraph in computing income for those years shall be deemed to be nil, and

(d) subsection 13(2) is not applicable in respect of any such reacquisition.

#### Sec 104(6)

(6) Deduction in computing income of trust. For the purpose of this Part, there may be deducted in computing the income of a trust for a taxation year such part of the amount that would, but for this subsection (12) and subsection 105(2), be its income for the year as was payable in the year to a beneficiary.

#### Sec. 104 (7)

(7) Non-resident beneficiary. No deduction may be made under subsection (6) in computing the income for a taxation year of a trust in respect of such part of an amount that would otherwise be its income for the year as was payable in the year to a person who, at the time such part of that amount became so payable, was not resident in Canada, unless at that time, the trust was resident in Canada.

(See also C. 104(6).)

#### Sec. 104(8)

(8) Limitation on deduction. No deduction may be made under subsection (6) in computing the income for a taxation year of an inter vivos trust that had income for the year from a business carried on by it in Canada, in respect of such part of an amount that would, but for subsections (6) and (12), be its income for the year as was payable in the year to a person who, at the time the amount became so payable, was

- (a) a non-resident person;
- (b) a non-resident-owned investment corporation; or
- (c) a trust resident in Canada other than
  - (i) a testamentary trust, or
  - (ii) a trust that throughout the period commencing on April 26, 1965 and ending at the time the amount became so payable, was a beneficiary under the trust by whom the amount became so payable, which latter-mentioned trust was throughout such period carrying on a business in Canada.

(See also S. 2(1); S. 104(6).)



## Sec. 104(9)

(9) Idem. No deduction may be made under subsection (6) in computing the income for a taxation year of a trust other than a mutual fund trust, in respect of any amount that is deemed by subsection (21) to be a taxable capital gain for the year of a non-resident person or of a non-resident-owned investment corporation from the desposition of capital property.

## Sec. 104(10)

(10) Where property owned for non-residents. Where all the property of a trust is owned by the trustee for the benefit of non-resident persons or their unborn issue, in addition to the amount that may be deducted under subsection (6), there may be deducted in computing the income of the trust for a taxation year for the purposes of this Part, such part of the dividends and interest received by the trust in a year from a non-resident-owned investment corporation as are not deductible under subsection (6) in computing the income of the trust for the year.

(See also S. 106(1)(b).)

## (Sec. 104(11))

(11) Dividend received from non-resident-owned investment corporation. Where any part of the dividends received in a taxation year by a trust described in subsection (10) from a non-resident-owned investment corporation are deductible under subsection (10) in computing the income of the trust for the year, for the purposes of Part XIII the trust shall be deemed to have paid to a non-resident person on the last day of the year an amount equal to that part, as income of the non-resident person from the trust.

## Sec. 104(12)

(12) Deduction of part of accumulating income included in preferred beneficiary's income. For the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year such part of its accumulating income for the year as was required by subsection (14) to be included in computing the income of a preferred beneficiary.

## Sec. 104(13)

(13) Such part of the amount that would be the income of a trust for a taxation year if no deduction were made under subsection (6) or under regulations made under paragraph 20 (1)(a) as was payable in the year to a beneficiary shall be included in computing the income of the person to whom it so became payable whether or not it was paid to him in that year and shall not be included in computing his income for a subsequent year in which it was paid.

Comment: The purpose of this subsection is to make an amount deductible by reason of its allocation to a beneficiary, taxable in the hands of the beneficiary. The words "or (12)" deleted in the version above, are un-

necessary in that subsection (14) provides for the inclusion of the amount deducted under (12) in the income of the preferred beneficiary concerned.

## Sec. 104(14)

(14) Where a trust and a preferred beneficiary thereunder jointly so elect in respect of a taxation year in prescribed manner and within prescribed time, such part of the accumulating income of the trust for the year as is designated in the election, not exceeding the preferred beneficiary's share therein, shall be included in computing the income of the preferred beneficiary for the year, and shall not be included in computing the income of any tax payer in a subsequent year in which it was paid.

Comment: "The income of any tax payer" is substituted for the words "his income" as the accumulating income may in a subsequent year be paid to someone other than the person so electing.

## Sec. 104(15)

(15) Preferred beneficiary's share. The share of a particular preferred beneficiary under a trust in the accumulating income of the trust for a taxation year is,

(a) where the trust is a trust described in paragraph (4)(a) and the taxpayer's spouse referred to therein is alive at the end of the year, an amount equal to,

(i) if the particular preferred beneficiary is the taxpayer's spouse, the trust's accumulating income for the year, and

(ii) in any other case, nil;

(b) in any case not referred to in paragraph (a), where the shares in which the accumulating income of the trust would be payable to the beneficiaries thereunder do not depend upon the exercise by any person of, or the failure by any person to exercise, any discretionary power,

(i) if at the end of the year a particular beneficiary was a member of a class of beneficiaries under the trust each of whom was prospectively entitled, as a member of that class, to share equally in any accumulating income of the trust the portion of the trust's accumulating income in the year that may reasonably be regarded as having been earned for the benefit of beneficiaries of that class divided by the number of beneficiaries (other than registered Canadian charitable organizations) of that class in existence at the end of the year.

Comment: This subsection provides a code to establish the amount in respect of which a particular preferred beneficiary can elect for the purposes of 104(14). The whole context, therefore, is one of income which is not, in fact, being paid but which is prospectively allocable to a particular preferred beneficiary. Consequently, in sub-paragraph (b) and particularly in clause (i) thereof, words suggesting that anyone is "entitled" to share in income should be changed. In addition, the right to elect only arises in connection with accumulating income so

that any reference to income should be modified by the adjective "accumulating".

(ii) in any other case, the portion of the trust's accumulating income for the year that may reasonably be regarded as having been earned for the benefit of the particular preferred beneficiary;

(c) in any case not referred to in paragraph (a) or (b), where each beneficiary under the trust whose share of the accumulating income of the trust depends under the exercise by any person of, or the failure by any person to exercise, any discretionary power, is a preferred beneficiary or a registered Canadian charitable organization, the portion of the trust's accumulating income for the year that may reasonably be regarded as having been earned for the benefit of the particular beneficiary, not exceeding the amount determined in prescribed manner to be his or its discretionary share of the trust's accumulating income for the year; and

(ca) in the case of a classified trust the amount prescribed.

(d) in any case not referred to in paragraph (a), (b), (c) or (ca), nil.

Comment: These amendments are designed to permit the Minister to prescribe alternative rules for trusts such as protective trusts which are worthy of special treatment.

#### Sec. 104(16)

(16) Capital cost allowance deduction. A beneficiary under a trust may deduct from the amount that would otherwise be his income from the trust by virtue of subsection (13) or (14), as the case may be, such part of the amount that would otherwise be deductible from the income of the trust for the year under regulations made under paragraph 20(1)(a) as the trust may determine; and any amount deductible under this subsection for a taxation year shall be deducted from the amount that the trust would otherwise be able to deduct under those regulations but shall, for the purposes of section 13, be deemed to have been allowed to the trust under those regulations in computing its income for the year.

(See also S. 20(1)(a).)

#### Sec. 104(17)

(17) Depletion allowance. Where an amount is payable in a taxation year by a trust to a beneficiary under the trust, no part of that amount shall be deemed, for the purpose of subsections (6) and (13), to be payable out of an amount deductible in computing the income of the trust for the year under regulations made under subsection 65(1) except such part thereof as the trust designates as being so payable.

#### Sec. 104(18)

(18) Trust for infant. Where the income of a trust for a taxation year or any part thereof was not payable in the year but was held in trust for an infant or minor whose right thereto had vested and the only reason that

it was not payable in the year was that the beneficiary was an infant or minor, it shall, for the purpose of subsections (6) and (13), be considered to have been payable.

(See also S. 65(1).)

#### Sec. 104(19)

(19) Portion of taxable dividends deemed to be dividends received by beneficiary. Such portion of

(a) the aggregate of taxable dividends received by a trust in a taxation year on shares of the capital stock of taxable Canadian corporations,

as

(b) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the year of a particular beneficiary under the trust, and

(c) was not designated by the trust in respect of any other beneficiary thereunder,

shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of section 82 and this subsection, to be a taxable dividend received by the particular beneficiary in the year from a taxable Canadian corporation, and not to be a taxable dividend received by the trust in the year from a taxable Canadian corporation.

#### Sec. 104(20)

(20) Portion of non-taxable dividends not to be included in beneficiary's income. Where an amount has, in a taxation year, become payable by a trust to a particular beneficiary thereunder, such portion thereof as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to have derived from an amount received by the trust in the year as, on account or in lieu of payment of, or in satisfaction of, a dividend on a share of the capital stock of a corporation resident in Canada other than a taxable dividend, and

(b) was not designated by the trust in respect of any other beneficiary thereunder,

shall, if so designated by the trust in respect of the particular beneficiary in its return of income for the year under this Part, not be included in computing the income of the particular beneficiary for the year.

#### Sec. 104 (21)

(21) Portion of taxable capital gains deemed gain of beneficiary. Such portion of

(a) the amount, if any, by which the aggregate of the taxable capital gains of a trust for a taxation year exceeds the aggregate of

(i) its allowable capital losses for the year, and



(ii) the amount, if any, deductible under paragraph III (1) (b) from its income for the year

as

(b) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by virtue of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for the taxation year of a particular beneficiary under the trust, and

(c) was not designated by the trust in respect of any other beneficiary thereunder,

shall, if so designated by the trust in respect of the particular beneficiary in the return of its income for the year under this Part, be deemed, for the purposes of sections 3 and 111, to be a taxable capital gain for the year of the particular beneficiary from the disposition of capital property.

#### Sec. 104 (22)

(22) Deduction for foreign taxes. For the purpose of section 126, the following rules apply:

(a) such portion of the income of a trust for a taxation year (before making any deduction under subsection (6) or (12)) from sources in a foreign country as

(i) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the income that, by virtue of subsection (13) or (14), as the case may be, was included in computing the income for a taxation year of a particular beneficiary under the trust, and

(ii) was not designated by the trust in respect of any other beneficiary thereunder,

shall, if so designated by the trust in respect of the particular beneficiary in its return of income for the year under this Part, be deemed to be income of the particular beneficiary for the taxation year from sources in that country;

(b) a beneficiary under a trust shall be deemed to have paid as income tax for a taxation year, on the income that he is deemed by paragraph (a) to have for the year from sources in a foreign country, to the government of that country an amount equal to that proportion of the income or profits tax paid by the trust for the year to the government of that country or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20(11) or (12) in computing its income for the year) that

(i) such portion of the amount included in computing his income for the year by virtue of subsection (13) or (14), as the case may be as is deemed by paragraph (a) to be income for the year from sources in that country,

is of

(ii) the income of the trust for the year from sources in that country (before making any deduction under subsection (6) or (12));

(c) the income of a trust from sources in a foreign country for a taxation year shall be deemed to be its actual income therefrom for the year minus the aggregate of the amounts deemed by paragraph (a) to be the income therefrom for the year of all beneficiaries under the trust; and

(d) a trust shall be deemed to have paid as income tax to the government of a foreign country for a taxation year an amount equal to the income or profits tax actually paid by it for the year to the government of that country, or to the government of a state, province or other political subdivision of that country (except such portion of that tax as was deductible under subsection 20 (11) or (12) in computing its income for the year), minus the aggregate of the amounts deemed by paragraph (b) to have been paid to the government of that country for the year by all beneficiaries under the trust.

#### Sec. 104 (23)

(23) Testamentary trusts. In the case of a testamentary trust, notwithstanding any other provision of this Act the following rules apply:

(a) the taxation year of the trust is the period for which the accounts of the trust have been ordinarily made up and accepted for purposes of assessment under this Act and, in the absence of an established practice, the period adopted by the trust for that purpose (but no such period may exceed 12 months and a change in a usual and accepted period may not be made for the purpose of this Act without the concurrence of the Minister);

(b) when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year;

(c) the income of a person for a taxation year from the trust shall be deemed to be his benefits from or under the trust for the taxation year or years of the trust that ended in the year determined as provided by this section and section 105;

(d) where an individual having income from the trust died after the end of a taxation year of the trust but before end of the calendar year in which that taxation year ended, a separate return of his income from the trust after the end of the trust's taxation year to the time of death shall be filed and tax under this Part shall be paid thereon as if that income were the income of another person; and

(e) in lieu of making the payments required by section 156, the trust shall pay to the Receiver General of Canada within 90 days from the end of each taxation year, the tax for the year as estimated under section 151.

(See also S. 70(2); S. 105(1); S. 150(4); S. 151; S. 156; S. 249(1).)



## Sec. 104(24)

(24) "Amount payable". For the purposes of subsections (6), (7), (8), (13) and (20), an amount shall not be considered to be payable in a taxation year unless it was paid in the year to the person to whom it was payable or he was entitled in that year to enforce payment thereof.

(See also S. 104(6); S. (7), (8), (13).)

## Sec. 104(25)

(25) An election under subsection (14) hereof on behalf of a preferred beneficiary under a disability can be made by the person designated in the trust to make such election and if none by a parent or guardian of such preferred beneficiary and if none by the trustee.

Comment: Doubt has been expressed as to the ability of persons to elect when otherwise entitled to do so as preferred beneficiaries in respect of accumulating income. It is understood that the Department of Justice has given the opinion to the Department of Finance that no problem arises under the provincial law with these elections. It is further understood that the Department of National Revenue has informed the Department of Finance that no problem arises in connection with the rights to elect which presently exist insofar as persons under a disability are concerned. The Bar Association does not dispute the advice tendered by either Department but in the particular context under discussion here, it does not consider that either advice meets the problem. It is perfectly true that the legal institutions exist in all of the provinces under which a person could become competent to elect on behalf of an infant but the institutions often involve tedious procedures and considerable expense as they are necessarily designed to cope with the awkward problems which arise in connection with the property of a person under a disability. The most common disability with which we will be concerned in connection with the right of election by a preferred beneficiary will be the disability of infancy. Other disabilities such as mental incapacity or absenteeism are uncommon or even exotic and the likelihood of resort to a proper procedure which would result in the appointment of a legal personal representative is great. Very few parents however, bother to become guardians of their own children. It is considered that the Statute should give the right to a parent to make the election. This would not interfere with the provincial right to determine the matter of guardianship but would simply say that a federal election can be made by a particular category of person.

## SEC. 105. Benefits under trust, contract, etc.

(1) The value of all benefits (other than a distribution or payment of capital) to a taxpayer during a taxation year from or under a trust, contract, arrangement or power of appointment, irrespective of when made or created shall, subject to subsection (2), be included in computing his income for the year.

(See also S.56(2); S.76(1).)

## Sec. 105(2)

(2) Upkeep, etc. Such part of an amount paid by a trust out of income of the trust for the upkeep, maintenance or taxes of or in respect, of property that, under the terms of the trust arrangement, is required to be maintained for the use of a tenant for life or a beneficiary as is reasonable in the circumstances shall be included in computing the income of the tenant for life or other beneficiary from the trust for the taxation year for which it was paid.

(See also S. 12(1)(m); S. 104(6), (13); S. 248(1).)

## SEC. 106 Income interest in trust.

(1) Where an amount in respect of a taxpayer's income interest in a trust has been included in computing his income for a taxation year by virtue of subsection 104(13) or subsection (2) of this section, there may be deducted in computing his income for the year the lesser of

- (a) the amount so included in computing his income for the year, and
- (b) the amount, if any, by which the cost to the taxpayer of the income interest exceeds the aggregate of all amounts in respect of the interest that were deductible by virtue of this subsection in computing his income for previous taxation years.

## Sec. 106(2)

(2) Disposition by taxpayer of income interest. Where in a taxation year a taxpayer disposes of an income interest in a trust,

- (a) except where subsection (3) is applicable, there shall be included in computing his income for the year the proceeds of the disposition;
- (b) any taxable capital gain or allowable capital loss of the taxpayer from the disposition shall be deemed to be nil; and
- (c) for greater certainty, the cost to the taxpayer of each property received by him as consideration for the disposition is the fair market value of the property at the time of the disposition.

## Sec. 106(3)

(3) Proceeds of disposition of income interest. For greater certainty, where at any time any property of a trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of his income interest in the trust, the trust shall be deemed to have disposed of the property for proceeds of disposition equal to the fair market value of the property at that time.

## SEC. 107 Disposition by taxpayer of capital interest.

- (1) Where a taxpayer has disposed of a capital interest in a trust,
- (a) for the purposes of computing his taxable capital gain, if any, from the disposition of the interest, the adjusted cost base to him thereof immediately before the disposition shall be deemed to be an amount

equal to the greater of the adjusted cost base to him thereof otherwise determined immediately before that time and the cost amount to him of the interest immediately before that time, and

(b) for greater certainty, for the purposes of computing his allowable capital loss, if any, from the disposition of the interest, the adjusted cost base to him thereof immediately before the disposition is the adjusted cost base to him of the interest immediately before that time as determined under this Act without reference to paragraph (a),

except that where the interest was an interest in an inter vivos trust not resident in Canada that was purchased by the taxpayer, paragraph (a) does not apply in respect of the disposition thereof except where subsection (2) is applicable in respect of any distribution of property by the trust to him in satisfaction of all or any part of the interest.

#### Sec. 107(1)

(1) Where a taxpayer has disposed of a capital interest in a trust,

(a) for the purposes of computing his taxable capital gain, if any, from the disposition of the interest, the adjusted cost base to him thereof immediately before the disposition shall be deemed to be an amount equal to the greater of the adjusted cost base to him thereof otherwise determined immediately before that time and the cost amount to him of the interest immediately before that time, and

(b) for greater certainty, for the purposes of computing his allowable capital loss, if any, from the disposition of the interest, the adjusted cost base to him thereof immediately before the disposition is the adjusted cost base to him of the interest immediately before that time as determined under this Act without reference to paragraph (2),

except that where the interest was an interest in an inter vivos trust not resident in Canada that was purchased by the taxpayer, paragraph (a) does not apply in respect of the disposition thereof except where subsection (2) is applicable in respect of any distribution of property by the trust to him as or on account of all or any part of the interest.

#### Sec. 107(2)

(2) Where at any time any property of the trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust as or on account of all or any part of his capital interest in the trust.

Comment: Some doubt has been expressed as to whether a capital encroachment for a beneficiary represents the distribution of property by a trust to a beneficiary "in satisfaction of all or any part of his capital interest". The problem seems to be with the word "satisfaction". The doubt has been expressed in print by writers such as David Ward and has been felt privately by those in the Bar Association concerned with the preparation of

this brief. It seems to us that the problem can simply be solved by changing the phrase where it appears in both subsections from "in satisfaction of" to "as or on account of".

#### Sec. 107(3)

(3) Determination of cost of property other than non-depreciable capital property. Where the property referred to in subsection (2) that was distributed by a trust to a taxpayer was property, other than capital property that was not depreciable property, for the purpose of determining the cost to the taxpayer of the property under paragraph (2)(b) (except for the purposes of paragraph (2)(b) as it applies to determine the taxpayer's proceeds of disposition of his capital interest under paragraph (2)(c), the reference in paragraph (2)(b) to "that proportion" shall be read as a reference to " $\frac{1}{2}$  of that proportion".

#### Sec. 107(4)

(4) Where trust in favour of spouse. Where the trust referred to in subsection (2) was a trust described in paragraph 104(4)(a) and

(a) the property so distributed by the trust was capital property other than depreciable property,

(b) the taxpayer to whom the property was so distributed was a person other than the spouse, and

(c) the spouse was alive at the time the property was so distributed,

notwithstanding paragraphs (2)(a) to (d), the following rules apply:

(d) the trust shall be deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(e) the taxpayer shall be deemed to have acquired the property at a cost equal to that fair market value, and

(f) the taxpayer shall be deemed to have disposed of all or part, as the case may be, of his interest in the trust, for proceeds of disposition equal to that fair market value.

#### Sec. 107(5)

(5) Distribution to non-resident beneficiary. Where subsection (2) is applicable in respect of the distribution by a trust of any property of the trust to a non-resident taxpayer who was a beneficiary under the trust and the property was not taxable Canadian property or property that would be taxable Canadian property if at no time in the taxation year of the trust in which it was so distributed the trust had been resident in Canada, notwithstanding paragraphs (2)(a) to (c) the provisions of paragraphs (4)(d) to (f) are applicable in respect of the property as if the reference in paragraph (4)(f) to "that fair market value" were read as a reference to "the adjusted cost base to him of the interest or part thereof, as the case may be immediately before the property was so distributed".



## SEC. 108. Definitions.

(1) In this subdivision,

## Sec. 108(1)(a)

(a) "Accumulating income".—"accumulating income" of a trust for a taxation year means the amount that, but for subsections 104(6) and 104(12) would be its income for the year;

[Comment: The words "104(6)" would appear to have been omitted by oversight.

## Sec. 108(1)(b)

(b) "Beneficiary".—"beneficiary" under a trust includes a person beneficially interested therein;

## Sec. 108(1)(c)

(c) "Capital interest".—"Capital interest" of a tax- or future and whether absolute or contingent) of the taxpayer as a beneficiary under the trust to, or to receive, all or any part of the capital of the trust;

## Sec. 108(1)(d)

(d) "Cost amount" of capital interest.—"cost amount" of any capital interest of a taxpayer in any trust at any time means,

(i) in any case where any money or property of the trust has been distributed by the trust to the taxpayer in full satisfaction of the whole of his capital interest (whether on the winding-up of the trust or otherwise), the aggregate of the money so distributed and all amounts each of which is the cost amount to the trust, immediately before the distribution, of each such property so distributed to the taxpayer, and

(ii) in any other case, that proportion of the amount, if any, by which the aggregate of all money of the trust on hand immediately before that time and all amounts each of which is the cost amount to the trust, immediately before that time, of each property of the trust exceeds the aggregate of all amounts each of which is the amount of any debt owing by the trust, or of any other obligation of the trust to pay any amount, that was outstanding immediately before that time, that

(A) the fair market value at that time of the capital interest in the trust, is of

(B) the fair market value at that time of all capital interests in the trust;

## Sec. 108(1)(e)

(e) "Income interest".—"income interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under the trust to, or to receive, all or any part of the income of the trust;

## Sec. 108(1)(f)

(f) "Inter vivos trust".—"inter vivos trust" means a trust other than a testamentary trust;

## Sec. 108(1)(g)

(g) "Preferred beneficiary".—"preferred beneficiary" under any trust means an individual resident in Canada who is a beneficiary under the trust and is

(i) the settlor of the trust,

(ii) the spouse or former spouse of the settlor of the trust, or

(iii) a child, grandchild or great grandchild of the settlor of the trust, or the spouse of any such person;

## Sec. 108(1)(h)

(h) "Settlor".—"settlor",

(i) in relation to a testamentary trust, means the individual referred to in paragraph (1), and

(ii) in relation to an inter vivos trust,

(A) if the trust was created by the transfer, assignment or other disposition of property thereto (in this paragraph referred to as property "contributed") by not more than one individual and the fair market value of such of the property of the trust as was contributed by him at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual, and

(B) if the trust was created by the contribution of property thereto jointly by an individual and his spouse and by no other person and the fair market value of such of the property of the trust as was contributed by them at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual and his spouse;

## Sec. 108(1)(i)

(i) "Testamentary trust".—"testamentary trust" means a trust or estate that arose upon the death of an individual and in consequence of his death, but for greater certainty does not include any such trust that was created by any person other than that individual; and

## Sec. 108(1)(j)

(j) "Trust".—"trust" includes an inter vivos trust and a testamentary trust but, in subsections 104(4),



(5), (12), (14) and (15) and sections 105 to 107 does not include

- (i) a unit trust, or
- (ii) a trust governed by a registered pension fund or plan, an employees profit sharing plan, a registered supplementary unemployment benefit plan, a registered retirement savings plan or a deferred profit sharing plan.

#### Sec. 108(1)(k)

(k) "Classified trust".—"classified trust" means a trust which has been accepted by the Minister for inclusion in a class prescribed by regulation.

**Comment:** This amendment is designed to permit the Minister to prescribe alternative rules for trusts such as protective trusts which are worthy of special treatment.

#### Sec. 108(2)

(2) Meaning of expression "unit trust". For the purposes of this Act, a trust is a unit trust at any particular time if, at that time, it was an inter vivos trust the interest of each beneficiary under which was described by reference to units of the trust, and

(a) the issued units of the trust included

- (i) units having conditions attached thereto that included conditions requiring the trust to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions the surrender of the units, or fractions or parts thereof, that are fully paid, or
- (ii) units qualified in accordance with prescribed conditions relating to the redemption of the units by the trust,

and the fair market value of such of the units as had conditions attached thereto that included such conditions or as were so qualified, as the case may be, was not less than 95% of the fair market value of all of the issued units of the trust (such fair market values being determined without regard to any voting rights attaching to units of the trust), or

(b) throughout the taxation year in which the particular time occurred it complied with the following conditions:

- (i) it was resident in Canada,
- (ii) its only under taking was the investing of funds of the trust,
- (iii) at least 80% of its property throughout the year consisted of shares, bonds, mortgages, marketable securities, or cash, or of rights to or interests in any rental or royalty computed by reference to the amount or value of production from an oil or gas well, or from a mineral resource, situated in Canada,
- (iv) not less than 95% of its income for the year was derived from, or from dispositions of, investments described in subparagraph (iii),

(v) at no time in the year did more than 10% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality, and

(vi) all holdings of and transactions, if any, in its units accorded with prescribed conditions relating to the number of its unit holders, dispersal of ownership of its units and public trading of its units.

#### Sec. 108(3)

(3) For the purposes of paragraph 70(6)(b), paragraphs 73(1)(a) and (b), paragraph 104(4)(a) (herein called the "rollover provisions:") and of paragraph 108(1)(e)

(a) the income of a trust is its income computed without reference to the provisions of this Act.

(b) where the trust directs the application of the income of the trust for the benefit of the spouse, the spouse, shall for the purposes of this Act, be deemed to be entitled to receive the income so directed to be applied.

(c) the fact that debts of the taxpayer or taxes exigible by reason of his death or administration expenses of the trust are payable out of the property of the trust shall not for that reason only prevent the application of the rollover provisions.

**Comment:** The Bar Association feels concern on two points in connection with the exclusive trust for a spouse. In the first place if money is spent for the benefit of a spouse rather than being paid to a spouse it ought to be treated in the same way. There is some concern that it would not be so treated and that the possibility of spending income for the benefit of a spouse would disqualify the trust. Similarly there is concern that if the trust must bear taxes payable to a province or to a municipality or debts of the deceased, that the trust would be disqualified. A section such as section 7(4) of the Estate Tax Act together with its interpretation is required and the Association is satisfied with the language which is proposed for this purpose.

#### Additional Sections to be amended

110(2)(a) Where an individual was, during the taxation year a member of a religious order and had, as such, taken a vow of perpetual poverty, he may, in lieu of the deduction permitted by paragraph 1(a), deduct from his income for the year an amount equal to his earned income for the year as defined by section 63 if, of his income, that amount has been paid to the order.

(b) Where a taxpayer has died in a taxation year in applying paragraph (1)(a) for the purpose of computing his taxable income for that year that paragraph shall be read without reference to the words "not exceeding 20%".

Comment: The Bill now limits charitable deductions to an amount equal to 20% of the taxable income in the terminal period. It is, in fact, not uncommon for a taxpayer to give all of his property, or all of his property subject to a life interest in favour of his spouse (and perhaps other dependants) to charity. The effect of the present provisions of the Bill would be to make some part of the charitable gift an amount in excess of the 20% limit and hence taxable. It is, therefore, suggested that in the year of death a 100% deduction should be available for charity. It is to be noted that this is not a novel suggestion. A 100% deduction is now available under the Estate Tax Act when a gift is being made to that well-known charity, the Crown. The Bar Association requests that the 100% deduction be generally applicable to all charitable gifts in the year of death.

54(e) "listed personal property" of a taxpayer means his personal-use property that is all or any portion of, or any interest in or right to, any

- (i) print, etching, drawing, painting, sculpture, or other similar work of art,
- (ii) jewellery,
- (iii) rare folio, rare manuscript, or rare book,
- (iv) stamp,
- (v) coin,
- (vi) antique furniture,
- (vii) gold, silver, antique flatware or plate,
- (viii) antique or rare china.

Comment: In the Minister's explanation of the Bill, the categories of listed personal property were explained as being examples of items which did not normally depreciate through use and would hence normally attract a gain on disposition. However, the technique in the Statute understandably has been to define a specific list for the purposes of listed personal property and the list contains omissions. Ordinary furniture depreciates through use but genuine antiques do not. The difficulty of establishing what is an antique can be resolved and is resolved for the purposes of the customs regulations. The present list includes coins, jewellery and works of art. These categories do not embrace gold or sterling silver tableware. Such articles do not depreciate through use and as they acquire patina of age they also acquire value. Similar articles made of more base metals such as pewter or copper or brass while normally belonging to the category of things which depreciate through use, may, if they are very old, move into the category of antiques and like the antique furniture, begin to appreciate by the passage of time whether or not used. Finally, antique or rare china describes two classes of pottery which do not depreciate through use. Every member of the Senate must be acquainted with particular items which, whether or not used, are more valuable now than when they were purchased. The characteristic of antiquity is here the more important qualification. Rare china which is not also old china will not commonly arise. However, certain of the most artistic makers of fine china are in the habit of

issuing special limited editions which immediately commence growing in value.

40(2)(k) For the purposes of paragraph 69(1)(b) and subsections 70(5) and 104(4) there may be deducted from the proceeds of disposition otherwise determined of property (other than depreciable property) an amount equal to the reasonable expenses which would have been incurred by the taxpayer in the disposition of the property deemed to be disposed of by him had he actually disposed of that property.

Comment: Commission on the sale of property and other similar expenses are deductible in computing the capital gain to be paid by the taxpayer. It seems only fair that allowance be made for this type of expense which the property is deemed to be realized rather than actually realized.

122(2) Subsection (1) is not applicable for a taxation year of an inter vivos trust other than a mutual fund trust or a classified trust if the trust

(a) was established before June 18, 1971

(b) was resident in Canada on June 18, 1971 and without interruption thereafter until the end of the year,

(c) did not carry on any active business in the year,

(d) has not received any property by way of gift after Royal Assent has been given to this Act,

(e) has not after Royal Assent has been given to this Act insured

(i) any debt

(ii) any other obligation to pay an amount to, or guaranteed by, any person with whom any beneficiary of the trust was not dealing at arms length.

Comment: Many trusts have been unintentionally put into the minimum 50% taxation category by additional gifts or borrowings since June 18, 1971. The authors of the Bill have their sights set upon sophisticated taxpayers indulging in constant tax planning. For such persons the rule of June 18 is undoubtedly fair. Those people all heard about this particular provision over the weekend of June 19 and 20. However, small trusts, often for children, are legion, not attended by formality and not always or even most largely, created by sophisticated people. The mother who banks her family allowance cheques in the name of the children, the grandfather who buys a \$50 Canada Savings Bond each year for his grandchildren, are examples. Those trusts should be saved by the creation of a new category of infants' trusts but pending such salvation, it would be more equitable to give a greater amount of time to taxpayers to become acquainted with the rule. At the time of the last amendment Section 13(4) of the Estate Tax Amendment Act, 1968-1969 allowed taxpayers to engage in post mortem variations of wills in order to qualify within the definition of the spouse-exempt trust created by section 7(1)(b) of the Estate Tax Act. Such variation was permitted until August 1, 1969 and the purpose was to allow a sufficient period of time to elapse to catch the cases where persons would not have had a reasonable opportunity to alter wills. The same principle is applicable here.

*Comment for Classified Trust.* At present the Bill recognizes the following categories of trusts:

Unit Trusts

Testamentary Trusts

- (a) exclusive spouse trust
- (b) other trust

Inter Vivos Trusts

- (a) exclusive spouse trust
- (b) other trust created before June 18, 1971 and not contaminated by gifts or borrowing since that time
- (c) other inter vivos trusts

The effect of the Bill is to treat generously spouse trusts, testamentary trusts and pre-June 18 trusts but all living trusts created after June 18 are treated punitively as if there never were any reason for employing them except tax avoidance. The Bar Association finds it tiresome to have to reiterate over and over again in argument with tax policy officials at the federal level that there are

other uses and reasons for trusts than tax avoidance and that these uses are of everyday application. In the 1968-1969 amendments it was recognized that an infant's trust was a legitimate device. There was also recognition in the estate tax context of a trust for an incapable person. It is suggested that the revenue has nothing to fear from the creation of further types of trusts to be treated on a less punitive basis both as to the time when the trust is deemed to dispose of its capital assets and as to the applicable rate of tax on accumulating income. The Bar Association would suggest that the two categories most urgently required are the category of a protective trust and the category of infant's trust. In each case conditions could be established to protect the revenue while at the same time leaving criteria which could be met in ordinary cases. The Bar Association considers that flexibility could be obtained in this connection by building in the possibility of prescribing categories of trusts by regulation and in this way making provision in the future not only for the two types mentioned, but also for other types. The required amendment is extremely simple.





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Monday, December 13, 1971

The Standing Senate Committee on Banking, Trade and Commerce met this day at 2.30 p.m. to give further consideration to the Summary of 1971 Tax Reform Legislation, and any bills based on the Budget Resolutions in advance of the said bills coming before the Senate, and any other matters relating thereto.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I call the meeting to order. We have the Minister of Finance here today. The main purpose is to deal with any questions which we may wish to ask him, but I think he has a short statement to make first.

I wish to inform you that the copies of this bulky volume which you have are all that are available to us at this time. If honourable senators wish to keep them for reference during the next few days they should take them with them to their offices, because they cannot be replaced.

**Honourable Edgar John Benson, Minister of Finance:** Gentlemen, firstly, in appearing here today at the request of Senator Hayden it is not my intention to make a general or lengthy statement. I will appear again before the Senate when the bill is officially in your hands next week, if you so desire. At that time, if you so wish, I will make a longer statement.

Now I would like to indicate the appreciation of the Government and, indeed, of myself for the work done from the beginning by this Senate committee on the tax legislation. Relating the reports produced by the committee with respect to the White Paper on Taxation to the budget of June 18, if I recall correctly, some 44 recommendations of the Senate committee which were adopted in Bill C-259. Since debate on the bill commenced in the House of Commons this fall, the Senate has been considering the subject matter and has so far made two reports. We have studied these very carefully, and have made certain amendments in the House of Commons. I think of such amendments as those with respect to credit unions and co-operatives, as well as a great many other technical amendments, as being in conformity with the suggestions of this committee. I would like to repeat that your recommendations have been very helpful and will be the subject of our continuing study. An amending bill will be introduced next spring as, indeed, there always is an amending bill to a taxation statute. There has been one every year since 1918, when income tax was first imposed in Canada.

However, there are specific areas in this bill which are troublesome to ourselves, to you and to the business community, and they are areas which cannot be ignored. Rather, we have undertaken to continue studying them

and, indeed, we will move forward and produce some amendments in the spring.

I indicated some of these amendments in the House of Commons last week, but they will not be in your records. I will inform you briefly of the areas we are considering. First of all, there is the matter of gifts in kind to charities, to which a gains tax would apply. A great deal of difficulty was experienced in this regard in the United States, as you know, because of loopholes which developed through this being allowed. Very lengthy legislation was passed there in 1969 in an attempt to close those loopholes. We hope, through further study, to be able to introduce provisions which will allow gifts in kind without involving a similar mass of legislation to that which exists in the United States. There is also an amendment with regard to profit-sharing plans.

**Senator Connolly:** Before you leave that subject, I read your comment about two ways in which this could be done. It mentioned the tax-paid aspect of it. In other words, if the gift were made in cash, presumably any capital gain which might have been realized would have been accounted for in the donor's tax return. The specific problem we had here, as you are well aware, was raised by the Jewish Congress, regarding gifts in kind, particularly real estate, given to camps, where capital gains were deemed to have been made at the time of the gift and therefore the tax was payable by the donor in addition to giving the property.

**Hon. Mr. Benson:** This is true. If he sold property and gave cash, he would have to pay tax on it. If one is making a gift in kind, the gains tax that might have accrued would have to be paid by the donor. In the result, the charity might receive a lesser amount by way of gift.

**The Chairman:** The real difficulty there is that the gift is valued at the date that it is made in kind. If the man lived for another 10 years and died and there was a disposition, it would then go back and the gain determined would be the difference between the value at the time he gave it and the disposition. This would be particularly harmful in the case of wills. The man who may think that he is leaving an estate in liquid form might find out that he has made a gift in kind to a registered charitable organization, and some 10 years later, when there has been a gain realized, this comes back to his estate, and he is not there to manipulate the affairs of this estate at that time.

**Hon. Mr. Benson:** And when he is dead he does not get the charitable donation deduction. That is the problem that we are studying at the present time. It is not an easy problem. If one could say, "Well, distinguish charities, pick out legitimate charities and say all these are legitimate and all those are not legitimate"—and here one could think of

personal charitable trusts—it would be relatively easy to do. The United States, in trying to do this in 1969, got into a great volume of legislation, and we are trying to find an easier way of doing it.

It is not a problem that may come up next year, but somebody may want to do something in his will next year and we feel that we should treat it as a matter of urgency, because it would stop these gifts in kind on death for a period of time. As a matter of fact, we are in favour of charities receiving gifts in this way and are determined that we will find a method of solving the problem.

In the case of employees' profit-sharing plans, which was another point raised here, as distinguished from deferred profit-sharing plans, there is an amendment which we think should be made in order to recognize that the funds which go into such a plan are tax paid and therefore the recipient of a distribution in print should be faced with a deemed realization of the accrued capital gain. We think this can be done. Here again, my advisers tell me that one can get into all kinds of problems, but we are looking into this.

With regard to the deferred profit-sharing plan area, in the legislation we mentioned two things that we can do. I indicated that we would give section 36 treatment to all amounts credited to a person up to the end of this year. This will in no way affect his right to average in the future the amount which may be put into the plan in the future. He will have both of these benefits. That was our intention, but the legislation is not worded that way. I made a promise to do this a while ago, but the first time I realized that I had not fulfilled my promise was when I read the Senate committee report, and the day after when I saw people representing a deferred profit-sharing plan.

There are a great many areas which I have mentioned. There is the matter of passive income and the treatment of foreign income of corporations. As a Government, we are in favour of multinational Canadian corporations, and we believe they should have fair tax treatment. The aim of some of the foreign income sections has been to prevent the avoidance of Canadian income tax through schemes whereby funds are funneled into tax havens. Unfortunately, in stopping this we find that it may affect a great many foreign corporations and Canadian corporations operating abroad. We are looking at the passive income section. It has been misinterpreted to some degree by the public, in that the definition is fairly broad and it allows such things as interest on receivables and normal amounts that a corporation would receive in their business operations as being non-passive income.

**Senator Connolly:** Income from active business.

**The Chairman:** The one thing that bothers me about that, Mr. Minister, is that there is a good deal of jurisprudence which has been developed over the years as to what is income from a business and what is income from property; and, unfortunately, we have many cases which say that rental income is income from property.

If we are going to have conflicts, we feel there should be some clarification so as to be sure that active business should not exclude income from property. As to the ramifications of that, I cannot tell you at the moment.

**Hon. Mr. Benson:** This is what we have been looking at, but our view was that we should make the definition as broad as possible so that the normal business operations would not be subject to the passive income rules.

When we started looking at this we felt that if we further confined it it would make the jurisprudence more confining than we want it to be. We are trying to determine how we can best do this.

**The Chairman:** If I may just give you an illustration, Mr. Minister. Routine maintenance and care of rental properties has been held not to constitute the carrying on of an active business. Rental income from apartment buildings and shopping centres, where services are provided by the owners, including heat, and so forth, has also been held not to be income from an active business. A private company operating an apartment building is held to be a personal corporation because it was not carrying on an active business. This is what you have to face in trying to interpret income from an active business operation.

I feel there has to be some broadening or clarification, but I agree too that if you push in a balloon in one spot it has to come out somewhere else. The point is you have to put all those things together.

**Hon. Mr. Benson:** That is true. It was not our concept of what we are trying to do in the act. The definition of passive income relates only to income earned abroad. We conceived that normal business income of firms operating outside the country, whether from rentals or various sources, would not be classified as passive income, and we are, as I have indicated, having a look at this section to try to find something that will make clear our intention.

**The Chairman:** In any event, you know the problem and the scope of our amendment, and you are looking at it.

**Hon. Mr. Benson:** That is right. This also applies to the *de minimus* rule with regard to passive income.

We have been looking at other areas as well, and I am just indicating the kind of things we have to think about in the interim, between now and when we introduce an amending bill.

There is also the matter of people coming to Canada to work for a few years who upon departure might be deemed to have realized capital gains, even though they never intended to become residents of Canada. We find this arising in some of our multinational corporations. For example, you could have a resident of the United States working in Britain, who is asked to come to Canada to manage the operation here for four or five years, until he retires, and who, at the end of that time, returns to the United States. That person could get stuck with capital gains in Canada. We are having a look at this to see if something can be done about it.

**Senator Isnor:** Why should he not be taxed in the same way as a Canadian?

**Hon. Mr. Benson:** I can tell you that such situations do arise. For example, supposing a resident of the United States living in Britain had bought shares of stock at \$20 and that stock went up to \$40. If his company wanted him to come and work in Canada, he would say: "Well, the



stock market is such now that the stock which was up to \$40 is now down to \$20, and if I go to Canada for a period of four years and then leave the country, I will have to pay tax on the amount of money involved in my stock going back up to where it was before, so I will not go; it is not worth my while going". We feel we should be in a position to encourage people in our multinational corporations to move from one country to another without an undue penalty.

The real purpose of the realization on leaving a country is to stop people who have been living in Canada for quite a long time accumulating wealth and then leaving the country in order to avoid a gains tax. That is what we are trying to stop, and we want to stop that without putting undue penalties on somebody who might come to work in Canada as compared to the situation if he went to work in the United States.

**Senator Lang:** Why have any penalty, Mr. Minister?

**Hon. Mr. Benson:** He might have some tax to pay. We will try and have a look at it.

**Senator Molson:** The principle might be that he should have to pay tax only once somewhere.

**Hon. Mr. Benson:** That is right. Of course, if we worked out our tax treaties this would presumably be the case.

I think that indicates some of the problems. We have gone over, in detail, a great many of the problems you have raised in your reports to date, including the one with respect to the pulp and paper industry. Indeed, we met with the pulp and paper industry last week as a Cabinet, and are taking a look at the taxation position vis-à-vis other countries. We fully recognize that they have serious problems—all of which do not arise out of taxation, incidentally.

**Senator Connolly:** What do you think of the concept of earned depreciation for the pulp and paper industry?

**Hon. Mr. Benson:** I would not commit myself to this. If I were going to do it for the pulp and paper industry, I think one could bring forward arguments that we should extend this to other manufacturing industries. We have done it for mines and oil. It might be great to do it, but one has to consider how much it would cost. If you move in the case of the pulp and paper industry it might not involve a move in other cases, but this has to be looked at very carefully.

**Senator Connolly:** Perhaps our staff and our chairman came up with a lable for the concept, because it is a resource industry in a large measure, and in a sense a wasting resource, although it is replaceable. What we were trying to provide there was something that would help them over the long run, hopefully that would not make too much of an impact on the loss of revenue.

**Hon. Mr. Benson:** We are looking at this and are working with the pulp and paper industry. Incidentally, a couple of provinces are also involved in looking at the tax position of the pulp and paper industry in Canada vis-à-vis other countries. We have been in consultation with the provinces and the industry in trying to work out what the taxes are in the various jurisdictions. You can pick out situations

where in the United States the tax might appear to be very much higher than it is in Canada, but then you have to start looking at the implications and what other things are involved.

**Senator Connolly:** That applies even between provinces with the logging tax. We had a long discussion on that here with some industry people, and some of our own people who were very knowledgeable because they had pulp and paper industries in their own areas.

**The Chairman:** I think the minister has noticed that. We thought that the logging tax credit should not be limited only to the provinces and people subject to what is specifically called the logging tax. We thought that if the tax, no matter what its name, applies the same as a logging tax, then for tax credit purposes it should be included, and this was one of the recommendations we made.

**Hon. Mr. Benson:** We have looked at your recommendations, and I assure you they will be given full consideration as we continue studying this problem.

**The Chairman:** On the good side, I can tell you that I had a letter from the Pulp and Paper Association after their visit and interview with a number of ministers. They were very appreciative of the work we had done, and also of the reception they had from you and other ministers.

There is another item, if I might mention items, Mr. Minister, that we included. It is mentioned in our two reports. We included it in the list we established as being a top priority list. It is the so-called tax exempt non-resident investors. Perhaps I can identify it more closely by saying that we relate it to the Teachers' Insurance and Annuity Association. They had a problem of having a benefit taken away from them, which the Minister of Finance in 1963 granted them, that is, exemption from withholding tax.

**Hon. Mr. Benson:** Yes. They made representations to us also. We can fix them up on a temporary basis, and we think that this may be the kind of thing that perhaps should be not subject to a tax. This is our general opinion on that point. What we have considered doing is giving them a two-year exemption and in this period looking at hardship cases, where there may be others as well as this, and developing some rules with respect to hardship cases, that do not go contrary to the basic law, but where we recognize special circumstances in these special cases.

**The Chairman:** Except that the basic law, as we thought of it, was to cover non-resident investment in debt securities, rather than equity. This seems to be quite a topic of national interest nowadays and it certainly was so in 1963 when Mr. Gordon brought this change in. This company, the Teachers', were investing only in debt securities in Canada, and they were tax-exempt organization in the United States. Obviously, on any withholding tax they paid in Canada, they would have no place to write it off; they would have to eat it. They have entered into transactions in Canada since 1963. I know one of them was the financing of the fuel pipe installations at Malton. They made it on the basis of their exemption from withholding tax.

**Hon. Mr. Benson:** We think, on our problem vis-à-vis the United States, we would be able to take care of that

without too much difficulty, if they are in the United States. But there are some investments in Canada, in some other areas, where we are not sure of the legitimacy of the tax exempt organization, or whether the money is really being funnelled through a tax exempt organization in order to be invested in Canada and avoid the 15 per cent withholding tax. We are looking at these and, as I said, it is our aim to have the law applied fairly. Here we have a sympathy certainly for the one you particularly raised and, as a matter of fact, we are building in an exemption in order that we may build a general rule to take care of the situation, and yet not allow the kind of flow through to individuals from pseudo charitable or non-taxable organizations in other countries.

**Senator Connolly:** Are you telling us that the tax deal with other countries may have to be revised on this point?

**Hon. Mr. Benson:** No. I think we may be able to do it within the law, but we just do not know of all the cases. We have asked people to come to us, and over a period of time they will come to us, then we will know what the situation is. I think that we can revise our own law on this point; we need not necessarily depend on our treaties.

**Senator Lang:** In a case where an occasional pseudo charitable organization might apply, could you not just withhold the certificate?

**Hon. Mr. Benson:** But you cannot find them. Under the provision in the law, if they are exempt from tax in the country of origin, they are tax exempt here. That is all right with the United States, where the basis of determination on what is charitable and exempt is very similar to what we have here in Canada. But if you go to other countries, you might find that something which is taxable in Canada would be tax exempt there and yet they could claim a certificate exempting them.

**Senator Beaubien:** It seems to me that about 99 per cent of the cases would be in the United States. It does not seem to make much sense to penalize those in the United States because there might be a few outsiders.

**Hon. Mr. Benson:** There are very few exempt in the United States that are not exempt in Canada and the law is only changing for those that are exempt in the United States and not exempt in Canada.

**Senator Beaubien:** What about Teachers'?

**Hon. Mr. Benson:** They would not be exempt in Canada.

**Senator Beaubien:** They would be?

**Hon. Mr. Benson:** No, they would not be. That is their problem. They are one of the few that would be exempt in the United States but would not be exempt in Canada, and there are not many of those.

**The Chairman:** Well, Senator Beaubien, I did not understand the minister to say that he was not proposing to grant any relief in this case. All I understood him to say was that this would be a deserving case. Certainly that is my view. It fits in with the political philosophy and everything else, that is, of getting non-residents to invest in debt securities in Canada instead of in equities. I do not want to

be taken by that statement to be subscribing to all that has been said recently about the acquisition of equities by non-residents. All the minister is saying is that they have to have a good look at it in all its ramifications, but I did not understand him to say that this was not a deserving case.

**Hon. Mr. Benson:** Oh, no, this is a hardship case.

**Senator Beaubien:** What is the difference?

**Hon. Mr. Benson:** The difference is that the tax law in the United States would make Teachers' exempt, whereas, if they were residents in Canada they would not be exempt. It is the difference in the tax law. Therefore, under the new provision they are not exempt from the withholding tax. We think it may be a hardship case. What you might do is to change your Canadian law and make them tax exempt here, but that would have a lot of other ramifications, because we would be getting into the whole insurance business and the taxation of insurance companies. So we have to take a look at the hardship cases. There are not that many of them, and we have to try to find a way to solve that problem. As an interim measure we have solved it for Teachers' for a two-year period until we get to the permanent solution.

**Senator Lang:** Could the issue of this certificate not be made discretionary in your hands, Mr. Minister? Would that not be the answer to the problem?

**Hon. Mr. Benson:** Perhaps it is the answer in the long run, but besides all the other things I have been asked to do in this tax bill I have been asked not to have my discretion extended.

**Senator Lang:** We would be quite pleased to extend it in this matter.

**The Chairman:** Would you like our approval of that, Mr. Minister?

**Hon. Mr. Benson:** Well, you can so recommend, if you like.

**Senator Connolly:** We have taken a dim view of too many discretions in the past. I think the policy has been to avoid them as much as possible.

**Senator Molson:** Mr. Chairman, may I ask the minister about the question of consolidated returns?

**Hon. Mr. Benson:** We have not got that far at this point.

**Senator Molson:** May I ask if you are working at it?

**Hon. Mr. Benson:** We are working at it. It took a lot of time to develop this tax legislation to where it was, and we did not know until the very end where we were going to end up in a great many matters. Integration was one of them. Finally, we accepted your recommendation from the Senate committee and did not have integration, but amended the dividend tax credit.

Now, when you get to this stage, then you can start taking a look at what would happen if you had consolidated returns with various kinds of companies in it and so on. We are presently looking at this. I cannot promise we are going to have it solved in a few months or anything, but we are looking at the problem.



**The Chairman:** Well, you would have to study the effect on tax revenues.

**Hon. Mr. Benson:** That is right.

**Senator Connolly:** I take it that your advisers will review the evidence we had before us here by various multinational, Canadian-based corporations, where they do make a very good case for hardship; you know, where they have various corporate units in different places and where the losses in one are not offset against the gains in others.

**The Chairman:** Mr. Minister, one of the recommendations we made had to do with non-resident-owned investment corporations, and we felt that what you said in the summary was exactly what we thought should happen; that is, because you are in corporate form instead of individual form your position should be equative. But the legislation does not do that.

**Hon. Mr. Benson:** I will let Mr. Cohen answer that.

**Mr. M. A. Cohen (Assistant Deputy Minister, Department of Finance):** Mr. Chairman, if you take into account the amendments that were tabled by the Government you get a situation where, by and large—I cannot say 100 per cent, but by and large—the treatment of a foreigner investing in Canada, whether directly or indirectly through an NRO, is to a large extent the same. Where you have significant differences is where you have an individual from one country investing in a third country using Canada as an intermediary and using an NRO for that purpose. There are differences. But for an individual investing into Canada, by and large the treatment is the same, given the amendments that were put in to permit the flow-through of the capital gains. I think that was the main criticism made to us by people who were involved in NROs and the Government responded to that criticism.

**The Chairman:** Well, if you read the submissions that we received, these people who were affected were substantial people carrying on substantial operations and representing very substantial investment of non-resident funds in Canada, and they were getting unequal treatment as against what an individual would get. And they referred to the capital gains situation.

**Hon. Mr. Benson:** That is taken care of in one of our amendments. It was taken care of in the house recently. Their main complaint in dealing with us was about the gains situation and we have taken care of that.

**Senator Connolly:** Perhaps we can have that section later.

**The Chairman:** Mr. Minister, the next one deals with the private and general insurance corporations who appeared before us, and the main burden of their complaint was that a great many of these would qualify under the small business concept. Their main difficulty was that on investments they are governed by the Canadian and British Insurance Companies Act, but when they come to try to qualify under the small business corporation provisions there is a definition of what is called "ineligible investments". An investment that might be approved under the Canadian and British Insurance Companies Act might be in the category of an ineligible investment for the purposes of qualifying for the lower rate of tax on a small business.

This would appear to be something that was not intended and should be corrected.

**Hon. Mr. Benson:** In the first case there are really two problems. Because of federal and provincial regulations they may be precluded from making full use of the small business deductions and also may be unduly suffering from the topping-up tax. In regard to the first complaint, this is another example of a taxpayer arguing for a more precise definition, in this case the term "ineligible investment". But once more, a more precise definition may turn out to be a more narrow definition. In our opinion the bill as drafted poses no problem to the private general insurance corporation.

With regard to the second complaint, these corporations want to be classified as public corporations in order to avoid the topping-up tax, but to do so would open the door to many other types of corporations making the same argument, and we should look further at this. That is our general position. We think they are all right in the first part, but in the second part we have to worry about other things.

**The Chairman:** Well, when you say that they are all right, does that mean that if administratively the problem subsequently arises the administrators will take cognizance of the views that have been expressed here today?

**Hon. Mr. Benson:** I would think they would, but when we get into the law and if we find something does not work out in law according to our intention in presenting it, then we have to consider what we think is missing in the procedure and then amend the law.

**The Chairman:** Another item was in connection with deemed realization on ceasing to be a resident of Canada. I think you have some comment on that.

**Hon. Mr. Benson:** Yes, I mentioned earlier we were looking at this particularly with regard to people coming in and working temporarily because it might inhibit our getting good people for good jobs and I think we have to watch that very carefully.

**The Chairman:** There was a point raised before us by the agricultural associations, and we did include a recommendation in our report on the question of what is called the "family farm". We recommended that so long as the title to the farm passed down the family line to a son or daughter, but remained in the family and was still utilized for farming purposes, there should be a roll-over as far as any capital gain is concerned. I believe you did make some changes in that area, and you provided for an amortization of the capital gain which might result over a period of six years. We have had a lot of submissions asking, "Why is it only six years? Why is it not a longer period of time?"

**Hon. Mr. Benson:** This was under debate in the House of Commons. We also had submissions before us. The roll-over concept within a family is a very difficult thing to follow through as you might well know. We decided on the six-year period.

**The Chairman:** From our saying that it should be 20 years.



**Hon. Mr. Benson:** The question is how long is a reasonable time, and if you go the 20-year period and charge current interest rates it is not a very great advantage.

**The Chairman:** That is true.

**Hon. Mr. Benson:** I should point out that the amendment to make it six years is not in the bill. This will be in the amended bill. It was missed, but it is my intention to put it in the amended bill in the spring. I will undertake to do this.

**The Chairman:** We will have another chance to raise the issue as to whether it should be a longer period of time than six years at that time.

**Senator Lang:** Before we pass from this subject, would you comment on the basic herd concept?

**Hon. Mr. Benson:** Basically, the problem of the basic herd concept is that the cattle farmers want to pay capital gains tax rather than income tax on money realized out of ranching. They have the advantage of building up their herd. They are not on a cash basis. They can invest in their herd and it can grow and grow. But under the law as it is proposed we say that this is a business and when you come to dispose of everything it should be treated as income subject to all the other averaging provisions, and so on. If you go on an accrual basis perhaps you would not have anything piled up at the end. But with the capital gains concept the basic herd concept no longer becomes a great advantage except if one takes the position that profits on cattle ranching should be taxed as capital gains rather than income. The position I have taken is that this is income the same as with any other farmer such as a wheat farmer. If he piles up a lot of inventory and realizes a gain he has to pay tax on it. I maintain they should have equal treatment. This is the same as the businessman who builds an inventory and is not on an accrual basis. However, businessmen are on an accrual basis and they have to pay as they go along. Perhaps my position is wrong. But that is the position the Government is taking.

**The Chairman:** Mr. Benson, we have asked for further consideration on the question of roll-overs. I believe you made some statement in the House of Commons concerning that.

**Hon. Mr. Benson:** Roll-overs on re-organization is one place it comes up.

**The Chairman:** Yes, that is correct.

**Hon. Mr. Benson:** I said in *Hansard* that, "Finally I want to refer to the many representations I received in connection with the relation of the rules relating to roll-overs and corporate re-organizations. This is a very complex area and I have instructed my department to carefully review the proposals under Bill C-259 to see if they could be extended without undue prejudice to the system. . . . I am hopeful that early next year we will have some positive steps to be recommended to the house in this area after we have had a general study of the matter and have seen the present rules in operation."

**The Chairman:** Another item we requested be given further consideration was in relation to the mining and

petroleum industry and those organizations which we term non-operative. Of course, under the present law they enjoy a 25 per cent automatic depletion, which is to go out the window.

**Senator Flynn:** Did you say "law" or "regulations"?

**The Chairman:** Under the regulations. I used the word "law" in a very broad sense, Senator Flynn. They lose the 25 per cent automatic depletion, and I believe that when the cut-off date occurs they may have positions which developed prior to that, in which they have incurred liabilities which carry on. They do not have a free royalty income position to the extent of taking care of the liabilities in their position. Have you some comment on that?

**Hon. Mr. Benson:** I can only say that this is under consideration. I would like to defer comment until we decide where our studies are in this regard.

**The Chairman:** By the time the amending bill is introduced next year this will be good fodder to throw out again.

**Hon. Mr. Benson:** There are a few areas in which people arrived in that position a long time ago and then have moved forward to a position where they would have become taxable some years ago, but they still had a depletion allowance and now, when the system runs out which, admittedly, will not be for several years, 1976 or 1977, they find they lose the 25 per cent or 33 per cent and have nothing from that point onwards.

Several cases have been drawn to our attention in which it is pointed out that there would have been no objection to the law being changed had it been known in advance so that a different type of contract would have been drawn initially. Many are trapped by this aspect, but we wish to make sure that they are not treated unfairly. Several mining companies have brought such cases to our attention. That is why I do not wish to comment definitively at this time.

**The Chairman:** One submission of the construction industry was in connection with joint ventures. We were told that it is a practice in that industry that if a job is too much for any one construction company, two or more will combine on a joint venture basis. In their opinion, since there is no clear-cut definition of a partnership, the joint venture concept in the construction industry should at their option be excluded or exempted from the partnership provisions.

**Hon. Mr. Benson:** I am told by my advisors that if they can avoid classification as a partnership they will have no problem.

**The Chairman:** The problem is as to what is a partnership. If two construction companies contribute funds and share the profits, I am sure the sharing of the profits might contain an element of partnership.

**Senator Connolly:** The law says it is a partnership.

**The Chairman:** That is correct.

**Hon. Mr. Benson:** I am told that we will consider this further and that it might in fact be a partnership in such a case. There are methods to avoid being classified as a

partnership, by arrangements. If they end up as a partnership, my people tell me that if we say there is no partnership, we cannot avoid saying that many other kinds of manufacturing partnerships and other businesses are not partnerships. It is a matter of attempting to exempt a certain class of taxpayers. One thing I have learned about tax laws is that whenever we attempt to draw a line we are in trouble. That is the difficulty in our saying that one is automatically not a partnership.

**The Chairman:** Some people put a declaration in their agreement to the effect that it is not a partnership, but that is meaningless. I do not think that they would be held to be a partnership if the case ever went to court in relation to joint ventures.

**Hon. Mr. Benson:** There are a lot of people who work together and do things.

**Senator Rattenbury:** I have come out of a joint venture now and have some knowledge of them.

**Hon. Mr. Benson:** If one could make sure that one is not going to lose money one could organize it as a limited company.

**Senator Connolly:** That is not always the most convenient way.

**Senator Rattenbury:** You do not treat it in that way.

**Hon. Mr. Benson:** I recall a case where the people concerned suffered a huge loss, and they chose to become a limited company. Many people entering into a joint venture could lose money. They want to be a partnership instead of a limited company. Now they are saying, "If we want to be a partnership, we should be treated as a non-partnership for tax purposes if we take a profit. If we make a loss, we are happy to be a partnership."

**The Chairman:** You have excluded joint ventures in the mining areas.

**Hon. Mr. Benson:** No, only on earned depletion, not on ordinary income. They are only exempt on their earned depletion.

**Mr. Cohen:** In all other respects national resource partnerships are treated like any other partnerships. Exemptions are only for depletions and fast write-offs.

**Senator Molson:** The minister has said on many occasions that it would be very awkward if the bill were not passed by the end of the year. I think I am right in saying that. He considers it highly desirable that it should be passed. In view of this list of problems that we see in the legislation as it is now, is there any way the minister can assure us that we will have an opportunity of seeing some amending legislation in the immediate future, either at the beginning of the next session or after the adjournment?

**Hon. Mr. Benson:** I have said, in regard to most of the problems, that they are not immediate. Most of them do not have to be solved next month, although some of them do. I have indicated some of the changes that will be made.

**Senator Molson:** That is a little different. They are immediate problems to us, perhaps.

**Hon. Mr. Benson:** Perhaps they are, but they do not affect one's taxation liability immediately. I am thinking of problems connected with international income. There are other things that will have to be changed as of January 1. For instance, there will be one change with regard to deferred profit-sharing plans, as well as others.

**Senator Connolly:** The proposed changes would not be made in this bill?

**Hon. Mr. Benson:** They will be made in the next amending bill. I cannot promise to have it for February, but the normal budget comes along in March or April and has to be through by June. It was in June last year, but normally in preparing for the next budget we would conduct our studies and come up with a solution to these problems.

**Senator Molson:** I am not well informed on these things, Mr. Minister, but every now and then I hear rumours of an election, and perhaps that might change some of the normal processes from one year to the other.

**The Chairman:** Well, you cannot expect the minister to give an undertaking.

**Senator Molson:** I do not expect him to give an undertaking, Mr. Chairman. I am simply saying that if the date is in the indeterminate future I am not quite sure whether I am as relaxed about the present as I would be if the minister could assure us that some action is going to be taken with regard to the matters which he has discussed and which he and his staff know about which the Senate over a period of three months has come up with as being problems in this legislation.

**Hon. Mr. Benson:** Well, I can assure you that we will proceed with action forthwith. As a matter of fact, in some cases we have already done things, and we will proceed forthwith towards the preparation of legislation. I cannot assure you when there is going to be an election, but I can assure you—

**Senator Flynn:** Nor of the result.

**Hon. Mr. Benson:** Well, I can assure you of the result, but I cannot assure you—

**Senator Flynn:** If we can count on that in the same way as we can with respect to the amendments, it is not very reassuring.

**Hon. Mr. Benson:** We would normally produce a budget so that the budget could be completed by June, and these changes would be outlined in the budget statement. Under our new arrangements in the House of Commons, this is the way we operate.

**Senator Beaubien:** Mr. Minister, this bill contains a great many things with which the Senate disagrees. The Senate would not think of passing such a bill under normal conditions unless these amendments are made. I am not being unduly critical; you have admitted this yourself. It seems terribly difficult to get an amendment passed in the other place in a reasonable amount of time, and if the Senate was willing to pass a bill because of those difficulties, a bill which has been studied very carefully and which the Senate feels needs amendment, I would think that the



Senate would want to have at least an expression from the minister that "not in the due course of events", but just as soon as he could he would introduce a bill—and we are not asking you to tell us what you are going to put in the bill—which would take these things into consideration. If you expect the Senate to pass this bill—and I am speaking for myself, not for the Senate—we would have to be assured that there would be a special bill to deal with the amendments.

**Hon. Mr. Benson:** I am not saying there will be a special bill, but there will be a budget—

**Senator Beaubien:** There will be another Christmas too, Mr. Minister, but what I am asking is: Can we expect a special bill for the purpose of these amendments?

**Hon. Mr. Benson:** There will be a bill to amend the Income Tax Act and it will take into consideration the propositions brought forward by the Standing Senate Committee on Banking, Trade and Commerce and, indeed, by a great many other people as well, and also other matter that we want to build into it, but I am certainly in no position to give an undertaking that we would have this bill introduced in February or at the end of January, or whenever. We intend to proceed with all due despatch to study the propositions brought forward by the Senate, as well as those brought forward by various associations. The propositions brought forward by the Senate are not simple ones when you look at the whole bill. I think some of the senators will admit that.

**Senator Beaubien:** We have studied it enough to realize that.

**Hon. Mr. Benson:** It will take some time to work it through, but the intention is, of course, to correct it. As I indicated in my speech on Friday, many of the matters will be amended just as soon as it is conveniently possible.

**Senator Gélinas:** Mr. Minister, I think what my colleagues are worried about is this period of uncertainty we have been going through for the last two years.

**Hon. Mr. Benson:** Well, the uncertainty has been eliminated to a major degree by this legislation. The points which the Senate has brought forward are in specialized areas concerning which it is difficult to come up with the right solution; and I do not want to come up with the wrong solution. There are holding provisions with respect to foreign businesses, for example, so that there will not be big loopholes created. We are studying the matter and have been working on it since before the Senate report—and, I might add, we have been helped by the Senate report—and we hope to come up with solutions in the near future. We are getting representations from a great many people. We have to listen to them, and then we will produce a bill. It will be this spring. We will have to produce a budget and we intend to include an amending bill to amend this act.

**Senator Cook:** This will be the end of round one. In other words, the door will be opened for amendments.

**Hon. Mr. Benson:** This is the end of all the rounds except the knockout round, I hope. I certainly hope we do not have to have too many more, anyway. We are down to the

point now of dealing with very specialized areas. I would like to deal with these in an amending bill in a way which will stand up over a period of years.

**Senator Beaubien:** If we had a little time the Senate would insist on putting in certain amendments. I think the Senate should not pass this bill unless the minister agrees. He has agreed. We are not really fighting too much on what we want in the amending bill; we all seem to be agreed. It seems to me that the Senate is entitled to have the minister say, "I know you have not had the time to insist on these things, and I do not argue with the fact that they should be done." If the minister will say, "We will put in a special bill; we are not going to have when the time comes, another budget and have it in there," we would not insist on certain amendments now, if we had time.

**The Chairman:** You do not want to tie the amending bill to budget time.

**Senator Beaubien:** No.

**Senator Molson:** No, and we do not think it should be necessary to wait so long.

**Hon. Mr. Benson:** If you want a better definition I will bring in an amending bill, but I cannot promise I will have the amending bill by the end of January or the end of February.

**Senator Molson:** Bring it in at the earliest possible date.

**Senator Beaubien:** That is all we ask you, Mr. Minister.

**Senator Molson:** Will you take into consideration the recommendations of the Senate, Mr. Minister?

**Hon. Mr. Benson:** Yes, but I do not say that I will agree with them.

**Senator Molson:** I did not ask you that. I asked whether you would take them into consideration in producing the amending bill?

**Hon. Mr. Benson:** Yes.

**Senator Beaubien:** We realize that the Senate cannot say to the Minister of Finance, "You have got to do so-and-so!"

**Senator Molson:** You may not agree to it.

**Hon. Mr. Benson:** Some may be impossible.

**Senator Molson:** We know this.

**The Chairman:** All we really need here is the assurance that there will be an amending bill, because with that assurance we can make our own amendments if we do not like what is in the bill.

**Senator Molson:** Mr. Chairman, that is what your committee said to you in its meetings.

**The Chairman:** That is right.

**Senator Molson:** That we should be able to say, "All right, the bill right now does not suit us, but rather than hold it up and cause unnecessary complications, we are willing to pass this, provided we get an assurance that there will be a chance to bring in the amendments we feel keenly about." I do not think it is unreasonable.



**The Chairman:** I understood the minister had said that now.

**Senator Molson:** I think he has now. I think we have just reached that point now.

**Senator Beaubien:** We want him to repeat it.

**Hon. Mr. Benson:** I have said that there will be an amending bill.

**Senator Molson:** But then you said the budget.

**Hon. Mr. Benson:** But an amending bill will form part of the budget; it has to.

**Senator Molson:** Maybe, but why could it not be before the budget?

**Hon. Mr. Benson:** It is another budget then.

**Senator Molson:** All right.

**Hon. Mr. Benson:** It is a change in ways and means.

**Senator Molson:** All right.

**Hon. Mr. Benson:** It has to be a budget.

**Senator Flynn:** Since Senators Beaubien and Molson have put this question to the minister, I should like to intervene, if the committee would permit me, for about 15 minutes, because I think it is about time we clarified the scope and meaning of the appearance of the minister this afternoon.

This committee has dealt with the White Paper and has produced a report. That is one thing. It has now considered the bill in a very technical way, which is something else. However, I think the Government would be under a wrong impression if it thought that we are concerned only with the recommendations of the last two reports we have made. This is something of a technical nature. It has been clearly understood that we would be dealing only with technical aspects of the bill, that we were not dealing with the principle of the bill in studying the bill since last fall. We restricted ourselves to the legislation as drafted. We forgot about some of the recommendations we had made in our report on the White Paper, because we said that it was a policy matter. However, because it was a policy matter it does not mean it is without the competence of the Senate when the bill reaches us to deal with it, or that we have completely forgotten about these other problems. I think it would be very wrong to give the impression that the Senate is willing to pass the bill if the minister gives us the assurance that we are going to have an amending bill along the lines of our reports. The problem is not restricted to that at all, to my mind.

I want to ask the minister about the consequences of our attitude in these reports. If my understanding is correct, the minister comes here to deal with the recommendations or the suggestions we have made in our last two reports.

**The Chairman:** That is right.

**Senator Flynn:** Is that correct?

**Hon. Mr. Benson:** That is correct?

**Senator Flynn:** That is the point. Now, is my understanding correct, that the minister is telling us, as far as these

technical recommendations—and I call them “technical” intentionally—as far as these technical recommendations are concerned, “I suggest to you, do not worry, we will come with an amending bill eventually”?

**Senator Beaubien:** We do not want “eventually”.

**Hon. Mr. Benson:** We will consider it—not “eventually”—

**Senator Flynn:** Well, let us say “eventually” at this point.

**Hon. Mr. Benson:** We will consider them “in the near future”, and we will consider the Senate's recommendations in producing an amending bill, but I do not say we will adopt them all.

If you go back to the previous Senate recommendations, and if you look at my June budget, or the booklet I issued with it, you will see we show on page 66 how we dealt with all of the Senate recommendations and the House of Commons committee recommendations over the whole area, and that was our decision at that time.

**Senator Flynn:** I know.

**Hon. Mr. Benson:** Of course, we did not agree with all of them.

**Senator Flynn:** I know, and that is why I do not want to draw the minister outside the field of our two reports. If the minister comes back to us, when the bill reaches us—and I understand that the deadline has been indicated in the other place to be 4 o'clock on Friday afternoon—then of course we can deal with all of the other problems that we dealt with in the White Paper or that we did not deal with in the White Paper. But at this time we are concerned only with the two reports, which are of a technical nature. But the debate is not limited to that, when the bill reaches us in the Senate.

I just wanted to ask the minister: Is he suggesting at this time, as far as these specific recommendations are concerned in our two last reports, “Forget about them for the time being; adopt the bill as it is now; otherwise . . .”—I am not speaking of the other provisions but in connection with these special provisions—“ . . . adopt the bill now, and we will correct it later”?

**Hon. Mr. Benson:** What I am saying really is that the bill is being presented to the Senate. It will be through the House of Commons on Friday, as you indicated. In the consideration of the bill, I simply want to assure the Senate that I have considered some of its recommendations, as well as recommendations from other people, and that I am willing now to undertake that certain of them will be changed, in an amending bill, and that in producing an amending bill we will consider submissions not only from the Senate committee but indeed from many other people outside who are making submissions to us presently.

**Senator Flynn:** Then you suggest that if we were to make some amendments along the lines of our two reports, that you would not be prepared at this time to accept them or to recommend them to the other place, if we return the bill with these amendments?

**Hon. Mr. Benson:** Well, you know it is not within my jurisdiction to control what the Senate does, and I am not saying to the Senate what they should do in any way.

**Senator Flynn:** You are not suggesting that you would refuse amendments?

**Hon. Mr. Benson:** I am not suggesting anything. I am not here to tell the Senate what to do. I am simply here to answer questions.

**Senator Flynn:** There was some misunderstanding—

**Hon. Mr. Benson:** You are master in your own house.

**Senator Flynn:** There was clearly in the minds of Senator Beaubien and Senator Molson that if we passed the bill as it is without the amendments we are suggesting, we would be satisfied with your undertaking to amend it later, or to consider amending it, or to consider very seriously amending it later.

**The Chairman:** Senator, you have jumped from one position to the other.

**Senator Flynn:** I thought you would jump, too, at this point.

**The Chairman:** There is nothing being done here that inhibits any senator, or all the senators, dealing with the bill in any way they wish.

**Senator Flynn:** I know. That is what I want to clarify.

**The Chairman:** Yes.

**Senator Flynn:** Because there is some understanding, from the questions that have been put, that our recommendations would be considered and that we only have to forget about them for the time being, because the minister will bring in an amending bill eventually in the New Year.

**The Chairman:** Only in relation to those items.

**Senator Flynn:** That is right, and that is what I want to clarify.

**The Chairman:** It is clear to me.

**Senator Flynn:** Yes, I know it is clear to you. It is clear to me, too, I can assure you of that, but I do not know if it is as clear to the public, and I want the public to know where we stand, and I want to know where we stand too.

**The Chairman:** That is right.

**Senator Flynn:** And that is why I say this.

Now, there is another point I want to raise. It has been suggested that we should get this bill through by December 31. Of course, the easiest way to do that would be to adopt an attitude towards the bill, whether in connection with the recommendations in our last two reports or the objections that we have had to the White Paper or the other objections that we have had in other ways, such that we would pass the bill by December 31 with the intention that we would correct it all sometime in the year 1972, 1973, or else. But does the minister feel that it is necessary for the Senate to go through this huge bill at this time? I may restrict my question to the amendments which are covered by our two reports, because again I do not want to be illogical and I know that the minister is only here for that. But let us say we postpone the consideration of the bill to January 11, for instance. Suppose we come back

then and in the meantime the minister and his officials have had time to consider our recommendations further and some amendments are brought in and finally the bill receives Royal Assent by the end of January. Supposing all of that, what practical difference would it make to the people of Canada generally?

I will add just one comment before I give the minister the opportunity to reply, and this is in connection with something said by Senator Gelinas, that there is uncertainty and that we should pass his bill to dissipate the uncertainty. Why? What is the difference between the uncertainty of passing this bill and being faced with an amending bill, or delaying the passage of this bill in order to adopt it in its final form or in a better form at the end of January?

**Hon. Mr. Benson:** First of all, senator, I think I explained the answer to this very carefully in the house on Friday.

**Senator Flynn:** I saw that. I even saw what you said about the Tories.

**Hon. Mr. Benson:** I was not referring to you, senator. I was referring to some people—Well, I don't want to get into a political argument here.

**The Chairman:** No.

**Hon. Mr. Benson:** It is advantageous, as I outlined in the house, to have the bill through by the end of this year in order that we may have certainty.

It is not for me to comment on the procedures in the Senate, but I believe that at least this committee of the Senate has given this bill very careful study. In fact, I was congratulating you earlier on the amount of study you had done ever since the bill was introduced in June. I can in no way indicate to the Senate what their procedures must be or how they must operate. That is not up to me to do.

**Senator Flynn:** That was not my question.

**Hon. Mr. Benson:** If the Senate operates in certain ways, then the Government is in a position where it has to decide on its own position. But I do not think it would be useful for me to read into the record here the long explanation which I gave in the House of Commons on Friday as to why we believe the bill should be got through. One can say, "Sure, there are going to be uncertainties in the legislation." There are always going to be uncertainties in the tax law. There were always uncertainties in the old law, even after it had been operating from 1918 to 1971.

**The Chairman:** Mr. Minister, do not forget that we had a new tax bill in 1949. We have had amendments practically every year since.

**Hon. Mr. Benson:** Sure, and you are going to have more. There is always going to be uncertainty. Take the dividend stripping cases. Look at the number of years of uncertainty there were there and the results ultimately. But we will do our best to clear up this uncertainty as soon as possible in the limited number of areas in which it is left, and in so doing we will consider the recommendations of the Senate committee.

**Senator Flynn:** This is my last question. Should I draw the conclusion that we should only spend a few hours on the



bill and send it back to you because you are eventually going to consider what has been said, and so it is absolutely useless for us to spend more than a few days on this bill?

**Hon. Mr. Benson:** I do not say anything of the kind.

**Senator Flynn:** You have not said it, but then we draw that conclusion.

**Hon. Mr. Benson:** You cannot draw that conclusion from anything I have said.

**Senator Flynn:** Well, read the record tomorrow.

**Hon. Mr. Benson:** I have indicated the problems that will arise if the bill is not passed, and it is up to the Senate to decide how it will proceed. We will not in any way try to tell the Senate what to do.

**Senator Phillips:** I am sorry, Mr. Chairman, but I arrived rather late and missed certain points covered earlier dealing with the basic right of a farmer to pass property on to his son, and so on. I am very much confused here in that I understood that there would be certain agreements and that if these things were passed and agreed upon now, there would be a review. But now I find that there is no limit as to when the review should take place. Now, while I am willing to submit these objections to a review, I would like very much, Mr. Chairman, to have a time limit placed on it. I am rather surprised that we have gone from a review to a budget, and it disturbs me very much, Mr. Chairman. Therefore my willingness to accept or adopt these measures diminishes as I see them going from budget to budget.

**Hon. Mr. Benson:** I do not think I indicated that. I indicated that, having had the submissions of the Senate which were considered, I had certain comments to make and I agreed to come here this afternoon to make those comments. We will review, if you want to use that word, the recommendations from the Senate,—and I believe there is another report on the way from you—and also submissions from other people, and then we will present amendments to the Income Tax Act. If that deals with ways and means, it is probably a budget we are producing. As you know, if there are major changes in revenues and expenditures, you present them in the form of a budget.

**Senator Connolly:** You have to have a resolution.

**Hon. Mr. Benson:** You have to have a resolution, and there is another way of getting a resolution in, but if they are comprehensive amendments, the only logical way to present them is in the form of a budget.

**Senator Phillips:** But there is nothing, Mr. Minister, that says you or the Government are bound by any time limitation; you can present a budget this year or five years from now.

**Hon. Mr. Benson:** That is not true. We will bring in a budget. I have undertaken to bring in a budget. We will have to do it in the spring, or as soon as we can, and then we will present amendments to the Income Tax Act which will take care of these things. I cannot tie myself down and say I am going to do this in February or in January or by the 15th of March. I have tried doing that before, and I

have gone through this whole tax bill, and every time you do it you get yourself into a mess. But I have said that we will move forward with all due dispatch, and I already have my people working on it. We are seeing people now and are reviewing the submissions brought forward by the Senate and by other people, and in due course or with all due dispatch we will consider amendments to the bill.

**The Chairman:** Are there any other questions?

**Senator Welch:** I would like to say to the Minister of Finance that we began our meetings here around the 1st of September; some days we sat in the morning as well as in the afternoon. I cannot understand why all these amendments and recommendations have not been brought to our attention before this. Why wait until the deadline and then say that we have to have this bill passed, you might say, in a matter of 24 hours? You cannot impose closure on the Senate, so why does the Senate not hold this bill up until we have a chance to obtain these amendments?

**The Chairman:** Our first report was tabled on November 4 and the second on November 24.

**Hon. Mr. Benson:** Yes, and they came to me a day or so later, so I have not had them for very long.

**Senator Welch:** If we are going to be held up with these amendments for this long, what is there to assure us that we are not going to be held up for just as long a period when the new bill comes in the spring? Will we wait until vacation time and then either pass it or sometime after the vacation? That is the old story.

**Hon. Mr. Benson:** One of the problems, senator, is that the Government can introduce legislation in the house but it cannot determine how long the house is going to take to deal with the legislation unless there is a time limit put on the debate. The House of Commons have had almost 50 days on the bill already. That is not under my control. I might introduce an amendment in February—

**Senator Flynn:** It was to some extent.

**Hon. Mr. Benson:** —and they might go on for three months. I cannot stop them.

**Senator Welch:** This probably has very little to do with the situation, but, on the other hand, if you had brought in closure a week before you did, you would have had that much more time to solve some of these problems.

**Hon. Mr. Benson:** Usually time allocation is a step you take reluctantly.

**Senator O'Leary:** Mr. Chairman, am I right in saying that what the minister has said to us today, and that all he has said to us, is that at some unspecified date in the coming year he will bring in an amending bill under the budget, and he may or he may not incorporate in that amending bill some of the amendments which your committee has suggested? Is that correct?

**Hon. Mr. Benson:** I think it has gone further than that. I indicated in the House of Commons on Friday, and again here today, that I will incorporate some amendments.

**Senator O'Leary:** Not necessarily our amendments.



**Hon. Mr. Benson:** Some of the amendments recommended by the Senate. I have also indicated that we will move forward with all due dispatch to examine the more complicated suggestions which the Senate, as well as others, have made, and produce new legislation in the form of an amending bill. Now, I cannot say whether that is going to be introduced in January or February; but we will move forward just as fast as we can in order to produce legislation. The only reason this got tied up with the budget is that if you make substantial changes in the House of Commons, under our procedure, I normally introduce it in the form of a budget.

**Senator Paterson:** Is the minister aware of the hours our Chairman has put in on this tax bill? I feel that probably he is the best tax adviser in Canada.

**Senator Flynn:** Let that show on the record.

**Senator Paterson:** Is he aware of all the amendments which you propose and is he in favour of them?

**Hon. Mr. Benson:** Senator, first of all, I indicated earlier that the Government appreciates very much what the Standing Senate Committee on Banking, Trade and Commerce has done. We have recognized the work which the Chairman has done, along with the committee, by adopting, I believe it was, 44 of the amendments suggested by the Senate in our June budget. The present amendments are under consideration by the Government. I have indicated some that will be adopted, and in the case of others we are considering the difficulties and will decide whether we can adopt them and produce legislation.

**Senator Paterson:** If this tax bill is passed in the other place to take effect on January 1, 1972 it will remain in effect after we conclude our debating it on the February 1? Is it true that it can date back?

**The Chairman:** That is a legal question, Senator Paterson.

**Senator Paterson:** Well, do not answer it if it will be embarrassing.

**Senator Croll:** The Chairman has already answered the question.

**The Chairman:** I expressed an opinion in the Senate.

**Senator Desruisseaux:** There have been strong objections by five of the ten provincial premiers with respect to accepting the bill at the end of the year. I believe one said he would go along with the old method this year. Another said he may well do that. Would you comment on the confusion this will cause in the minds of taxpayers?

**Hon. Mr. Benson:** First of all, all provinces that are involved, which excludes the Province of Quebec, in the tax collection agreement have indicated that they will adopt basically the same legislation. We have sent bills to them to be effective January 1. Quebec, I believe, have indicated that in principle they will follow this legislation in their own, which is quite independent; they collect their own taxes. Ontario have indicated that in some corporate areas they will not be able to make the changes immediately. Therefore, only the corporate taxpayers in Ontario, and maybe the corporate and personal taxpayers in Quebec,

can be affected. I am not sure, however, how they will proceed. All other provinces with which we have collection agreements have indicated that they wish to continue. This means they will adopt the tax law in this bill. Some have indicated that they do not like everything in it, but I do not believe we can produce law which ten premiers would approve in toto. Nevertheless, they will proceed with the tax collection procedures and introduce the legislation.

**Senator Desruisseaux:** This can lead to confusion.

**Hon. Mr. Benson:** I would like to see Ontario move as fast as possible with regard to its corporate tax legislation.

**Senator Croll:** When we last considered the amendments to the White Paper, Mr. Chairman, we made certain recommendations.

**The Chairman:** Yes.

**Senator Croll:** How many did we make? Have you any idea?

**The Chairman:** Offhand, I cannot tell you how many. I know how many were accepted.

**Senator Flynn:** Do you know the percentage?

**Hon. Mr. Benson:** I do not have the numbers here, senator. We adopted them in some cases and partially adopted others. In certain areas we went one better, for example with regard to exemptions.

**Senator Croll:** I understood you to say, if you recall, that you adopted 44 of our amendments.

**Hon. Mr. Benson:** That is right.

**Senator Croll:** How many more could we have? I cannot remember the number, but it seems like a very good proportion.

**Senator Flynn:** It all depends; we might have recommended 200.

**The Chairman:** It is a problem in arithmetic to total them. I have not taken the time. It would mean not going through our report on the White Paper, which could be done, but it would take a little time.

**Senator Macnaughton:** Mr. Chairman, at the beginning of this meeting, if I understood you correctly, you said that you had a personal statement to make. It seems to me that it might be very helpful to our committee at this time if you were to make that statement now.

**The Chairman:** When the meeting concludes I would like the members of the committee to remain, because we have prepared in draft form a final report which we would like to table tonight, if the committee approves.

There is one question that I should like to ask of the minister, for the purposes of our record. In the case of credit unions and caisses populaires, we made certain recommendations to enable them to be in a better position to qualify as small businesses. I believe that the amendments which you subsequently introduced accepted those recommendations 100 per cent.

**Hon. Mr. Benson:** That is right.

**The Chairman:** An additional amendment was inserted in the case of co-operatives, where you had 5 per cent of working capital as an income tax base.

**Hon. Mr. Benson:** Yes. We moved away from the percentage-of-capital concept. Under the new legislation co-operatives are better off than they were under the previous legislation.

**Senator Isnor:** Why do you not put them on exactly the same footing as small businessmen?

**The Chairman:** They are now, if this amendment becomes law.

**Senator Burchill:** Have we nothing to say with regard to the pulp and paper industry?

**Hon. Mr. Benson:** We had their representatives in to see the Prime Minister and a large number of the cabinet last week. One of the problems raised was that of taxation. They have agreed with us that we take a look at their taxation vis-à-vis that of other countries. We are proceeding to do this. I mentioned that two provinces are doing the same thing, and we are co-operating with them in looking at the problem.

**Senator Burchill:** Are they satisfied?

**Hon. Mr. Benson:** They are quite satisfied that we should proceed in this manner.

**The Chairman:** I mentioned to the minister earlier that I had received a letter from the Pulp and Paper Association indicating how pleased they were with what we did and with the reception they received from the minister and the cabinet ministers. They feel that the problem is being looked into. Nobody can formulate what can be done until the matter is studied completely.

**Senator Lang:** Based on the minister's remarks in the House of Commons last Friday, and from the way his presentation has evolved today—I would like to be corrected if I am wrong in this assumption—I take it that he agrees in principle with our recommendations regarding gifts to charities, profit-sharing plans, deferred profit-sharing plans, foreign affiliate passive income, and ceasing to be a resident.

**Hon. Mr. Benson:** We cannot go quite that far. We have indicated that we believe changes need to be made in these areas, but in some areas changes cannot be made exactly as recommended by the Senate.

**Senator Lang:** But you agree in principle?

**Hon. Mr. Benson:** In principle we agree that something has to be done.

**Senator Flynn:** There are problems.

**Hon. Mr. Benson:** There are problems in doing it. With regard to deferred profit-sharing plans, the two things that I mentioned can and will be done in that form. In the case of ordinary profit-sharing plans we have to find out how to do it, and we are working on that. In the case of the passive income rules, we are looking at this matter and are trying to find out how we can avoid the pitfalls that may exist. With regard to foreign operations of Canadian cor-

porations, the same thing applies. I have indicated that we will act on these as soon as we can do so. The other problems are being looked at. There are many complicated matters that have to be dealt with.

**Senator Lang:** Mr. Chairman, I was just wondering if the minister would care to comment on three items which are contained in our report and which have not heretofore been mentioned. They are: firstly, with respect to contracts in the construction industry; secondly, the designated surplus concept; and, thirdly, the problems which arise in connection with life insurance corporations.

**Hon. Mr. Benson:** First of all, with regard to the construction industry, senator, nothing in this legislation changes the basis of computation of tax. If the Department of National Revenue proceeds as they have been proceeding I do not think the people will worry about it. They would like to have something put into our regulations to add additional clarity to this, and we are taking a look at it.

**Senator Lang:** The second point was with respect to designated surplus.

**Hon. Mr. Benson:** We think it is necessary at the present time, but we are looking at it. If we had gross-up and credit, which the Senate recommended against, it would not be necessary, but because we do not have gross-up in credit and we do have a partial dividend tax credit and a half rate gains tax it can still be a method of avoiding tax.

**Senator Lang:** The final one was the recommendation with respect to life insurance corporations, and in this regard we made the following recommendation:

—that corporate dividend income received and arising from investments made by a life insurance corporation out of its non-segregated funds in shares of capital stock of corporations be excluded from the allocation of investment income formula set forth in the proposed legislation.

**Hon. Mr. Benson:** We are presently talking to the industry about this. It is a technical amendment which would be of some advantage to them. That law has been running for two or three years now and this legislation has just shaken it down so that they now know where they stand. As I say, we are presently discussing this matter with them.

**Senator Lang:** Just one final comment, Mr. Chairman. On my way up here today I met a legal colleague of mine, and he said, "I hope you will pass this legislation and have it in force on January 1st". I replied, "I am rather surprised that you would make that comment." He said, "Well, in our firm alone we have already found 141 loopholes and we want to get them into operation."

**The Chairman:** Why did they stop at 141?

**Senator Flynn:** We should put on the record what an expert said when we began the study of this bill. The expert had been discussing the complexities of the legislation with officials of the department, and the officials said to this expert who was a lawyer, "You should be grateful to us because we are putting all of you on the same level as Stikeman. No one is an expert any more."

**The Chairman:** Are there any other questions?



**Hon. Mr. Benson:** They will have to develop new experts.

**Senator Phillips:** Mr. Chairman, perhaps I would be in disagreement with members of the committee if I said I do not consider this bill a tax reform bill but rather a tax imposition bill. In other words, more taxes are being imposed than was the case under the old system.

How much extra revenue is expected to be collected as a result of this bill, Mr. Minister, and what will be the cost of collecting that revenue? There are certain sections in the bill, as I see them, where it is going to be very costly to collect the additional taxation revenue.

**Hon. Mr. Benson:** Well, senator, I can answer your question quite simply. So far as the federal Government is concerned there is no additional tax revenue as a result of this bill over a five-year period. As a matter of fact, we have built into the legislation tax reductions to make sure that this does not occur. We would get the same amount of money under the old system as we will get under this new system, as best we can forecast it.

**Senator Phillips:** Under parliamentary rules, Mr. Minister, I must accept your statement. However, may I add that I do it with certain reservations?

**The Chairman:** That is your privilege.

**Senator Carter:** I would like the minister to clarify his last statement.

You are not going to get an increase in revenue over the next five years?

**Hon. Mr. Benson:** There will be an increase in revenue inasmuch as there will be an increase in our Gross National Product, but it is exactly the way it would be under the old system. In order to ensure that this is the case we have built into this legislation both personal and corporate tax reductions to make sure the level would be exactly the same as under the old system.

**Senator Grosart:** Mr. Chairman, I think what is worrying some of the senators here is the rather extraordinary situation we find ourselves in, that we have amendments to a summary bill approved by the Senate when it approved the committee reports, and we are now in the position of having amended the bill or of having approved amendments to the bill. The Senate has accepted the amendments.

**The Chairman:** No, the Senate has not. There has been no vote.

**Senator Grosart:** The Senate adopted the report.

**The Chairman:** No.

**Senator Grosart:** I am sorry. Then we are in a position of having suggested amendments.

**The Chairman:** Yes.

**Senator Grosart:** And they are now going to the minister, or to the Government.

**The Chairman:** We call them recommendations.

**Senator Grosart:** Recommendations.

**Senator Flynn:** They were very prudent.

**Senator Grosart:** They are suggested amendments. We are now placing these in the hands of the Government. We are not sending them back to the other place, as we would normally.

**The Chairman:** That is right.

**Senator Grosart:** We are dealing with the recommendations and a bill in what we would call the normal way, time permitting. I presume the Senate still has the opportunity to move these amendments when the amending bill comes forward.

**The Chairman:** Certainly, on second reading.

**Senator Grosart:** I am for the time being assuming that we do not make amendments when the bill comes before us, between now and January 1. We still have the opportunity to put our amendments in a form in which they will go back for re-consideration by the other place when the amending bill that the minister has, I think I can say, promised comes before us.

**The Chairman:** It is my view, as a matter of law, that when an amending bill comes before the Senate amending this Bill C-259, we can deal with that bill in the same way as we would deal with any other bill, except that we cannot levy taxes or raise taxes. We can put in the amendments we are talking about today; we can put them in if they are not already in the bill; or we can put in other amendments if we decide to hear more evidence.

**Senator Flynn:** But they have to be relevant to the amending provisions of the bill. We cannot add to a tax bill.

**The Chairman:** This is what I said. You cannot add anything that will increase rates or levy taxes.

**Senator Flynn:** Even if it does not touch ways and means, you cannot include provisions that are without the general ambit of the amending bill.

**The Chairman:** That is where you and I disagree on a matter of law.

**Senator Flynn:** I am not too sure that you entirely disagree with me, maybe because we have not got time to discuss our opinions.

**The Chairman:** Nothing can become law at any time in relation to any matter unless the Senate passes the bill.

**Senator Flynn:** That is right.

**The Chairman:** Is that not enough authority?

**Senator Flynn:** I think you did not get my point.

**The Chairman:** Yes, I did.

**Senator Flynn:** I say that if the minister brings in an amending bill dealing with the gift problem, we could not add to the bill a provision concerning the profit sharing plans, because it would not be relevant to the amending bill.

**The Chairman:** We have done it in the past.



**Senator Flynn:** Well, I doubt that we can do it.

**The Chairman:** We disagree on that point.

**Senator Grosart:** Just to make my point perhaps a little clearer: Would you say as a matter of opinion, as the chairman of this committee, that in due course, when the amending bill comes before us, if we do not make amendments now, we will be in a position generally to make any of the amendments we have suggested?

**The Chairman:** In my opinion, yes.

**Senator Grosart:** That is the answer I wanted.

**Senator Flynn:** In my opinion, no.

**The Chairman:** So we are both batting 500 per cent.

**Senator Grosart:** It is yes and no.

**The Chairman:** Are there any other questions?

**Senator Beaubien:** Mr. Chairman, I would like the minister to be a little more specific about that amending bill, when he brings it in.

**Senator Flynn:** You have done your best up to now.

**Hon. Mr. Benson:** I can undertake no more than I have now. There will be a bill coming in in due course, with all due dispatch, amending this legislation. I cannot go any further than that. If I did and said January 15, or February 15, or March 15, and I did not meet that deadline, people would tell me I had broken my word with the Senate, and I have no intention of doing that.

**The Chairman:** You might be talked out of an opportunity to do it.

**Senator O'Leary:** The amending bill may or may not incorporate the proposed amendments.

**Hon. Mr. Benson:** The decision has to be made. We will look at the amendments. I have indicated some that would be incorporated.

**Senator O'Leary:** As long as that is quite clear.

**Hon. Mr. Benson:** That is absolutely clear.

**The Chairman:** If there are no other questions, we will conclude this meeting. Thank you very much, Mr. Minister.

The committee adjourned.





THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable JOHN J. CONNOLLY, P.C., *Acting Chairman*

No. 52

MONDAY, DECEMBER 20, 1971

Complete Proceedings on Bill C-259

intituled:

“An Act to amend the Income Tax Act and to make certain provisions and alterations in the statute law related to or consequential upon the amendments to that Act”

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)





THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Grosart
Beaubien	Hayden
Belisle	Hays
Benidickson	Isnor
Bourget	Lafond
Buckwold	Lang
Burchill	Langlois
Choquette	*Martin
Connolly ( <i>Ottawa West</i> )	McElman
Cook	Molson
Desruisseaux	O'Leary
Everett	Phillips
*Flynn	Quart
Gélinas	Sullivan
Giguère	Walker
Goldenberg	Willis

\*Ex officio members

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1971:

"The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

After debate, and—

In amendment, the Honourable Senator Grosart moved, seconded by the Honourable Senator O'Leary, that the following words be added to the motion:

"and that the Committee be instructed to bring back to the Senate a report incorporating the amendment to Bill C-259, intituled: "An Act to amend the Income Tax Act and to make certain provisions and alterations in the statute law related to or consequential upon the amendments to that Act", which have been drafted by the Committee and other amendments recommended to the Senate as "top priority" changes in the bill necessary to correct existing defects in the bill as reported by the Standing Senate Committee on Banking, Trade and Commerce."

## RULING BY THE HONOURABLE THE SPEAKER

Honourable Senators:

I have now had time to examine the authorities on similar amendments where instructions were to be given to a committee. In fact, although I cannot recall the exact circumstances, we did have a similar case one or two years ago. At any rate, I should now like to read from *Bourinot's Parliamentary Procedure*, Fourth Edition, page 513. It reads as follows:

"Considerable misapprehension appears to exist as to the meaning of an instruction. An instruction is given to a committee to confer on it that power which, without such instruction, it would not have. If the subject-matter of an instruction is relevant to the subject-matter and within the scope and title of a bill, then such instruction is irregular since the committee had the power to make the required amendment."

Therefore, Honourable Senators, since the Standing Committee on Banking, Trade and Commerce has all of the powers to do what is the purpose of this motion in amendment, I must rule it out of order.

Debate was resumed on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Langlois, that the Bill C-259, intituled: "An Act to amend the Income Tax Act and to make certain

provisions and alterations in the statute law related to or consequential upon the amendments to that Act", be referred to the Standing Senate Committee on Banking, Trade and Commerce,

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Monday, December 20, 1971.  
(68)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10:00 a.m. to examine and consider Bill C-259, intituled:

"An act to amend the Income Tax Act and to make certain provisions and alterations in the statute law related to or consequential upon the amendments to that Act"

*Present:* The Honourable Senators Aird, Beaubien, Benidickson, Bourget, Buckwold, Choquette, Connolly (*Ottawa West*), Cook, Everett, Gélinas, Goldenberg, Grosart, Hays, Isnor, Lafond, Langlois, Martin, McElman, O'Leary, Phillips and Quart—(21).

*Present, but not of the Committee:* The Honourable Senators Bonnell, Duggan, Fergusson, Forsey, Laird, Lawson, McNamara, Michaud, Nichol and van Roggen—(10).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel and E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

In the absence of the Chairman and upon motion duly put it was *Resolved* that the Honourable Senator Connolly (*Ottawa West*) be elected Acting Chairman.

## WITNESSES:

### *Department of Finance:*

The Honourable Edgar J. Benson, P.C. Minister;  
Mr. M. A. Cohen, Assistant Deputy Minister.

### *Department of Justice:*

Mr. D. S. Thorson, Associate Deputy Minister.

The Committee then proceeded to the consideration and examination of the said Bill and heard the Minister in explanation thereof, assisted by Messrs. Cohen and Thorson.

At 12 Noon the Minister departed.

At 12:10 p.m. the Committee adjourned until the Rise of the Senate this afternoon.

2:15 p.m.  
(69)

At 2:15 p.m. the Committee *resumed*.

*Present:* The Honourable Senators Connolly (*Ottawa West*) (*Acting Chairman*), Aird, Beaubien, Belisle, Benidickson, Bourget, Buckwold, Cook, Everett, Gelinass, Goldenberg, Grosart, Hays, Isnor, Lafond, Langlois, Martin, McElman, O'Leary, Phillips and Quart—(21).

*Present, but not of the Committee:* The Honourable Senators Bonnell, Duggan, Fergusson, Fournier (*Restigouche-Gloucester*), Laird, Lawson, McGrand, McNamara, Michaud, Nichol, Paterson, Petten, Rowe and van Roggen—(14).

*In attendance:* The Honourable Lazarus Phillips, Chief Counsel and E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

## WITNESSES:

### *Department of Finance:*

Mr. M. A. Cohen, Assistant Deputy Minister.

### *Department of Justice:*

Mr. D. S. Thorson, Associate Deputy Minister.

After discussion the Honourable Senator O'Leary moved the following motion:

That Section 147(10) of Bill C-259 should be amended to read as follows:

"147(10) There shall be included in computing the income of a beneficiary under a deferred profit sharing plan for a taxation year each amount received by him in the year from a trustee under the plan, minus

(a) any amounts deductible under subsections (11) and (12) in computing the income of the beneficiary for the year,

(b) amounts paid by a trustee under the plan pursuant to the plan to a person described in subparagraph (2)(k)(vi) to purchase an annuity described in that subparagraph,

(c) the amount by which the aggregate of

(i) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of a capital gain made by the trust, and



(ii) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of the increase in the value of property of the trust over its cost amount to the trust

exceeds the aggregate of

(iii) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of a capital loss of the trust, and

(iv) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of the decrease in the value of property of the trust from its cost amount to the trust,

(d) the fair market value of property (other than money) transferred in kind to the employee or other beneficiary by a trustee under the plan."

That Section 147(10.1) should be added to Bill C-259 in the following terms:

"147(10.1) Where any property (other than money) has after 1971, been transferred in kind to an employee or other beneficiary by a trustee under a deferred profit sharing plan, the employee or other beneficiary shall be deemed to have acquired the property at a cost to him equal to its cost amount to the trust at the time of its transfer."

After lengthy discussion and the question being put, the Committee divided as follows:

YEAS—5      NAYS—10

The motion was declared *lost*.

The Honourable Senator Hays made the following motion:

"That all the recommendations contained in the first, second and third Reports of the Standing Senate Committee on Banking, Trade and Commerce respecting the Summary of 1971 Tax Reform Legislation, as tabled in the Senate, be submitted to the Minister of Finance for further consideration, and that appropriate action be incorporated in the legislation to be introduced at a later date in accordance with the undertakings of the Minister as given this day".

The question being put, the Committee divided as follows:

YEAS—17      NAYS—1

The motion was declared *carried*.

The Honourable Senator Grosart moved the following:

That Clause 52(5)(b) be amended to read as follows:

"52(5)(b) The beneficiary shall be deemed to have acquired the property at a cost equal to its cost amount to the trust at the time of the transfer".

The question being put, the Committee divided as follows:

YEAS—4      NAYS—10

The motion was declared *lost*.

Following further discussion the Honourable Senator Phillips moved that Clause 29 of the Bill be deleted.

The question being put, the Committee divided as follows:

YEAS—4      NAYS—10

The motion was declared *lost*.

The Honourable Senator Grosart moved that Clauses 69, 70, 91, 91(2), 91(1)(b), 127(1) and 212(14) be amended as contained in a document described as "Draft amendments, November 30, 1971" all relating to Bill C-259.

The question being put, the Committee divided as follows:

YEAS—4      NAYS—10

The motion was declared *lost*.

It was moved by the Honourable Senator Cook that the Bill be reported without amendment.

The motion was declared *carried*.

It was moved by the Honourable Senator Everett that the following Recommendation be included in the Report of the Committee:

"(1) That a method be found to deal with the subject-matter of the distribution of corporate undistributed income accrued subsequent to December 31, 1971, in a manner similar to the method proposed in Bill C-259 for dealing with corporate undistributed income accrued prior to January 1, 1972; and

(2) That the Minister of National Revenue give binding advance rulings on a written set of facts as to:

(a) the exercise of ministerial discretion under the Income Tax Act.

(b) As to whether a receipt would be an income receipt or a capital receipt under the Income Tax Act."

The question being put, the Committee divided as follows:

YEAS—13      NAYS—1

The motion was declared *carried*.

At 5:10 p.m. it was agreed that the Committee adjourn for approximately half an hour in order that the Acting Chairman and the Chief Counsel be given sufficient time to prepare a Draft Report for the consideration of the Committee.

At 5:40 p.m. the Committee resumed.

The Chairman read to the Committee a proposed draft report and after discussion and certain revisions having been made thereto, it was Resolved that the Report be tabled in the Senate by the Acting Chairman.

At 6:10 p.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee*

# Report of the Committee

Monday, December 20, 1971.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred the Bill C-259, intituled: "An Act to amend the Income Tax Act and to make certain provisions and alterations in the statute law related to or consequential upon the amendments to that Act, has in obedience to the order of reference of December 18, 1971, examined the said Bill and now reports the same without amendment.

Your Committee, however, considers it urgent that the following observations be made.

As a result of a reference to your Committee by the Senate on September 14, 1971, your Committee considered the Summary of 1971 Tax Reform Legislation and the Bill based thereon, being Bill C-259, which Bill received first reading in the House of Commons in June. The present Bill C-259, although amended in part, is in substance the same Bill which received first reading in June in the House of Commons.

As this Committee's first preliminary report states: "your Committee has heard a number of representations and has received a number of written submissions on the proposed legislation." As a result of its deliberations and studies your Committee submitted to the Senate its First Preliminary Report on November 4, 1971, its Second Preliminary Report on November 30, 1971, and its Third and Final Report on December 13, 1971.

These Reports include a series of recommendations for suggested amendments to Bill C-259. In approving this Bill today this Committee reiterates with the greatest possible emphasis that the recommendations for changes in the Bill as contained in these Reports, are of continuing importance and relevance.

Your Committee further recommends to the Minister of Finance and the Minister of National Revenue the following:

- (1) That a method be found to deal with the subject-matter of the distribution of corporate undistributed income accrued subsequent to December 31, 1971, in a manner similar to the method proposed in Bill C-259 for dealing with corporate undistributed income accrued prior to January 1, 1972; and
- (2) That the Minister of National Revenue give binding advance rulings on a written set of facts as to:

(a) The exercise of ministerial discretion under the Income Tax Act.

(b) As to whether a receipt would be an income receipt or a capital receipt under the Income Tax Act.

Your Committee, nonetheless, is of the view that the content and context of the Bill urgently calls for a series of amendments which will clarify and simplify certain sections thereof and excise others.

In view of the statements made by the Minister of Finance before your Committee on December 13 and this day, your Committee confidently expects that the Government will give meaningful consideration to the recommendations of your Committee in respect of Bill C-259 in amending legislation to be presented to the House of Commons as soon as possible in 1972.

It is therefore expected that the Government will give intensive and meaningful attention to the views expressed herein having regard to the important role that the Senate of Canada has played and is playing in the government of this country as one of its two constituent parliamentary Chambers.

Respectfully submitted.

John J. Connolly,  
*Acting Chairman.*





# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Monday, December 20, 1971

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-259, an act to amend the Income Tax Act and to make certain provisions and alterations in the statute law related to or consequential upon the amendments to that act, met this day at 10 a.m. to give consideration to the bill.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, I am most grateful for your continued confidence. I note that the Christmas spirit has already taken hold of the Leader of the Government, and I hope that some of it will spill over on to everyone present.

We have before us Bill C-259, which has already been the subject of debate in the Senate. We are expecting to have the Minister of Finance with us this morning. He was to have been here at 10 o'clock, but he may have been delayed by the poor weather conditions. Meanwhile, we have with us Mr. Donald S. Thorson, Associate Deputy Minister of Justice.

Is it your wish to discuss the bill with Mr. Thorson prior to the arrival of the minister?

**Senator Choquette:** Mr. Chairman, I would like to make our position clear. We, the official Opposition, are a group of five or six here, and we do not intend to use delaying tactics. However, we should have a definite plan at the outset. For instance, I would like to know how we are going to proceed. Are we going to go over this bill clause by clause? Is there a deadline; and, if so, what is that deadline, or have we all the time we need?

**The Acting Chairman:** Of course, the chairman is always in the hands of the committee, but I think, speaking personally, that we should first of all hear from the minister, unless he is delayed; and if he is unduly delayed, that we should proceed in some other fashion. Thereafter, I think we should follow the usual practice of this committee; that is, that we should deal with any item or any part of the bill about which any senator would like to have some information.

In answer to Senator Choquette's other point, certainly there is no deadline. The committee will sit, as it always sits, until it finishes its work. I think we would like to do that with the usual expedition this committee has shown through the years.

Here is the minister.

**Senator Choquette:** Mr. Chairman, I am happy to see the minister here, but I think that if we start with the minister's evidence we are starting from the bottom and working upwards. I thought this was work for a committee. Since the minister is here, I expect we will have a definite commitment from him, but it may be that that is just wishful thinking for the moment. I am sure we will have a promise that some of our amendments, that were so well prepared under the chairmanship of Senator Hayden, will come in the form of a special bill as soon as possible. I am not putting words in the mouth of the minister, but that is my hope. So I am wondering if we should start with the minister.

**The Acting Chairman:** This committee has always taken the view that when we have a minister here, we hear him at his convenience. I would be inclined to deal with the minister's evidence at this time, if that is the wish of the committee.

**Hon. Senators:** Agreed.

**Senator Beaubien:** Mr. Chairman, just speaking for myself, I think what this committee would like to have is three very simple commitments. If the minister could convince us that for the good of the country this bill should pass before the end of the year, that would be a great thing for the Senate and would be a good thing for the country. After he has done that, if the minister would tell us that as soon as he found it practicable he would bring in a special bill, and that when he does prepare the special bill he will give full consideration to the recommendations of the Senate, especially with respect to our three reports, then, speaking for myself, I think that would help us tremendously in making up our minds on this bill.

**Senator Benidickson:** Senator Beaubien, I think you have made a very important point and it impresses me very much.

**Senator O'Leary:** I propose that we hear the minister first and then, when he has finished, we can cross-examine him, if he will permit.

**Honourable Edgar John Benson, Minister of Finance:** First of all, as you know, I was here last week and I reviewed generally the recommendations made by the Senate committee. I indicated that we had your reports and were looking very carefully at them. I indicated several areas where we felt that amendments were necessary, both along the lines that the Senate committee had indicated and in other areas. I indicated that we would continue

looking at them and that, indeed, we would bring forward an amending bill. We will bring in an amending bill. Some people object to my using the term "budget," but an amending bill of the Income Tax Act which will affect the balance of the Ways and Means is a budget, in effect. There are other ways of bringing it in. We can bring it in through a resolution and carry it along, but, in any event, we will bring in an amending bill to this legislation as soon as we possibly can. But this does not mean that we can promise that we can do it in January or early in February. There are very complicated matters involved in some of these amendments. For example, in the field of foreign income, I do not want to bring in amending legislation which again will have to be amended and will not solve the problems that we see. The problem of passive income, for example, which you dealt with in your report, is a very complicated matter which affects different companies operating abroad in very different ways. They are making representations to us, we are looking at these, and we intend to bring forward amending legislation. I have made that quite clear.

Why should the bill pass by the end of the year? First of all, I gave a good many reasons in the Commons, which I would be glad to repeat here, but, basically, if we do not pass this bill at the end of the year we are going to be in a period where people do not know what the law is. We have reached the stage now—indeed, a month ago we had reached the stage—where there is no question of splitting this bill. It is just not that easy to split the bill. People say that you can take out sections and do these things, but it just does not work that way. The legislation going through will provide tax relief for a great many Canadians. It will provide for the imposition of a gains tax for the first time in Canada. It will provide such things as higher exemptions, child care allowances, allowances for working people up to \$150 a year, additional allowances for older people—a tremendous number of changes. It brings into income things that have not been included in income before, such as capital gains. It also brings in unemployment insurance benefits and a great many minor things that have not been treated as income before.

Also, if we do not have the legislation a hiatus period is created. In the Commons I pointed out that by the end of January, 1972, there will be about 15,000 corporations which will have completed their 1971-72 fiscal year, the one ending in 1972. By the end of February this will be close to 30,000 corporations. These companies would not know whether they should be reporting their income under the old or the new system.

Similarly, there are thousands of partnerships with year-ends that would fall into this particular period, and they would face the same kind of problem.

Difficult problems of administration would arise. For example, would it be open to taxpayers to assert that they had no liability in respect of a transaction or an event because the bill had not been put into effect? This could have arisen previously, of course, on a small scale when budgets were announced and the legislation was enacted some months later. However, here the problem is one of magnitude because the whole Income Tax Act has been changed.

**The Acting Chairman:** Can you give an example of that, Mr. Minister?

**Hon. Mr. Benson:** Well, a good example would be, supposing people wanted to distribute part of their accumulated surpluses. One of the alleviating provisions in the new act is that all surpluses can be cleared up to the end of December 31 by a payment of a flat 15 per cent tax and distributed tax-free to the shareholders. Now, supposing somebody had to do this because they needed the cash out, or they just wanted to go ahead and do this; the question is, which law applies—the old law, where half of it was taxable income and the other half was distributed tax-free, or the new law, where the whole thing is tax-free?

These are the kinds of decisions people have to make and their advisers have to make all the time, and this is just one example that comes very quickly to mind.

Another problem that would arise is what would happen in the case of interest paid by a corporation to purchase shares of another corporation. Would this be allowable or not? There are many business transactions of that kind. In the new act we are allowing the deduction of this kind of interest. So people will not know whether they should go ahead with the transaction or not. These are the kinds of difficulties that arise.

I mentioned the surplus account with respect to distribution. With regard to taxpayers making payments to non-residents, for example, which withholding tax rules apply? Under Bill C-259 there are a number of transactions, particularly in the corporate sector, which require that forms or the elections be filed with the Department of National Revenue. There would not be any election forms existing, if the bill was not proclaimed.

Those are just some of the reasons why I think it essential that people know what the law is and that the law go into effect on January 1.

I do not say it is going to be the end of the world if the bill is not passed by January 1, but I think it should be passed, if you can possibly do it with due dispatch. And in saying that, I am in no way indicating what the Senate should do or urging the Senate to do anything. What you do is entirely up to yourselves. I am simply here to try to answer questions.

**Senator O'Leary:** Mr. Minister, you used the words "tax relief." How is that going to be affected? It will not be affected, will it, if this bill is not passed?

**Hon. Mr. Benson:** There is another bill that I have to get through after this one, as you know. I have some tax reductions, outside of this bill, which started in June last. It is a very small bill; it is a relieving bill. That bill cannot be passed until after this bill is passed, because it amends this bill. That means that the tax relief I have given from last June until the present time for individuals and corporations is not really legal. It has been done before; but, goodness, it seems to me that before the end of this year or, at least, before the end of the session this has to be cleaned up in order that one legalizes the tax relief one has been giving to people.

You know, there is precedent for giving people tax reductions and carrying them on, but the question arises



as to how long you do this. If you are moving from January on and there is a completely new tax system, is it correct to change the amount of deductions from people? Indeed, some people will be paying additional tax, although the amounts are not very high—I think it comes to a maximum of \$100, or something like that. The question arises: Is it proper to deduct the tax from these people? You can do it. Legally I think you can do it, but it is much better to have the law to support you, I think, than to just move forward in that way.

**Senator Grosart:** How soon after the passage of this bill, Mr. Minister, would you see that relieving act being passed—or being introduced, I should say?

**Hon. Mr. Benson:** This is very difficult. I did not want to tie myself down to this last week, and that was quite intentional. We are now working on the various problems that have been raised, some of them by the Senate committee and some by people outside. We have our people in the Department consulting with businesses involved, to see what can be done and what the various situations are. We will start writing legislation, but it is not a fast process. I have been through this once before, as you know, to develop this bill, and I know it is difficult. Many of the things, or at least some of the things, if the bill went through in February, March, April or May, would be effective as of January 1—for example, the decisions with respect to deferred profit-sharing plans which I indicated I was going to make. They would have to be effective as of January 1. But we will work ahead as fast as possible, senator, in order to produce a bill.

**The Acting Chairman:** Senator Grosart, you are talking not about the bill to reduce the taxes, to which Senator O'Leary was referring, but about the general amending bill?

**Senator Grosart:** Oh, no, I am not. I was asking how long after the passage of this bill, C-259, would the minister expect—and that is the word I used—to introduce the bill he referred to in reply to Senator O'Leary.

**Hon. Mr. Benson:** I will introduce it right away. It will not take any time to pass. You will have it this week, if you get this one through.

**Senator Grosart:** It is written?

**Hon. Mr. Benson:** Yes, it is written, and it is a very simple bill. It is simply reducing people's taxes, and there will not be many complaints about that; that is, unless they say that we are not reducing them enough.

**Senator Grosart:** And the amending bill, if I may call it that, is the bill that you said would come subsequently, perhaps in the spring. You have said, I believe, Mr. Minister, that that could very easily be retroactive in its effect to January 1. Would that not apply to Bill C-259?

**Hon. Mr. Benson:** Well, if you are making small or relatively small changes to the Income Tax Act, I think it is fine to make them retroactive, but when you are introducing an entirely new piece of legislation, building from the bottom up, then you really have no tax law if you do not have this. All you are left with of the old law is the title. Therefore, I

think there is a difference in magnitude in trying to make this retroactive.

**Senator Grosart:** But the old act is not repealed.

**Hon. Mr. Benson:** No, the title is left; the only thing that is left is the title, and that is for technical reasons.

**Senator Grosart:** So what you are saying is that it is better to have a bad bill than no bill at all, and that it is better to have confusion and uncertainty with the bill than to have confusion and uncertainty without the bill.

**Hon. Mr. Benson:** Well, first of all, I will not admit it is a bad bill; it is probably the best piece of tax legislation in the western world. Certainly, I think it is useful to have certainty. There will certainly be amendments to this bill, and I think we will consider all the Senate committee recommendations. These are amendments which affect a very small segment of the Canadian population. These are specialized cases and specialized problems that arise, and I congratulate the Senate on looking into them and finding these particular problems, mainly in the corporate area, which affect a relatively small number of the Canadian population.

**Senator Grosart:** I cannot agree with you on that, Mr. Minister, because, certainly, in thinking of some of them which relate to our capability in export markets, I would say that it affects every Canadian perhaps even more significantly than the very helpful benefits there are in this bill. I do not think you really mean to say that the amendments, for example, which the Senate committee in Appendix "B" of its third report referred to as "top priority", are ones whose effects are confined to a small segment of the Canadian population. These top priority amendments affect the whole Canadian population. I do not like the suggestion that the Senate amendments are zeroed in on corporate benefits.

**Hon. Mr. Benson:** Well, I should mention, Senator Grosart, that I indicated when I was last before the Senate, a week ago, that I would be making changes which are rather broad in nature. Deferred profit-sharing plans and profit-sharing plans is one example that comes to mind. These have a broader application, but those amendments will be made, and they will be made presumably effective January 1. But if one gets into the area of foreign corporate operations, we asked for representations in this regard and we have less than a handful of representations from these corporations. So the number of corporations anxious about this is not really that great. We are trying to get them to come forward so that we can look at the various problems, and these problems do differ as between different types of corporations, how they operate, and so on.

**Senator Grosart:** I would suggest, Mr. Minister, that it is possibly a non sequitur to say that because you had representations from only five or six corporations this means that only a small number of corporations is interested. Of course, that is not so. It is normal in such cases for corporations to let one or two take the lead because they have the experts, the information and the available data to carry the ball.

**The Acting Chairman:** In that connection, Senator Grosart, I think we can say at this stage to the Minister that in our consideration of this legislation all fall we did not have too many representations from individual corporations, but we have had them from associations representing various industries like the pulp and paper industry, the construction industry and the petroleum industry, and there are ten or fifteen such organizations.

We have also had representations which apparently came from the corporate level but which do affect many individuals. For example, on the profit-sharing plans, and the deferred profit-sharing plans, those representations usually were made not by the beneficiaries under the plan but by the companies that operate the plan. The ramifications of the representations were wide, although perhaps it was put to us here from the corporate side rather than from the individual side.

**Senator Grosart:** Well, Mr. Chairman, you have still objecting to the bill the Retail Merchants' Association. At least they are objecting to some aspects of the bill and certainly to its quick passage. They could hardly be said to represent the big corporations; they represent everybody down to my barber and taxi-driver.

**The Acting Chairman:** We have had representations too, in the course of the fall, from the people who were very interested in the problems of small businesses and particularly businesses who want to qualify under the definition of the act as a small business with the \$400,000 ceiling that the act proposes. We have heard a great deal about that.

**Senator Grosart:** Mr. Minister, we, as the Senate, are in a somewhat embarrassing situation in that we have a recommendation to the Senate from this committee that there are at least nine items—and I am sure you are aware of them—which are described as top priority recommendations. I think the assumption is that these are changes that the committee felt should be made before the bill is passed. I am sure you know the list to which I refer, and you gave us interesting answers. You are trying to work one out; you are looking favourably at another; and you are examining a third. The chairman reported that this does not mean that you will make a change. The chairman also reported to us, summarizing your reply in connection with one, and that is that all they are saying is that they are going to look around. Now, I do not want to be unfair. The chairman generally reported that you gave sympathetic consideration and some indication that at least some of them would appear or would be made effective in the amending bill. I want to say that I was very much impressed that you were able to go as far as you did when you were last before this committee, and I am in no way critical of the replies which you have given. I feel they were generous and that you were certainly trying to assist us in what I have referred to as our dilemma, and I believe it is a dilemma.

It has been said in the Senate and in press editorials that you have made no commitment.

**Senator Beaubien:** Just a moment, I think the minister made a commitment this morning.

**Senator Grosart:** Let me finish, please. It has been said that, firstly, you have made no commitment, and, second-

ly, that you were casual in your remarks regarding the fact that there is always an amending bill to a tax act. I am not saying this critically. Would you say that you have gone a little beyond that today by making a commitment to this committee that there will be a specific bill which will take into consideration recommendations contained in our report? I realize you cannot make a commitment on behalf of the Cabinet; at least, I do not think you can.

The reason I ask this question is that all honourable senators have actual draft recommendations made by this committee. You can help us in our proceedings by going further than you have. I feel we will have to look at this bill clause by clause, and I do not mean we should take every single clause and spend a lot of time on it, but we will have to look at each clause and determine how sensible this committee was in drafting these amendments—Do we abandon these amendments now? Perhaps you can help us on that. I do not mean abandon them forever. We have drafted amendments before us called "top priorities." What do we do with them?

**Hon. Mr. Benson:** First of all, I have indicated there will be an amending bill. I will not say that the amending bill will only cover your committee's recommendations.

**Senator Grosart:** No, we are not asking for that.

**Hon. Mr. Benson:** There will be an amending bill, as I have said before. Perhaps I have caused you some difficulty because I indicated it would be a budget; but an amending bill which affects the balance of Ways and Means, to my mind, is a budget. There will be an amending bill to the Income Tax Act.

**Senator Grosart:** Would you use the word "specific" in respect to recommendations which are already before you?

**Hon. Mr. Benson:** Yes, and also recommendations I may receive. We are seeking recommendations from industry and business in an attempt to solve some problems that have arisen, including the problems which you have mentioned. There will be a specific bill amending the Income Tax Act as it is amended by Bill C-259. I cannot be any more specific than that. With regard to timing, I feel I have gone as far as I can go. We have to work these items out and properly determine and insert these amendments.

**Senator Buckwold:** Will it be some time during the next year?

**Hon. Mr. Benson:** Oh yes.

**The Acting Chairman:** I am sure counsel for the committee, or perhaps members of the committee will correct me if I am wrong. What our Senate committee has given to the Government is a series of recommendations, and we have endeavoured to make concrete suggestions regarding the form of the amendments. We have listed some as being more important than others. I do not think the word "priority" goes any further than that. Senator Hayden's appreciation of this particular situation is important here. I do not want to engage in a debate regarding what amendments a Senate committee can make to a tax bill. However, Senator Hayden indicated that rather than have confrontation between the two houses on specific



amendments to a tax bill, what our committee should do is to make recommendations, and if the Government can accede to some of the suggestions made by the committee—perhaps they cannot accept all of them, and I think that is understandable—the amendments should not be made through the Senate but through the House of Commons. I think that is a practical way of looking at the procedure in connection with our treatment of a tax bill.

Having said that, perhaps what the committee meant by priority items emerges a little more clearly. Perhaps some honourable members of the committee assumed a different connotation of the word "priority". I put it to the committee that this is what we had in mind.

**The Honourable Lazarus Phillips, Chief Counsel to the Committee:** I think you are right, Mr. Chairman. I was working with Senator Hayden on the concept of priorities which related itself to the subject matter included in the recommendations rather than to the timing itself in terms of this bill.

**Senator Grosart:** Mr. Chairman, I do not know in what capacity you make that statement.

**Senator Beaubien:** I have two questions to ask of the minister,—

**Senator Grosart:** I am not sure in what capacity you have made that explanation. Certainly, it was not made to the Senate, nor was it part of the report of the committee. The words "top priority" are understandable English words. I feel it is quite proper to assume that "top" means "most important", and that "priority" means "items that go ahead of any others". I am not suggesting for a moment that you are not accurate in explaining the committee's interpretation of the word. However, this is not what the committee has reported to the Senate. I was not aware that the drafted amendments had been sent to the minister. I do not know by what procedure the committee sent these draft amendments to the minister, especially before they were reported to the Senate. However, that is another matter.

**The Acting Chairman:** Senator Hayden has ways and means of accomplishing certain things.

**Senator Grosart:** Yes, I am aware of that. However, there are rules which govern our behaviour.

**The Acting Chairman:** The very fact that the draft recommendations were put on the Senate record would necessarily ensure that they be given to the minister.

**Senator Beaubien:** And they were approved by our committee.

**Senator Grosart:** Yes, but there is no reference to the drafted amendments, and I want to point that out. There is a general description of top priority items. But several honourable senators had no way of knowing that these drafted amendments were communicated to the Government. That is not the issue before us. But I think it is important that we look very carefully at this bill with respect to the suggested amendments.

**Hon. Mr. Benson:** Regarding the nine or ten areas considered by the Senate to be of top priority—

**Senator Benidickson:** In the third report?

**Hon. Mr. Benson:** Yes, in the third report—we indicated that we had sympathy for some, accepted changes in other areas and that we would implement them. In other areas we indicated that we were considering them. Mr. Cohen and Mr. Thorson are here and will go through this specific area in detail, if you wish. They will be glad to point out some of the difficulties we encounter in making a quick decision with respect to them. I outlined this particular problem in a general way last week. One aspect is the matter of gifts in kind to charitable organizations, with reference to which we said we have great sympathy and think something should be done. However, we do not wish to get into a similar mess to that in the United States when they had to introduce massive legislation in 1969 to plug loopholes which were created. So we would do something about it, but must find a means of attempting to avoid such a situation. I am just picking this one out.

**Senator Grosart:** Well, Mr. Minister, I have no quarrel whatsoever with that. I was quite convinced myself that you need time. You made out an excellent case for it. There is no question that you need time perhaps to hear other representations and to integrate in the bill such parts of these amendments as you may find viable. I have no doubt about that; you do not have to prove it to me.

Of course, it does raise the question, if that is so, of why this bill must be passed by January 1. It is not for me to go back at this time to quarrel with the manner in which it was brought here, except to say that it raises an obligation for us in the Senate, in that it does not come to us as a vote from a free Parliament—I will put it another way, a free vote in Parliament.

**Senator Isnor:** What do you mean by that?

**Senator Benidickson:** What does that mean?

**Senator Grosart:** I did not wish to go into it, but I will. I am merely saying that with closure—

**Some hon. Senators:** Oh, oh.

**Senator Isnor:** What do you mean? That is a statement of your own view.

**Senator Hays:** I would like to hear your answer to the three questions raised by Senator Beaubien.

**Hon. Mr. Benson:** I think I did answer them.

**Senator Hays:** I thought you might go into them in more detail.

**Hon. Mr. Benson:** I went quite thoroughly into the reasons why the bill should be passed before the end of the year. Senator Beaubien asked only two questions. The second was as to how soon a bill to amend the Income Tax Act will be introduced.

**Senator Beaubien:** You covered that.

**Hon. Mr. Benson:** I think I covered that, honourable senators, as well and as reasonably as I can.

**Senator Phillips:** Mr. Chairman, I have two questions. The first relates to the priorities. The minister has indicated that some of the so-called priorities will be adjusted. There



are changes not included in the priorities which I would like to see included in the bill. Could you give some indication of the priorities which the Government will not accept?

**Hon. Mr. Benson:** I went over this in some detail last week when I was here. The nine that I had seen in the Senate report were: Gifts, Bequests and Devises to Charities, Employees Profit Sharing Plans, Deferred Profit Sharing Plans, *De Minimis* Rule, which is somewhat related to the Passive Income, Tax-Exempt Non-resident Investors, Non-Resident Owned Investment Corporations, Private General Insurance Corporations, and Deemed Realization on Ceasing to be a Resident of Canada. Those were the areas contained in the Final Report.

Incidentally, I think that this committee does not receive enough credit for the amount of study that it has devoted to the contents of this bill. I have been concerned recently by such statements as "Well, the Senate is only looking at the bill for four days." In my opinion, that is downgrading this committee, which has been considering the bill since September.

**Hon. Senators:** Hear, hear.

**Senator Benidickson:** This committee has been considering this bill for three months, not four days.

**Hon. Mr. Benson:** In my opinion, this committee has carried out a much more thorough study of the bill than some of those who have commented on it. It has produced three very useful reports and, indeed, for several months has been studying the contents of the legislation in great detail.

**Senator Benidickson:** Thank you very much.

**Senator Phillips:** My second question, Mr. Chairman, relates to the minister's statement that so many firms would be completing their taxation year in January, and in February it will increase to approximately 30,000. I am concerned by section 221(2), at page 545 of the bill. This may be strictly a legal and technical regulation which is provided for in the bill, but it causes me some concern in its wording:

No regulation made under this Act has effect until it has been published in the *Canada Gazette* . . .  
etcetera.

The point that bothers me is that it states:

. . . a regulation shall, if it so provides, be effective with reference to a period before it was published.

There is no limitation on that period. It could be retroactive for five weeks or five years. My point is that I do not see how anyone can prepare a tax return without an infraction of such a section.

**The Acting Chairman:** The minister will read the clause.

**Hon. Mr. Benson:** Clause 221(2) provides:

No regulation made under this Act has effect until it has been published in the *Canada Gazette* but, when so published, a regulation shall, if it so provides, be effective with reference to a period before it was published.

This has been in the Income Tax Act since the act was first enacted. As far as we are concerned, under the act the

regulations will become effective as of the effective date of the act, January 1, except for certain regulations of a relieving nature which may have to be made in the early period. It is simply the method which has always been used. Sometimes on budget night the Minister of Finance states that the rate of depreciation on certain assets will be increased. The regulations are not published that night, but as of that night they will be effective. This may happen two or three months before the regulations are published, but they become effective as of budget night. That is the type of regulation covered by this clause.

**Senator Phillips:** The fact that I had marked it in the old copy merely illustrates that we did consider it.

**Senator Buckwold:** Mr. Chairman, what I have to say is probably a consideration of the role of this committee, rather than a question and I may be corrected by the minister if necessary.

First, we have been assured that the reasons are cogent that it is important for this act to become effective on the first of the new year; that the difficulties would be tremendous if it went on for some weeks after that time. The calendar year is important.

The second point is that we have been given an assurance that full consideration will be given to the amendments which have been proposed. It would seem to me that point No. 3 would be the continuing study of this bill, if necessary clause by clause, by this committee.

The idea that suddenly this committee is dealing with this whole bill in a few days is really not the case. It is a continuing study, one that will continue, I hope, by careful consideration on the part of this committee, and as further amendments are proposed they will be submitted, as have others, for full consideration in a continuing process of amending this particular act. Would that basically be the position in which we find ourselves?

**The Acting Chairman:** Perhaps that is hardly a question for the minister to answer. It might be appropriate if, on behalf of the committee, I say that we have had on-going studies on tax reform legislation, because we sat for an enormous amount of time on the White Paper. We then had, as the minister indicated, a very fruitful discussion during the fall on Bill C-259. Concerning amendments that will come to us in due course by a further amending bill, I am sure the Senate and the regular chairman of the committee will take whatever steps are necessary to ensure that this committee is seized of the subject matter of that new legislation.

**Senator Buckwold:** Are you suggesting that the committee would deal only with further amendments? I presume we would have a continuing study of the act.

**The Acting Chairman:** That is really a matter for the committee to decide. Usually it takes the lead from the permanent chairman of the committee.

**Senator Cook:** May I say to my colleague that the Income Tax Act is something like a subscription, in that there is always some new interpretation of it; it never stops.

**The Acting Chairman:** And there may be some new archaeological diggings that raise problems.

**Senator Buckwold:** I do not find the so-called pressure on the Senate to get the bill finalized intolerable. I am not suggesting that there is any pressure, but, in my opinion, the deadline does not mean that this is a finalized act so far as the Senate is concerned. We will continue to play our role in amending the legislation.

**Senator O'Leary:** This is not a question. This is a speech that the honourable senator is making. We heard all of this in the Senate the other night. I said some of it myself. We will never get through our work if alleged questions are turned into observations, which observations constitute a speech.

**The Acting Chairman:** I would ask honourable senators to observe the injunction of Senator O'Leary. In this committee we like to plot our way as we go along.

**Senator Beaubien:** I have prepared an imaginary portfolio. I have put down that a man has 100 shares of Bell Telephone, for which he paid \$65; he has 400 Molson, for which he paid \$7; and 400 IAC, for which he paid \$9. At the moment, if the value date was today, on the Bell Telephone he would have a loss of \$1,900; on the Molson he would have a profit of \$4,400; on the IAC he would have a profit of \$4,000. Supposing the man decided, after the bill came into effect, that he had to raise some money, and he decided that he wanted to sell the Bell Telephone. I would like to ask the minister, if the man wanted to sell the Bell Telephone—bearing in mind the fact that it is \$46 today and he paid \$65 for it—has he got to go back and take costs for all the stocks he holds, or is he free in every security to take either cost or valuation day value?

**Hon. Mr. Benson:** I will let Mr. Cohen answer that question.

**Mr. M. A. Cohen, Assistant Deputy Minister, Department of Finance:** Senator, on the figures that you have given us, if he sold all those securities . . .

**Senator Beaubien:** I said he was going to sell only one.

**Mr. Cohen:** You have asked the question whether or not he can take either market or cost. The bill is not drafted in quite that way. The bill says that taxpayers have a tax-free zone. They are protected on the gain side by the higher of market or cost, and on the down side we do not recognize a loss except to the extent it is below the lower of cost or market; in other words, if the Bell stock kept falling below the lower of cost or market. That is the way the scheme is developed for most taxpayers. It produces what we call the tax-free zone.

In some situations, taxpayers holding old securities, which they have had for a long period of time, or other assets, might not be able to establish cost on all of their securities or assets, and so we have an exception to the general rule. That exception says that if you choose, you can elect fair market value on V-day for all of your assets. I underline the word "all". You cannot choose fair market value on one asset and cost on another asset.

**Senator Beaubien:** That is in the regulation?

**Mr. Cohen:** No, that is in the bill. That is in the transitional rules, in Part III of the bill. It is not a choice between

market and cost. You can elect fair market value on all of your assets or you can take the general rule, which is the higher of cost or market on the up-side and the lower of cost or market on the down-side. There has been a great deal of confusion over this question as to whether or not one had a choice. I suppose the reason why we do not have that choice in there is that it produces a random adverse selection for taxpayers. The tax-free zone should protect most taxpayers in most circumstances, and the fair market value rule is an exception that one can elect.

**Senator Beaubien:** Supposing he sells the Bell and has a loss of \$1,900, and for some reason he is forced, after that, to sell the IAC, he would then have a gain of \$4,000. How could he work out the grey zone?

**Mr. Cohen:** If he sells the securities at the prices you have indicated on Valuation date, in all three of those transactions he has no tax consequences whatsoever. He has no gain on the Molson stock or on the IAC stock, and he has no loss on the Bell Canada stock. Any transaction in the Bell Canada case between \$65 and \$46 is within the free zone.

Perhaps I could extend this for you. If he sold the Bell at \$40, he would have a \$6 loss, because he is down below the free zone. Similarly with the Molson stock, if he sold it at \$20, he would have a gain of \$2, being the gain that accrued after the \$18 figure of fair market value. Any transaction between the cost and fair market value on Valuation day falls within the tax-free zone, is completely irrelevant, and has no tax consequences whatsoever.

**Senator Everett:** You have used the term "taxpayers". Do you mean it in that sense, or do you mean an individual?

**Mr. Cohen:** The election on fair market value, senator, is restricted to individuals.

**Senator Everett:** So in the answers that you have given you would preface the word "taxpayer" with "individual taxpayer"?

**Mr. Cohen:** Yes. We assume that corporations will be able to ascertain costs on all of their records.

**Senator Everett:** So they are into the tax-free zone automatically.

**Mr. Cohen:** They cannot get out of the tax-free zone rules.

**Senator Everett:** Does that also apply to personal corporations?

**Mr. Cohen:** There are no more personal corporations under the new system.

**Senator Everett:** I appreciate that, but there are under the old system.

**Hon. Mr. Benson:** It would include corporations where the majority of shares are held on behalf of an individual owner. The tax-free zone is fair, I think. The only reason for putting in the other option with respect to the market value of all one's assets is that some people may have assets that they just could not find a cost for.



**Senator Beaubien:** In grossing-up, Mr. Minister, you add a third of your Canadian dividends and then you deduct a third. Now, subsection 121 says that it is four-fifths. I realize that is in there because of the provinces, but how is someone living in Prince Edward Island, for example, where there is no such tax, going to be affected?

**Hon. Mr. Benson:** It is automatic under the draft act of the provinces.

**Senator Beaubien:** Are the provinces going to accept the act?

**Hon. Mr. Benson:** All of the provinces where we have tax collection agreements have agreed to take the personal income tax *per se*, so that you will get the full credit. The Province of Quebec will put their own act in, but I imagine it will be the very same.

We had to put it in that way in order to show the federal figures in the bill, but it will take care of the provinces as well.

**Senator Grosart:** May I ask a supplementary, Mr. Chairman?

**The Acting Chairman:** Yes.

**Senator Grosart:** Mr. Cohen, when you say "all assets," do you mean just that? You are not suggesting it would just apply to securities?

**Mr. Cohen:** Yes, sir, all assets. You make the election to go on fair market value for all assets.

**Senator Grosart:** So if you have real property—a painting or something—you must apply the same criteria all the way through?

**Mr. Cohen:** Yes, sir.

**Senator Everett:** Mr. Minister, one of the serious problems in the old act which is solved in the new act, is the right to elect to pay a flat rate of 15 per cent on undistributed income, thereby distributing corporate surpluses. That is valid up until December 31, 1971.

In the White Paper you recommended a means through integration which, perhaps, would make it possible in the future to solve the problem of corporate surpluses. I do not find anything in this present act that solves that problem. Have you given consideration to that? I am wondering if you will not find yourself in a position, say, ten years from now, where you will be confronted with all of the problems of the 1948 act in reference to surplus stripping and all of the manipulation that went on, and which you tried to solve by the flat rate of 15 per cent.

**Hon. Mr. Benson:** The problem, first of all, is basically one of private corporations. It has never really been a problem with public corporations because they never pay out their surpluses if they are widely spread.

The provisions in the act, I believe, are really quite generous in taking care of surpluses accumulated up to January 1, 1972. If we had full integration, then, indeed, the problem in the future would have been solved as well. You are quite correct in saying that there may be a problem in the future, but one of the things offsetting this

problem in the future, I feel, is the limit of \$400,000 at the low rate. In other words, in order to continue this on and get the low rate in the future, I believe—and this is just speculation—that people will pay out dividends in order to continue the low rate of tax. If they get to the \$400,000 figure, I believe there will be an encouragement for distribution of surplus even though it may be loaned back to the company.

**Senator Everett:** Is that not based on whatever the difference between the corporate rate and the personal rate is?

**Hon. Mr. Benson:** And the low rate, yes. It may not solve all of the problems, but—

**Senator Everett:** If that difference is too wide, then is it not a fact that taxpayers will then elect to leave the money in? I am not saying that the taxpayer would be right or wrong in doing so. I am simply saying that the effect of the legislation will be that the taxpayer will leave the surplus in and when it builds up to a large enough amount you will again be confronted with the problem of how to strip off surplus and all of the difficulties that led to ministerial discretion. The problem of designated surplus will return to haunt us again, will it not?

**Hon. Mr. Phillips:** Senator Everett, you should remember the refundable tax of 33 1/3 per cent which is now applicable to private corporations. This will exert terrific pressure for distributing surplus.

**Senator Everett:** Not necessarily.

**Hon. Mr. Phillips:** Well, a refundable asset against the Crown is not quite the same type of asset as a marketable bond.

**Senator Everett:** That is a very interesting argument, but it does not hold.

**Hon. Mr. Phillips:** No, but I am simply pointing out that it is an argument for distribution.

**Senator Everett:** But what you are pointing out, sir, is something that does not in fact hold, because it depends on the difference between the corporate rate and the end rate, which is probably the top marginal rate to the taxpayer. If that is great enough, it seems to me the taxpayer will elect to leave his surplus in.

**Hon. Mr. Benson:** the rates get very close, because after the \$400,000 level, if one chooses not to do anything, there is a 10 per cent differential, roughly, or 11 per cent differential between the corporate rate and the personal rate; it is 61.3 as compared to 50 per cent. In Ontario, it is 52 per cent.

**Senator Everett:** In the long run the corporate rate will be 46 per cent, will it not?

**Hon. Mr. Benson:** Yes.

**Senator Everett:** It seems to me it will be 46 per cent as compared to a top marginal personal rate of 61 per cent, and that is a difference of 15 per cent. Now, based on 15 per cent, it is actually a difference of 30 per cent, is it not? In fact, you would have to take 15 per cent of 46 per cent which amounts to about a 30 per cent surcharge.



**Hon. Mr. Benson:** Full integration would solve the problem, but we have not got full integration. I might add that the Senate recommended against full integration. We have a continuing problem, but the problem, I believe, is not as great as it is at the present time, although a problem could develop.

**Mr. Cohen:** I wonder if I could add one other feature. In addition to the 61 per cent top rate and the point which Mr. Phillips makes with respect to the investment income being available for refundable tax, there is a third factor here which should take some of the pressure off, although I agree with you that in the end it may build up again. Under the old system you had to take your earned surplus out before you could get out your capital gains or any other non-earned surplus. We have now turned the act on its ear, in a sense, and we now permit corporations to distribute these capital gains and anything else that is not earned surplus first, without any pressure to take out the earned surplus in the initial instance. A great part of the problem—not all of it, I quite agree, but a great part—was the possibility of a large capital gain getting trapped in behind a significant amount of earned surplus, and in order to get at the large capital gain you had to clear your earned surplus. That built up the pressures. I submit to you that in turning this thing backwards, in permitting capital gains and paid-up stock to be redeemed free of tax at least some of the pressure to distribute surplus will be relieved.

**Senator Everett:** On the other hand, Mr. Cohen, it may work the other way around. One of the pressures to get the earned surplus out is the fact that there was a large capital surplus sitting there, and the taxpayer might very well pay the penalty on the earned surplus to get out the capital surplus. Under the new act he does not have that incentive. Admittedly, there is a limited integration, but the danger is that the provincial governments, in adding tax points to the personal rates, can make that integration largely ineffective.

The Senate report, indeed, did come out against integration, but it also recommended some means of solving the on-going corporate surplus problem. If I have any disappointment with this legislation it is that the very problem that probably more than anything else caused the act to be reviewed in the first place is still with us.

**Hon. Mr. Benson:** The first investigation of how to do this, as I can recall, started with the Rowell-Sirois Royal Commission back in 1941.

**Senator Everett:** That is before my time.

**Hon. Mr. Benson:** And we still have—and I do not like this fact—ministerial discretion in the act with regard to distribution. The reason we had to leave it in was because of the problem you are raising.

**Senator Everett:** That is correct.

**Hon. Mr. Benson:** I just do not think there is any easy solution to this problem except integration. There is no other way I can think of that you can get through the corporate surplus problem and have an ultimate solution to it, except through integration, and we just do not have integration.

**The Acting Chairman:** Which we rejected.

**Hon. Mr. Benson:** It is just that many people were not in favour of integration. We listened to them and came up with a different dividend tax credit.

**The Acting Chairman:** This is a highly technical area, of course, as Senator Everett recognizes. I was just speaking to our counsel, and I know we discussed this at great length during the fall study, and while we made no specific recommendations on it, perhaps we did it for the reasons that have been emerging here.

**Hon. Mr. Phillips:** We made the first move by the suggestion that we dispose of designated surpluses, so it would at least simplify the structure with respect to surpluses by its elimination, which would be a very important step in the right direction. That is one of our major recommendations. That is not so much an ad hoc recommendation in respect of any particular category of taxpayers, but rather going to the, shall we say, basic philosophy of the bill, such as consolidations, extension of roll-overs, and elimination of designated surpluses, all of which this committee thought, if approved, would clarify the statute considerably.

**Senator Benidickson:** That was one of your main points.

**Hon. Mr. Phillips:** That is right; it was.

**Hon. Mr. Benson:** Designated surplus is still a problem which I have indicated we have to study. Unfortunately, when we had full rate gains tax it was easy to get rid of designated surplus. Once you move to a half rate gains tax you have great problems in getting rid of designated surplus.

**Hon. Mr. Phillips:** For whatever it is worth, now that I have the forum, I think if we have relief in the amending statute on consolidation, elimination of designated surplus, extension of roll-overs, and provision on capital gains, we will have a statute that we will not recognize. The baby will be considerably improved in terms of beauty.

**The Acting Chairman:** It will have a nice complexion. Senator Everett, had you finished?

**Senator Everett:** Well, I think that is very interesting, but I believe the Honourable Mr. Phillips has indulged in a diversion. I still come back to reiterate that point, Mr. Minister. You have the problem of undistributed income, and that problem will build up again, because it really is not going to bother the taxpayer; he will allow his surplus to build up, and he will save the tax. He will wait for the day when some method of distribution, such as an Ives Commission or the flat 15 per cent tax on undistributed income offered by C-259, is made available to him. All I say is that it is unfortunate that you have not, at this stage, nor apparently has this committee, been able to solve that very difficult problem, which has led to all sorts of problems, such as ministerial discretion. It is not the entire reason for ministerial discretion, but it is to a large extent.

I am a member of this committee but, unfortunately, I was tied up with another report and was not able to attend the meetings on the subject. However, I do not glean anything from the report of this committee to indicate that

this matter was really that seriously considered, so I raise it now as something that I think the minister, in his wisdom, would be wise to give very serious consideration to.

**Hon. Mr. Benson:** I am willing to have any representations made or any ideas you may have in this regard. We just have not found a solution to it, and neither has anyone else—provided you do not have full gross up in credit. That is the only solution that has been found to it since 1941. It was decided not to proceed along that line. We have the problem, and I would like to know a solution. Indeed, I am sure that a great deal of time and effort will be put forward in the future towards finding a solution to the problem, but there just is not one at the present time that I know of.

**The Acting Chairman:** Have you finished, Senator Everett?

**Senator Everett:** Yes, thank you.

**Senator Hays:** Mr. Minister, the first recommendation this committee made in its first report dealt with capital gains on farm land. I would just like to make an observation before I ask you a question. In Canada we as agriculturists, due to our geography, have to be much more efficient than people who are permitted to ship food into Canada without tariff, or with very little tariff. In Canada we have at the very best 150 frost-free days. In the areas where we produce most of our grain we are down to 100 frost-free days. Of the ten developed nations, I think Canadians enjoy probably the cheapest food. We get very little subsidy. We compete on an open market with most of our exports. We buy on quite a protective market. I think of the beef situation, where we have been an importing country for most of the last 18 months, whereas we should possibly be an exporting country.

If we have a capital gains on these farms when they are turned over to a son, it seems to me that the Canadian people will have to pay more for their food. We buck quotas; we buck complete prohibition. For instance, we are not allowed to ship a pound of wool to the United States. We are allowed to ship only a million pounds of cheese to the United States, and you were there when we negotiated that. We used to ship over 50 million pounds. We are locked in at 30 million pounds to Britain. This is the situation in which the farmer finds himself. You are the Minister of Finance, and you know that those who pay income tax are a very small group. We have suggested that there should be no capital gains on farm land, and if there is there should be a roll-over for bona fide farmers.

My first question is: Are you going to give consideration to this or not?

**Hon. Mr. Benson:** What we have done in the bill is to eliminate death duties and gift taxes as far as the federal Government is concerned. The provinces may impose some, but if they just go to the levels they were at before, our calculation was that roughly the elimination of our death duties would offset any gains tax that had to be paid. Gains tax will start from this point forward, and it will be quite a long time before it accumulates to a lot of money.

What we have also done, after some discussion in the other place, where this matter was discussed fairly thoroughly, I think, is to provide in the bill, or should I say intended to provide in the bill, a period for payment of the gains tax on death. There is the exemption, as you know, of \$1,000 a year, plus the cost of the residence, or the alternative of having the residence and a portion of land free, so that is taken out.

**Senator Hays:** May I just ask one question on that point. What good is the house 50 miles from the city if you do not have any farm land?

**Hon. Mr. Benson:** I agree. You have got the exemption; it is built in for the principal residence. If there is a house on the farm you can add \$1,000 a year to the value of the property. Our present feeling with respect to it is that we could not provide an exemption from the gains tax, but we could provide a period of payment of six years. That did not get into the act ultimately as an amendment, because of procedural difficulties. We intend to put that into an amending act, along with some of the Senate recommendations.

**Senator Hays:** How did you arrive at six years? Why not 25 years?

**Hon. Mr. Benson:** It was the same period as allowed under the Estate Tax Act.

**Senator Hays:** Would the Government give consideration, if they do not see that they can live with eliminating the capital gains tax, to making this amortization over 20 or 25 years?

**Hon. Mr. Benson:** It might do so. This is subject to amendment, Senator Hays, in the future. The problem is that if you get into too long a period of time and apply interest rates to it, it becomes much more costly to the person. Generally speaking, people do not want to spread the period over that long, because of the increase in cost.

I believe this is an area, the area of farm land, in which there will be many representations in the future. The difficulty is that if we exempt one asset from a gains tax or something else, it makes it terribly advantageous to get into that particular type of asset. Then people who are not necessarily interested in farming, but who are not interested in gains tax, will get into that particular type of asset. We have it in homes now, where there is exemption provided in the act for a principal residence. For people who do not want to pay gains tax, there is a great advantage in getting into that kind of investment and increasing the value of it so that there is a gain accumulated.

I was talking with one former Secretary of the Treasury in the United States and he said he started out with a modest home and now he has reached a \$150,000 apartment in New York City and he cannot afford to get rid of it.

**Senator Hays:** What happens to him when he dies?

**An hon. Senator:** He will not worry about that!

**Hon. Mr. Benson:** This is what a gains tax does when these things are gains free. It encourages people to buy expensive homes.



**Senator Hays:** What is the difference between a home in the city and a farm in the country? This is the farmer's whole livelihood. The first exemption was homes, before the bill got to the House of Commons. It was not going to be included. It seems to me that the family farm we talk so much about is the home; the home is no good without the land.

**Hon. Mr. Benson:** You are really taking two things. You are taking the home as a personal asset where you live, and the farm land as a business asset. One can argue that if it is a business asset it is to produce income and it should be as much subject to gains tax as a garage or a grocery store making income for an individual person, which would be subject to tax.

**Senator Phillips:** Mr. Chairman, I should like to raise a point of order. I understand we started out in a very indefinite way as to the manner in which we intend to proceed. I think we should decide now on this. I am very interested in the question Senator Hays is asking, but if we keep waffling from corporations to farms we will not get a very thorough examination of the bill.

**The Acting Chairman:** It seemed to me that the sense of the committee was that while we have the minister here we should have as many, even wide-ranging questions as the members of the committee would like to put. Then, if further clarifications are required on this or on any other point, most of them could be dealt with by the officials, who will remain when the minister has to leave us.

**Senator Phillips:** We will still have an opportunity to go through the bill clause by clause?

**The Acting Chairman:** Yes, indeed.

**Senator Phillips:** I am satisfied with that.

**Hon. Mr. Benson:** Both of the officials who are here—Mr. Thorson and Mr. Cohen—will stay and deal with individual clauses. They cannot deal with policy matters, of course, as they are matters for Government decision, and that is basically why I am here.

**The Acting Chairman:** The committee makes that distinction all the time.

**Senator Lawson:** I have a brief point I wish to raise while the minister is here. I raised it the other day, and I might have caused minor confusion. The question relates to trade unions. Subsequent to my raising it, Senator Martin was kind enough to arrange a short meeting for me with Mr. Cohen, so that I could explain it to him. He said it had not been raised before.

Mr. Minister, the point is that under the present act, under the present regulations, there is no reference whatever to trade unions. By that I mean trade union representatives as a classification. When we deal with it from a tax point of view, the only category they can fit us in, they tell us, is that of salesmen. It bears no relation to that activity. One could probably make as good a case for having them classed as professionals, other than giving up their amateur status, as you could for making them salesmen.

When we are talking about expense allowances, *per diems* and so on, that are related to the particular occupa-

tion or job or profession of trade union representatives, they may be allowed at the discretion of the tax department in one province, but will be just as quickly disallowed in another province. If we can make a case that there should be separate classifications, either in the regulations or by a specific future amendment, it would satisfy my desire in this regard. Is there anything to prevent such a specification or classification? It would serve two purposes. It would avoid the confusion we are now faced with by different decisions in each province; and, secondly, it would avoid any abuse that may arise as a result of the confusion.

**Hon. Mr. Benson:** As a matter of fact, this is the first time that this matter has come to my attention. I see no reason why we should not look at it and see if there is any way that we can define it within the law. If you call it a profession, you might lose your amateur status. We will be quite willing to look at this and see what can be done about it.

**Senator Lawson:** I am satisfied with that. I did not want any confusion. I think some people thought that I was speaking about members. I think you have covered the question of trade union members, but not that of trade union representatives.

**Hon. Mr. Benson:** We will be glad to look at it.

**Senator Grosart:** Mr. Chairman, I have two questions for the minister and I think they are policy questions. One arises out of the recommendation of this committee and its report on the White Paper. It is pretty well carried through the discussions. The recommendation is that co-ordination with the provinces be improved. We seem to have evidence that five provinces have asked for a delay in the implementation of the bill. It seems to create serious problems for them. I have no doubt there are pros and cons, but would you be good enough to indicate the two sides of that problem?

**Hon. Mr. Benson:** As far as co-ordination and consultation with the provinces are concerned, the income tax changes are probably the best example of consultation that has existed since I have been around here. On no other particular subject can I recall so many consultations and discussions with the provinces.

Of course, we ultimately get down to the point where we have to proceed with law. It has been a long process and we have been talking about it for a long time. At that time, when we have to proceed with the law, people often say that it would be easier to put it off, and, of course, it always is easier if we put things off. However, the provinces have come to the stage where they have all agreed to proceed with the same income tax legislation and they are going to enter into tax collection agreements—that is, all except Quebec—and, basically, they will enact the same income tax legislation as we have.

In the case of corporate tax legislation the provinces, other than Quebec and Ontario, have accepted it. Quebec and Ontario have their own taxation laws, which presently differ in minor degrees from the federal law. As a matter of fact, it used to differ a lot more in Quebec, but ultimately they have to get together, it has to end up in the same



way. They are proceeding with their corporation law, and the basic principle is the same as federal corporation law.

In the case of Ontario, they are going to consider continuing with the present law at the present time, but they will be able to enact new law very soon, closer to the federal law, because it would facilitate the operation of corporations in Ontario.

I think there have been co-ordination and co-operation as much as physically possible in this particular instance. Of course, you never get legislation, particularly tax legislation, with which everyone will agree. Indeed, I can think of things that I would disagree with if I took a look at the tax law as it is presently worked out. But I do think that a good deal has been done in producing this legislation to try to go along with the provinces in areas where we could. Integration was one obvious area where we went along, because it was an area the Senate disagreed with us on. The provinces had some qualms about integration. We talked about it, and the Government decided to move out of the area. Similarly, there are a great number of other changes that took place because of consultations with the provinces.

**Senator Grosart:** I think the committee, in using the word "co-ordination rather than "co-operation" in our consultations, was thinking of integration in a different sense than we have been using it. We were thinking of integration of the eleven sets of laws.

**Hon. Mr. Benson:** Canada has the most co-ordinated personal and corporate income tax law of any federation in the world—much more so than the United States. The personal income tax law across the whole country, with a few exceptions in Quebec, is the same. In the corporate field up until the present time, before adjustments have taken place, virtually the same corporate law applies across the whole country. So there is great co-ordination, I think—more than in any other country.

One of the things in tax reform that we are trying to maintain is co-ordination so that there will not be varying laws on personal income tax and corporate income tax in the various provinces.

**Senator Grosart:** Do you see a problem arising in the estate tax field?

**Hon. Mr. Benson:** We have not had the same success in co-ordination there as in the other fields, because we have had the federal estate tax, which applied to most of the provinces, and then there were three provinces, Ontario, Quebec and British Columbia, which had quite different succession duty acts. Then we had one province, and later two, that decided to get out of the succession duty field entirely. So we were developing into a kind of tax system in Canada which I did not think should be run by a federal government.

**Senator Grosart:** A tax incentive system.

**Hon. Mr. Benson:** And I encouraged them to get together and have a similar law. If they had had a similar law, or if I had seen any possibility for this in the long run, we might have continued with a single death-duty system across the country. But the federal Government cannot be involved in tax laws where the provinces decide to go their own way

and where you have very different treatments in areas in which the federal Government collects the taxes, and in areas in which the provinces collect the same taxes. If four or five of the provinces get together and want a common succession duty act, as I am sure they will, we will help them administer it and will help them to get going on it. But I think we are out of that field to stay.

**Senator Grosart:** My second question refers to the problem of tax treaties. It has been said that it seems unfair to certain taxpayers to be penalized in circumstances where the federal Government has been unable—I will not say "unwilling"—to conclude a tax treaty. Do you see any way out of that by which, where a tax treaty has not been concluded between Canada and another country, some relief could be given to those who would seem to be affected in a very unfair way by a tax measure that is completely beyond their control to influence or even live with?

**Hon. Mr. Benson:** First of all, the effects of a differentiation in withholding tax treatment, for example, will not take place until 1976. This was intentional because we want tax treaties with the major countries of the world. Indeed, I think by that time we will have tax treaties with the countries where Canadians do business.

One of the reasons for putting the differential in was to urge people in other countries to have tax treaties with Canada. We find, generally, that our Canadian corporations, for example, and individuals are treated better in countries where we have tax treaties than in countries where we do not have tax treaties. So we are trying to put pressure on people to have tax treaties with us.

If there are particular problems, the Government will have to deal with them as they occur. Indeed, a few have been brought to my attention already, and we are trying to deal with them. Because the people involved have to plan beyond the 1976 period, we are trying to see what we can do in order to facilitate assistance to them.

It is not in any way intended to penalize Canadian taxpayers. The provisions are put in there in order to encourage other people to have tax treaties with us so that our taxpayers can be fairly treated. That is the angle.

**Senator Grosart:** But if they are not, do you see any method of resolving the problem in the interests of those who might be adversely affected?

**Hon. Mr. Benson:** Certainly. Of course, the Government can resolve the problem, if it wants to, at any time. You could put a fairly simple change in the act, if you wanted to, by putting in exceptions or that kind of thing; or you could do it in the regulations.

**Senator Grosart:** Would you say, in your view, that the Government would, or will, do so?

**Hon. Mr. Benson:** That would be a very dangerous thing for me to say, because I want to put pressure on these fellows to give us tax treaties.

**Senator Everett:** Mr. Minister, with respect to these amendments which you propose in the new budget, do you intend that some of them will be retroactive?

**Hon. Mr. Benson:** Yes.

**Senator Everett:** This question probably has been asked before, but for my own clarification, if a taxpayer moves under the present act and if, subsequent to that, you bring in this legislation which is retroactive, presumably in law he will be affected by the retroactive legislation. Yet, on the other hand, he will have moved on the basis of legislation as it has been passed and exists at that time. Have you any policy or provision to take care of that situation?

**Hon. Mr. Benson:** The amendments that we are presently thinking of, including those recommended in the Senate committee reports, are just about all relieving provisions. Any retroactivity would be a relieving retroactivity rather than the imposition of an additional burden on taxpayers. Anything that is tightening will not be retroactive.

**Senator Everett:** Will "not" be retroactive?

**Hon. Mr. Benson:** That is right. Anything that is tightening will not be retroactive. Relieving provisions might be retroactive until January 1, if it would be advantageous; if it should be done.

**Senator Everett:** So, then one could say that retroactivity will not affect any taxpayer adversely who takes advantage of the present act.

**Hon. Mr. Benson:** In the areas involved.

**Senator Everett:** Oh, yes, of course. Well, are there any other areas?

**Hon. Mr. Benson:** Well, you know, I cannot think of every situation, Senator Everett.

**Senator Everett:** No, but I am talking about a general question.

**Hon. Mr. Benson:** Well, as a general principle, you do not put in retroactive legislation that increases the tax burden. That would not be our intention.

**Senator Everett:** Thank you.

**The Acting Chairman:** Mr. Minister and honourable senators, I should like to ask a question for myself, if I may, as a member of the committee.

A few days ago, Mr. Minister, a number of senators received a delegation from an organization called the Montreal Property Owners' Association. I undertook to raise this matter in the committee and I spoke to Mr. Cohen about it. Their problem is in connection with depreciation on personally-owned property as against corporately-owned property. The corporate owner apparently is entitled to take depreciation on real estate while the individual with personally-owned property does not have that advantage. I undertook on behalf of the senators to raise these points with you in the hope you might have something to say about them.

**Hon. Mr. Benson:** I have not gone into that and, in fact, have just read a note from Mr. Cohen about it. So, since you discussed the matter with him, perhaps I could let him answer it.

**The Acting Chairman:** Perhaps I should say that the senators directed that, if possible, one of the officials from the

department should come, and he did and he reported that to Mr. Cohen as well, so now perhaps we could go on from there on this specific point.

**Mr. Cohen:** As I understand it, what the property owners asked was, firstly, that rental losses created by capital cost allowance should be deductible against any other income of the individual; and, secondly, that individuals should have the same privilege as real estate corporations to deduct rental losses against other income.

Here I have to move into policy discussion and say that the Government has taken the view that capital cost allowances should not be permitted to produce losses which can be offset against other income. That, I suppose, is the basic policy position and its purpose was to curb the so-called abuse of the system whereby many, many people were sheltering all kinds of income under the umbrella of excessive capital cost allowances.

That is the Government's policy, and it has struck to it, with one particular exception, and that is in the case of the integrated real estate corporation. There we have a provision to the effect that if you are what we would loosely call an integrated real estate corporation, then you can take those capital cost allowance losses and offset them against other business income.

That does not extend to an individual for three reasons. First, most integrated real estate developers are incorporated. Secondly, I think what the urban league was talking about was the ability to set these losses off against other investment income. Thirdly, on a practical level, it is rather difficult for the Department of National Revenue to administer a system which would involve ascertaining what the principal business of an individual is. It is much easier to contain and define and administer that kind of concept in the case of a corporation, and anybody who has more than one principal business will be able to isolate his principal business of real estate by setting up a corporation. That becomes very tricky when you get involved with individuals, because there you are talking of branch operations as opposed to separate corporate entities. So I do not think the Government could assist the league in regard to their requests without upsetting the basic policy question, and I will leave it to my minister to speak to the basic policy.

**Senator Bourget:** And in that policy there is no change, I think, from the old bill?

**Hon. Mr. Benson:** There is quite a change. One of the things we decided to do was to stop people who had a high personal income buying an apartment building and not paying any tax. It was possible for somebody with a \$50,000-a-year income to take depreciation on an apartment building in which he had made an investment and to write off his entire income and pay no tax. We thought these two should not be combined, and the law is designed to prevent that. I gather the urban league disagrees with this, and I disagree with the urban league.

**Senator Hays:** On the question of the distribution of capital gains tax—and I do not know if the Government has dealt with this—will it be Government policy to distribute a certain amount of the capital gains tax, just as they have done with the estate tax?



**Hon. Mr. Benson:** To the provinces?

**Senator Hays:** Yes.

**Hon. Mr. Benson:** Yes, it will be shared in the same way as other income. The capital gains tax will be distributed in the same way as the personal income tax, because it forms part of personal income, and this works out at 77 per cent to 23 per cent for the provinces basically.

**Senator Hays:** The provinces will get 23 per cent of the gains and the federal Government will get 77 per cent?

**Hon. Mr. Benson:** But the provinces can still keep their own succession tax and estate duties, if they want to, and get the same amount of money, and the overall tax burden would roughly not be any greater on the taxpayer.

**Senator Hays:** I think you had a rough figure as to what the amount of capital gains tax would be by 1974.

**Hon. Mr. Benson:** We have never given this.

**Senator Nichol:** I am not a member of the committee, as you know, but I have some questions I want to ask anyway. How many people are coming off the tax rolls as a result of this bill?

**Hon. Mr. Benson:** Here we pre-judged what was going to happen through some of our actions last June and December, and the figure is that there would be one million people off the tax rolls and something like 4.7 million people paying less tax under the new system. No married person with salary income would have additional tax—that is, married people deriving their income from salaries, no matter what their level—and those filing as single people with salary income would not have any additional tax up to \$8,000, and the calculation was, before some amendments in the bill, that the maximum would be about \$78. I cannot say exactly what it would be at the present time.

**Senator Nichol:** Then, assuming that one million people were dropped from the tax rolls, that figure is a balance sheet figure which means that at a certain point in time it will be reduced in absolute terms because of inflation, since you are dealing with real dollars and they are dealing with flexible or rubber dollars. Therefore, the figure will be reduced in relative terms by population growth, so that that figure, as I say, is a balance sheet figure at the time you put it in.

Presumably you can correct this by changing your exemption rate over a period of time. Do you have projections on this? How long will that figure of one million last? And, secondly, how do you measure what is a desirable level in this field as to who gets exempted and who does not?

**Hon. Mr. Benson:** First of all it is very difficult to pick a desirable level. We have tried to go as far as we could, through the increase in exemptions and additional allowances, to get the people at the lower end of the roll off, and this is how the million is calculated after these things to into effect.

Certainly, as the private income of individuals goes up, if it goes up through inflation, they will have a higher

dollar income, and unless the exemptions and rates are changed, more people will come on the tax rolls. There is a provision in the act to reduce the tax over the next five years, that is, the federal tax at any rate, which would tend to relieve the burden on individuals. We have not worked out the exact balance as yet. Indeed, I do not think there is an exact balance. There is a decrease in personal rates at the bottom of the scale which is built into the legislation over the next five years.

**Senator Nichol:** I am concerned that the benefits remain benefits, and that they do not become dissolved through inflation and population growth, et cetera.

**Senator McElman:** Mr. Minister, is that figure of 4.7 million inclusive of the one million who will come off the rolls?

**Hon. Mr. Benson:** No, it is a total of 5.7 million. These are ball park figures.

**Senator O'Leary:** Mr. Chairman, God forbid that I try to filibuster the work of this committee. I wonder if I could work as a reporter for a moment and, through you, ask the minister a question before he leaves. I hope he will remain for a while longer. May I ask what, in the name of God, happened in Washington last week? As I read the press the surcharge is being lifted, is that correct?

**Hon. Mr. Benson:** Yes.

**Senator O'Leary:** Do you mean today, tomorrow, or next week?

**Hon. Mr. Benson:** He said it would be lifted this week. Apparently, it takes a day or so for presidential action. But the decision was made on Saturday at the Group of Ten meeting, where currency re-alignment was decided, and the communiqué indicates that at the same time the surcharge and discriminatory features of the job development tax credit will be lifted.

**Senator Cook:** Are congratulations in order?

**Hon. Senators:** Hear, hear!

**The Acting Chairman:** I think we should inform the minister that during the course of our discussions last fall we spent some time talking about the effects of the American economic policy. Our committee is very interested in the subject which Senator O'Leary has raised. And if it is the desire of the committee, would you be willing to report, to use Senator O'Leary's words, on some of the highlights of the Washington meeting? Is that the desire of the committee?

**Hon. Senators:** Hear, hear.

**Hon. Mr. Benson:** It has been a long process since the surcharge was put on in August of last year. Shortly after that, we had the first Group of Ten meeting in London. At that time I was chairman. Secretary John Connally, through the process of rotation, became chairman in Washington, and then we moved on to Rome, and then back to Washington on Saturday. During this period, members have been putting forward their cases, both privately and publicly, regarding the type of adjustments which they felt should be made. Our position throughout



the entire period was that we should maintain a floating exchange rate for the present. Some members had other ideas, but this was the nub of the discussion as we moved along.

There were several problems discussed at our meetings on Friday and Saturday. I do not want to point out individual countries with regard to the settlement of their exchange rate. There have been sizable adjustments since last March. For example, the Japanese rate of exchange has gone up 16.9 per cent, and the German rate has increased over 13 per cent. We maintained that we had taken a good deal of the burden through the action which started in May of 1970, and we had seen a gradual increase in the Canadian dollar vis-à-vis the United States dollar, and the market was basically determining the value of our dollar on the free market. We maintained that we should not be required to make further adjustments on a fixed basis, but that our currency should be allowed to float.

After some discussion, and at times it became very heated, the Group of Ten finally agreed to the position that we should continue on a floating exchange rate and that other currencies would be pegged at a much appreciated rate vis-à-vis the United States dollar.

**Senator O'Leary:** Is Secretary Connally going along with this?

**Hon. Mr. Benson:** This is the decision of the Group of Ten, and he is the chairman. This is contained in the communiqué of the Group of Ten. I feel this is fair to Canada.

I want to point out that there are no commitments involved in this action. I was rather annoyed last evening when someone referred to a matter being put under the table. We have no commitments other than the commitment which we have had from the beginning, which is to continue discussions with the United States regarding irritant points which arise between the two countries with respect to trade. We intend to continue these discussions. I feel we should develop as good a relationship as we can with the United States, and that we should get these irritant points settled. However, we have no commitments.

**Senator O'Leary:** Will there be an announcement from Washington when that surcharge is lifted?

**Hon. Mr. Benson:** Yes. As a matter of fact, it was stated in the communiqué that in consideration of the agreed immediate re-alignment of exchange rates the United States agreed that it will immediately suppress the recently imposed 10 per cent import surcharge and related provisions of the job development credit.

**Senator Isnor:** I think that was announced this morning on the eight o'clock news.

**Senator O'Leary:** I do not listen to the eight o'clock news.

**Senator van Rогgen:** You have mentioned irritants, and I vividly recall that when the auto pact was brought in in 1964 or 1965 we were attempting to obtain an equilibrium between the two countries with regard to auto parts. Some people are now saying that we are giving things away to the United States. It seems to me that we are not giving anything away, if it is out of balance in our favour.

**Hon. Mr. Benson:** There is a great misunderstanding with regard to this. I am not dealing with the trade end of the matter—basically, that is the job of Mr. Pepin—but there has been a long discussion regarding the automotive pact, and this is one of the irritants.

The automotive pact was signed with the United States. There were transitional provisions made in it, and they guaranteed the level of production for 1964. The United States maintains that, since our production is higher by \$1 billion, the 1964 level should no longer apply. If one takes a practical look at the situation, it is not much of a safeguard. We are at a figure of \$1 billion above that level at present. However, this is not my area of concern and I do not wish to get into a discussion on this matter. Mr. Pepin is negotiating with the United States, and we have not agreed to any proposals on the trade end. There are to be continuing discussions, and that is Mr. Pepin's responsibility. I got rid of the surcharge and he can look after this matter, which we have always maintained was not attached to the surcharge *per se*.

The point I am trying to make is that in our negotiations with the United States we are not giving something away.

**Senator Martin:** I think Mr. Benson will agree that the very successful negotiations, in which he played an audible part, and the auto pact are two unrelated matters and they were not the subject matter of the Washington discussions.

**Hon. Mr. Benson:** No, not at all.

**Senator Martin:** If you had continued, I would have followed you with a very urgent question.

**Senator Everett:** I would like to congratulate the minister on what must have been an extremely difficult job in maintaining the floating rate for Canada during these negotiations. Secretary Connally has indicated that the Canadian dollar will float freely, without interference except for smoothing operations. He has also indicated that in his judgment the rate will go up. If, indeed, the rate does go up, what is our policy at the present time in relation to the float and what is our likely stance should the rate go appreciably beyond par with the American dollar?

**Hon. Mr. Benson:** Our undertaking is outlined exactly in the communiqué, as follows:

The Canadian minister informed the group that Canada intends to permit fundamental market forces to establish the exchange rate without intervention except as required to maintain orderly conditions.

We could intervene in the case of speculation in the Canadian dollar and such circumstances. However, the basic market forces should determine the value of our dollar. Our policy has been determined by basic market forces, as of last Thursday, vis-à-vis the United States. The fact that the United States has devalued its currency, or increased the price of gold, should not in itself change that relationship between the United States dollar and the Canadian dollar.

There may be underlying market forces that will change it. I am not forecasting that there will not be any change in the value of the Canadian dollar, because this cannot be

determined. One of the reasons it has moved up is that we in Canada have operated, in 1970 at least, on a current account surplus and have imported capital. If both of these conditions exist there will naturally be pressure on the Canadian dollar. This has been offset to some degree by an export of Canadian short-term capital, because we have kept interest rates low. However, so long as we in Canada have a current account surplus and continue importing large amounts of capital, there will be pressure on the Canadian dollar, unless we export capital. I have been urging provinces, municipalities and corporations to use the Canadian market to the maximum amount possible, because, in theory, if we have a current account balance we can finance our own capital requirements in Canada.

**Senator Everett:** What is the life of the undertaking to, presumably, the Group of Ten, not to intervene in the level of the rate? As long as it is floating?

**Hon. Mr. Benson:** Our basic policy since floating the Canadian dollar in 1970 has been to allow the market forces to determine the value of the currency. We do intervene to make sure this is a smooth float, without a big upward movement through which money would be made, followed by a drop the next day. We accumulate some reserves by doing this. However, if there is speculation in the Canadian dollar, as there has been in the past, or if there is in the future, we will intervene on a more massive scale to prevent its disturbing normal movements of the Canadian dollar. I do not think I made any commitment not to do that.

**Hon. Mr. Grosart:** Mr. Minister, I have not read the communiqué, but I heard a precis, at least, on the radio this morning. My impression was that it referred specifically only to the surtax and the job maintenance measures arising out of the August 15 situation. Does this leave any other measures to which we object in that group which arose on August 15?

**Hon. Mr. Benson:** This leaves the DISC proposal, which has now been approved by the Senate and Congress in the United States and, indeed, signed by the President as part of the tax bill. It is in a very much amended form from that presented by the administration, comprising about one-half of the effectiveness of their proposal. We are studying it to see what its effect will be in Canada. The effect will not be immediate, but we are considering the long-range effect and any action we as a Government should take.

This was never included in the discussion at the Group of Ten with respect to the negotiations.

**The Acting Chairman:** It is really a matter of domestic policy.

**Senator Grosart:** So are they all, the surtax and everything else.

**Hon. Mr. Benson:** This has never been part of the discussions, although we have had bilateral discussions and indicated that we are upset by the DISC proposals. Indeed, now that they are law, we are studying appropriate action for the future.

**Senator Grosart:** Is DISC the only one of that group of measures with which we have to live now?

**Hon. Mr. Benson:** Yes.

**Senator Lawson:** Were negotiations satisfactorily concluded with respect to the question of duty-free purchases by Canadians in the United States?

**Hon. Mr. Benson:** No, we have not concluded negotiations with respect to anything on the trade side. It is being negotiated. This is not something new; there has been a great difference over a long period of years. They allow something like \$100 per month, whereas we allow \$25 every four months and \$100 once a year. However, the dollar figures are not the only consideration in this regard. Canadians, as individuals, buy much more in the United States and bring it back than Americans do in Canada.

**Senator Lawson:** I suggest it would be less if the level were raised on a par basis.

**Hon. Mr. Benson:** Do not quote me, but they will probably report more.

**Senator Hays:** Mr. Minister, under the old Income Tax Act it was considered good to have a basic herd, which was considered to be capital. Why should it not be so under the new legislation?

**Hon. Mr. Benson:** The basic herd concept will be discontinued at the end of this year. Basic herds may be established until that time. We will then move into a new era, in which profits realized in a ranching business through cattle will be treated similarly to profits in the wheat business, in which when the profit is ultimately realized it is subject to income tax.

**Senator Hays:** You are comparing wheat with cattle.

**Hon. Mr. Benson:** No, any farming business. I am not referring only to wheat.

**Senator Hays:** Is the basic herd not considered as capital in the ranching business? A basic herd of 50, 100 or 500 cows is necessary. Previously this has been considered under the basic herd plan as capital. As inflation or increased costs occur and the animals are disposed of, this type of capital asset item is encountered. However, a combine is still considered to be capital, although wheat cannot be produced without it.

**Hon. Mr. Benson:** Under the new system, the depreciation on the combine will be recoverable. It will not be treated as a capital asset in the sense that you make a capital gain on it in the future, which you could in the past. Similarly, in the case of a basic herd, if you are in the cattle business you can accrue as you go along and pay tax on it. There are the averaging provisions, both cash and the other, in the event of disposal. It can also be operated on a cash basis.

**Senator Hays:** I appreciate that. That could also be done under the old system.

**Hon. Mr. Benson:** It will still be possible.



**Senator Hays:** Would it be possible, in view of the fact that there will not be a basic herd concept in future, to change from this to the cash basis?

**Hon. Mr. Benson:** Do you mean from cash to accrual?

**Senator Hays:** Yes?

**Hon. Mr. Benson:** Yes.

**Senator Hays:** This is permissible under the provisions of the new act?

**Hon. Mr. Benson:** Yes.

**Senator Hays:** What are the mechanics?

**Hon. Mr. Benson:** It is reported on another basis. There is a question of an adjustment period.

**Senator Grosart:** And it might cost you money.

**Hon. Mr. Benson:** No, it might be to your advantage to move to an accrual basis with your original basic herd in 1972. When adding in the future, you would move to the accrual basis and the tax would be averaged over a period of years.

**Senator Hays:** If you were on an accrual basis, you would not be able to change.

**Hon. Mr. Benson:** No, you would not.

**Senator Hays:** But if you are on a cash basis, you could.

**Hon. Mr. Benson:** If you are on a cash basis, you can change.

**The Acting Chairman:** The minister has been with us now for about two hours. If the committee is satisfied with the time that we have had with him and there are no further questions, we might well allow him to go about his other duties. We thank him very much indeed for his help this morning.

The officials of the department are here, and we shall now proceed to deal with any questions which the committee have with regard to details of the bill.

We have with us Mr. Cohen, the Assistant Deputy Minister of Finance, and also Mr. Thorson, the Associate Deputy Minister of Justice who had a large part to play in the drafting of the legislation. Both gentlemen are open to questions.

**Senator Buckwold:** I have received an item on which I am not an expert. It was handed to me by our own chartered accountants. It concerns the penalty tax on excessive elections. There is a provision in the bill that if you pay out a tax on what you consider capital gains, which is later deemed by departmental decision to be income, you would be liable to 100 per cent of that payment. Has any consideration been given to an amendment to what I and many chartered accountants feel is an excessive penalty for what could be an innocent mistake?

**Mr. Cohen:** I think I can suggest two answers to that question. First, we did put in an amendment. The bill, in its original form, was much tougher on someone who had made a mistake, because that particular tax would apply

to the whole of the amount distributed, if he chose to distribute out of what we might call the wrong pot. We have now amended the bill to provide that only the excess is subject to this tax. In other words, if you distribute \$100 and you had only \$85 in the proper pot, the tax would apply only to that excess \$15.

Secondly, with regard to the 100 per cent tax, I appreciate that it looks very onerous, but that is a tax which is paid by the corporation. If you do the mathematics, I think you will find that that is the appropriate amount of tax in dollar terms, not in rates. In other words, it results in the same net after tax yield to an individual shareholder receiving an ordinary taxable dividend in a 60 per cent marginal tax bracket. Although it looks like a 100 per cent tax, mathematically it works out to be the appropriate level. You might argue that one should have taken a 50 or 40 per cent marginal rate, but it is our feeling that this would probably occur with taxpayers in high brackets. So we chose the 60 per cent marginal rate at the personal level, and mathematically that turns out to be a fraction away from 100 per cent when paid by the corporation. I do not want to take you through the whole mathematics, because I would lose you, and probable lose myself, but that is the underlying genesis of that.

**Senator M. Grattan O'Leary (Acting Chairman)** in the Chair.

**Senator Grosart:** I should like to move that we now adjourn, because the acting chairman is no longer in the Chair.

**The Acting Chairman (Senator O'Leary):** He will be back in a moment.

**Senator Grosart:** I feel that we should go through the bill clause by clause. I do not mean that we should consider each one individually, but I think we have a duty as a committee. This is the first time that the bill has been before us. We have had the summary. I am not suggesting that it has not been thoroughly discussed; it has been.

To revert to the comment I made earlier, there are amendments that the committee has drafted, and I should like time to make up my own mind on the proper way for the committee to proceed.

We have had the minister's statement, which has gone beyond what he undertook when he was last before us. I would like a little time to consider that before deciding what I would suggest to the committee is the way it should proceed. For that reason, it might be well to adjourn until 2 o'clock.

**The Acting Chairman:** Would it be possible for Mr. Cohen and Mr. Thorson to be with us this afternoon? I know that the Honourable Lazarus Phillips will be here. Perhaps we should adjourn for lunch.

**Senator Beaubien:** May I remind the committee that the Senate is sitting at 2 o'clock?

**Senator Martin:** May I say, Senator O'Leary, that you grace the chair with an unusual distinction.

**Hon. Senators:** Hear, hear.



**Senator Martin:** If I thought that it would refine your opposition, I would suggest that you sit there more often. We have to consider the fact that the house will be meeting at 2 o'clock. We shall not meet for very long, because the purpose of that is to enable us to proceed with the committee stage. But whatever adjournment time we take into account, we must bear that in mind.

**The Acting Chairman:** Would someone make a motion to adjourn?

**Senator Cook:** I move that we adjourn until 2.30 p.m.

**The Acting Chairman:** A motion has been put that we adjourn until 2.30.

**Senator Connolly:** It will depend on the business of the Senate, which is to meet at 2 p.m. We might agree, if the Senate gives us permission, that immediately on assembly the Senate adjourn until perhaps later this day. The Committee can then resume.

**Senator Langlois:** That is what I suggested on Friday.

**Senator Grosart:** Perhaps the motion should be amended to say that we will meet on the adjournment of the Senate.

**Senator Connolly:** "... when the Senate rises" this afternoon—those are the formal words.

**The Acting Chairman:** The motion, as I understand it, is that we adjourn until the Senate rises this afternoon.

**Hon Senators:** Agreed.

The committee adjourned.

Upon resuming at 2.15 p.m.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**Senator O'Leary:** I am going to propose moving an amendment dealing with deferred profit sharing plans. Before doing so, I should like to read from the Preliminary Report on the Summary of 1971 Tax Reform Legislation.

**The Acting Chairman:** That is the report of November 4, 1971.

**Senator O'Leary:** That is right. On page 8 it says:

The tax treatment of deferred profit sharing plans differs from the treatment accorded employees profit sharing plans. The provisions of the present law relating to deferred plans are, in summary, as follows:

1. the employee is not taxed currently on any amounts which his employer may contribute to the plan on his behalf nor on the income earned in the year by the plan; and
2. instead, the employee is subject to tax on the full amount received on his withdrawal from the plan minus any portion representing a refund of contributions paid by the employee into the plan; the exclusion of the employee's contributions follows from the fact that the employee is not allowed a deduction for contributions but is obliged to make these payments out of tax-paid dollars.

It is significant to note that the amount taxable as income in the employee's hands represents not only his share of (a) the employer's contributions, and (b) the income earned by the plan, but also (c) his share of any net capital gains of the trust. This treatment has been acceptable to member employees partly because of the tax deferral feature inherent in these plans but also in large measure because the employee has the right to avail himself of the special tax averaging provisions of Section 36 of the present Income Tax in respect of a lump sum payment received on his withdrawal from the plan.

Under the proposed legislation, the lump sum distribution from the plan will continue to be treated as ordinary income whether the distribution is made from employer contributions, income accumulated by the trust, capital gains, realized by the trust or unrealized gains in respect of property distributed in specie to the employee.

However, the tax averaging provisions of Section 36 of the present Act are not carried forward into the proposed legislation in respect of amounts accumulated by the trust after 1971. Instead, these provisions are to be replaced by averaging provisions which, for purposes of members of deferred profit sharing plans, appear to be quite inadequate. In this regard transitional provisions are to be introduced to permit employees to take advantage of an averaging provision equivalent to Section 36 of the present Act in respect of amounts accumulated in the trust up to December 31, 1971. However, if such an election be made by an employee, he cannot avail himself either of the proposed averaging provisions (general or forward) in respect of that portion of the amount accumulated in the trust after December 31, 1971. Also, in future years, the transitional rule will be of diminishing benefit.

The general and forward averaging provisions available under the proposed legislation are not only much less generous than the elective provision under section 36 of the present Act, but the requirement to purchase an income averaging annuity in order to obtain forward averaging in effect removes the basic purpose of a deferred profit sharing plan, i.e. the accumulation of a lump sum on retirement.

In the opinion of your Committee, the effect of the proposed legislation will be to legislate these plans out of existence. Relief should be granted; the most appropriate means of achieving this relief is by the application of capital gain rules to the property of the trust.

#### YOUR COMMITTEE RECOMMENDS the following.

1. that any amount distributed by the trustee of a deferred profit sharing trust out of capital gains realized by the trust should qualify for capital gains treatment in the employee's hands;
2. that where property is distributed in specie to an employee by the trustee, the trustee should be deemed to have disposed of the property for proceeds equal to its "cost amount" (as defined) to the trust;
3. that the employee should be deemed to have acquired the property at the "cost amount" to the trust; and

4. that the employee should not be taxed until he ultimately disposes of the property, at which time any gain should be accorded capital gain treatment.

Based upon that, I beg to be permitted to move the following amendment to section 147(10) of Bill C-259:

1. Section 147(10) of Bill C-259 should be amended to read as follows:

"147(10) There shall be included in computing the income of a beneficiary under a deferred profit sharing plan for a taxation year each amount received by him in the year from a trustee under the plan, minus

(a) any amounts deductible under subsections (11) and (12) in computing the income of the beneficiary for the year,

(b) amounts paid by a trustee under the plan pursuant to the plan to a person described in subparagraph (2)(k)(vi) to purchase an annuity described in that subparagraph,

(c) The amount by which the aggregate of

(i) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of a capital gain made by the trust, and

(ii) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of the increase in the value of property of the trust over its cost amount to the trust

exceeds the aggregate of

(iii) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of a capital loss of the trust, and

(iv) each amount allocated to the employee or other beneficiary by a trustee under the plan in respect of the decrease in the value of property of the trust from its cost amount to the trust,

and

(d) the fair market value of property (other than money) transferred in kind to the employee or other beneficiary by a trustee under the plan."

2. Section 147(10.1) should be added to Bill C-259 in the following terms:

"147(10.1) Where any property (other than money) has after 1971, been transferred in kind to an employee or other beneficiary by a trustee under a deferred profit sharing plan, the employee or other beneficiary shall be deemed to have acquired the property at a cost to him equal to its cost amount to the trust at the time of its transfer."

This suggested amendment, just moved by me, is, I assure you, not for the purposes of obstruction; it is frankly, sincerely and honestly for the purposes of construction.

We had the minister here this morning, and I thought he was very fair, very frank and very able. He practically committed himself—some senators might not interpret what he said as a commitment, but I do—to bring in an amending bill to include some of the amendments already made by this committee of the Senate.

I must say that in moving this amendment we in our small group in this committee are actually trying to strengthen the minister's hand. He cannot do these things on his own; he has to go to cabinet colleagues and put these things before them. We think that by moving an amendment such as this—some others may follow—we are giving the minister the assistance he needs in getting these proposals into his amending bill. Therefore, I commit it to the committee, and I trust and hope it will be given the fair and sincere consideration which I think it deserves.

**The acting Chairman:** Thank you, Senator O'Leary.

**Senator Isnor:** Mr. Chairman, might I put a question to Senator O'Leary? I wish to have a clear understanding of the motion. Does he propose to move an amendment to be submitted to the minister for consideration, to be brought in later in the bill?

**Senator O'Leary:** I am proposing this amendment in the hope that his amending bill will include it. This morning this is what he committed himself to do.

**Senator Isnor:** The amending bill?

**Senator O'Leary:** This is an amendment to the bill.

**Senator Cook:** I understand what the senator is proposing in an amendment to the bill.

The minister has not turned down one single, solitary amendment proposed by the Banking, Trade and Commerce Committee. He has undertaken to give consideration to them all.

We have had the assurance of the minister that there will be an amending bill next year. Therefore, in my opinion, no good purpose would be served in pressing our amendments at this time. I would, in order, amend the motion, if I may—that it be not put. I do not want to vote against it, but I think the motion should not be put at this time. In other words, I think we should not press our amendments at this time.

**The Acting Chairman:** Do I understand that your amendment to the motion is to the effect that the motion should not carry at this time for the reasons you have given, Senator Cook?

**Senator Cook:** Yes, that it should not carry.

**Senator Phillips:** Mr. Chairman, on a point of order, I should like to know if that is a legal amendment to the motion. I would like a ruling on that. I am not so sure the amendment is in order.

**Senator O'Leary:** You mean the amendment to the amendment?

**Senator Phillips:** Yes. I would like a ruling on that, and, if my interpretation is correct, I am quite willing to accept the amendment because, if it be not put now, the bill cannot be reported. Nothing would make me happier than that, according to my interpretation of the Rules. But I would like a ruling on that from the Law Clerk.

**Senator Cook:** That is an unwarranted extension of my motion.



**Senator Phillips:** I can only hope for the best.

**Senator Grosart:** If I may speak to the point of order, Mr. Chairman, there appears to be some confusion, because I believe when you phrased the amendment you said that it was that the amendment do not now carry. I would suggest to you that that is obviously out of order because, if an amendment is made, it is voted on. You simply cannot amend to negative an amendment or a motion. I think that is fairly clearly understood in parliamentary procedure. I do not think it is a matter of great moment.

However, the motion is before us, as put by Senator O'Leary, which I take to be a motion before this committee to amend Bill C-259. With respect, I would suggest that that motion is before you, and that perhaps you would wish to put it to the committee for discussion.

**The Acting Chairman:** I think the consideration that was probably in Senator Cook's mind is that the committee has already proposed suggestions for amendments and these suggestions, in the view of the committee, are valid suggestions with which the minister has been impressed and with which he proposes to deal. I should think that the committee would not want to put itself in the position of negating what it has already proposed in a positive way.

If the rejection of the amendment at this time does not negative the work that the committee did all fall, then I think Senator Cook's point would be met.

**Senator Cook:** That is right.

**The Acting Chairman:** But how to achieve this, I do not know. Perhaps the committee could vote on the amendment with the idea in mind that it is still a valid proposal for consideration. If that is the case, then I have no objection whatever to putting the main motion, which is Senator O'Leary's motion.

**Senator Grosart:** If I might speak for a moment on a point of order, Mr. Chairman.

**The Acting Chairman:** Senator Isnor?

**Senator Isnor:** I want to know whether this is an amendment to the bill now before us, or if it is a recommendation to the Minister?

**The Acting Chairman:** I see your point, senator, and I think this is clearly, as Senator O'Leary has said, a proposed amendment to Bill C-259.

**Senator O'Leary:** That is right.

**The Acting Chairman:** What he wants to do by this motion is to amend section 147.(10) and 147.(10.1) now. That amendment, if carried, would have to be reported to the Senate, and if the Senate passed it it would then have to have the approval of the House of Commons before the bill was amended in that form.

**Senator Isnor:** That means that if the motion is carried the bill will go back to the House of Commons.

**The Acting Chairman:** If the Senate agrees with the amendment.

**Senator O'Leary:** Of course, that is as clear as crystal.

**Senator Isnor:** It is not so clear. It is delaying the bill. That is all.

**Senator O'Leary:** Is that a catastrophe?

**Senator Grosart:** On the point of order, Mr. Chairman, perhaps to clarify it, it should be pointed out that the committee has made recommendations to the Senate and those recommendations to the Senate and those recommendations have not been adopted by the Senate. The Chairman has made it quite clear that he was not asking for adoption, but merely for consideration, which I think was a very wise course in the circumstances. So this amendment is in no way out of order on the grounds that the committee has already dealt with it.

**The Acting Chairman:** There is no question of that.

**Senator Phillips:** Speaking further on the point of order, Mr. Chairman, and perhaps I misunderstood both the Chairman and the Minister this morning, but I thought we would have the right to move amendments in committee, and if it were left in the position where any amendment is going to interfere with recommendations—the Banking, Trade and Commerce Committee admittedly has studied this and set certain priorities, but they have never been in the form of amendments, and now it seems we are being deprived of the right to make amendments.

**The Acting Chairman:** There is no suggestion that that would happen.

**Senator Cook:** My only point, Mr. Chairman—and I made this point on the floor of the Senate and I make it again—is that assuming we really desire to have the bill amended, I think we have a much better chance of getting it amended by having it passed now and having it in definitive form. Then, when we receive the amending bill, to bring forward our amendments once again, because our recommendations have not been rejected by the minister. He has not rejected any of our amendments yet; in fact, he has agreed to give them consideration.

In my view, the most sensible practical and reasonable course to follow would be to allow the bill to become law now, instead of throwing it back again to the House of Commons; and then to persuade the minister again in the new year to accept our recommendations.

Let me make it clear that I am not against the principle of the amendment, but I am definitely against the amendment being pressed now. It may be that my only recourse will be to vote against Senator O'Leary's motion, which I will; but I wanted to give the reason why I would vote against it.

**The Acting Chairman:** Is the committee of the opinion that should this amendment be defeated the proposal which the amendment sets up should still continue to be a valid proposal from this committee?

**Senator O'Leary:** If it is defeated, I do not know what the effect will be, but this will be on record, and I hope the minister will see it and endeavour to carry out some of the terms which he indicated to us this morning. I feel he was more definite this morning than he was on the last occasion he met with this committee. I was present and I heard



him. All I am endeavouring to do is to get these amendments through. What the procedure is I am not sure, but what is wrong with passing this amendment?

**Senator Isnor:** There is nothing wrong with passing the amendment, only in the direction in which you are sending it. I would suggest you send it to the minister, and then he can put it in his amending bill.

**Senator Martin:** Mr. Chairman, I was not aware that we were going to be dealing with this matter at this stage of our proceedings. It seems to me there is important evidence which we should hear, particularly on the consequences of not meeting our target date.

**Senator Grosart:** We heard that information from the minister this morning.

**Senator Martin:** No, I am sure he gave us an indication of the consequences. But I, for one, am very anxious to hear what Mr. Thorson has to say concerning the consequences with regard to what are called transaction taxes and the serious legal dilemma in which the country will be put if we do not hold to the effective target date. I am sure this is one of the issues which Senator Cook had in mind. The effect of passing this amendment in this form is to send it back to the other place, with an ensuing long debate which would seriously affect the kind of evidence I have just mentioned. What Senator Cook has indicated, it would seem to me, has great value regarding the fact that we continue to support the recommendations of which this amendment is, in form, one. Our hope is that the recommendation would be embodied in the amending bill which the Minister of Finance said would be brought forward some time in the course of the next few months.

We are not withdrawing our support of the recommendation, but we are endeavouring to have the recommendation accepted in the most effective form. Senator Cook has argued that the most effective way of getting that recommendation accepted is to reaffirm our confidence in the recommendation, with the hope that it will be one of the amendments brought forward in the amending bill, and not as Senator O'Leary has proposed. I feel this logic is fairly clear.

**Senator Cook:** I would like to make one more comment, Mr. Chairman. It seems to me that the minister has not rejected our proposed amendments. He has indicated that he needs further time to consider them. In effect, we are saying, "We will not give you further time to consider them." He is not rejecting our amendments; he is asking for further time to consider them. By this amendment we are saying, "We will not give you further time. We want to put them through now." I do not think this is reasonable.

**Senator Hays:** It seems to me, and I will be blunt, that if I was a member of the Opposition I would take the same stand as Senator O'Leary has taken. It embarrasses this committee to no end, and I feel we should vote on the matter now. If it is defeated we should recommend that it be sent to the minister for his consideration.

**The Acting Chairman:** You are free to make such a motion, if you so desire, after we have considered the specific motion which is before us.

**The Acting Chairman:** It will be open to you to make such a motion, if you so desire, after we have considered the specific motion now before us.

**Senator Grosart:** I would like to comment on Senator Martin's remarks, which I find most extraordinary. He suggested that if this amendment were carried we would necessarily be delaying the bill. I suggest to him that it may have been forgotten by some that the essential responsibility of the Senate, or a Senate committee, is to report to the House of Commons, not to the minister. The bill comes to us from the House of Commons. We have an obligation to report to the House of Commons, whether we approve this bill without amendment, or with amendment. I therefore suggest that that particular argument is a complete *non sequitur* in the present circumstances.

As to the effect of a vote, negative or positive, on this amendment, others will decide. It is not for us to decide what will happen if an amendment is carried. Presumably it will go to the Senate, which might or might not accept the report of the committee. The bill might or might not go on to the House of Commons, to whom, I suggest, our major responsibility is in considering legislation. It might or might not be passed there before December 31. That is not the consideration.

Senator O'Leary is presenting an amendment, in which I support him. We think this committee should pass it, because it is its own amendment. The amendment read by Senator O'Leary was drafted by the advisers of the committee. We are faced with that position. The committee considered that it is one suggestion which would help solve the problems it sees in this bill. In my opinion, Senator O'Leary is simply asking the committee if they wish to deal with their own draft amendment now.

**The Acting Chairman:** That is the point; the pertinent part of your comment is the word "now".

**Senator Grosart:** That is right.

**Senator Buckwold:** I listened with interest to the minister this morning. As I recall, he made some mention of proposed amendments to the section on deferred pension plans. I again have to plead ignorance of the detail. Were suggestions along those lines indicated; and, if so, did they involve reference to the questions raised in the motion in amendment of Senator O'Leary?

**Senator Grosart:** Yes, they did.

**Mr. Cohen:** The minister's statement related to deferred profit-sharing plans and some changes he was considering in that regard. In fairness, however, they do not relate to the whole of the point raised by Senator O'Leary. They are concerned with the treatment of averaging, but not, to use the short term, the roll-out of capital gains. The minister made a statement in the other place; unfortunately I do not have the exact text. When he was before you previously, he spoke about changing the context in which you can make use of the old form of averaging from amounts vested on January 1, 1972 to amounts standing to your credit, which is a much bigger number in almost every situation. Secondly, he indicated that he was looking carefully at the provision which would permit an individual to take advantage of both the old form of averaging of

amounts standing, to his credit prior to 1972 and the new forms of averaging for current contributions.

As Bill C-259 reads, if you choose the old form of averaging on those old accounts, you are precluded from using some of the new forms of averaging. The minister indicated that he was considering taking away that inhibition so that you could use old averaging on old amounts and new averaging on new amounts.

**Senator Buckwold:** The whole question of profit-sharing plans and deferred profit-sharing plans is still very much in front of the minister?

**Mr. Cohen:** Oh, yes. He said that he would be looking at those, and he became specific on the two points I have mentioned.

**Senator Grosart:** On that particular point, would you agree that in general the minister said there are three main objections; that he is looking favourably on two, and has not committed himself to the third—or am I being too general? I think it is important that we know just where we stand on this. Perhaps I may read one paragraph from the report of the chairman of this committee on this very point. In reporting to the Senate on December 13 he said:

With regard to employee and deferred profit-sharing plans, three recommendations were made and the minister indicated that two of them would be implemented. They have been approved. The third, it will be recalled, concerned capital gains. We stated that in a trust fund which is related to the profit-sharing plan or a deferred profit-sharing plan there may be a capital gain on the buying and selling of securities in the year, and that there was no reason why those capital gains should be taxed as income in the fund. It is the same type of a capital gain which any other person might make, and which would only attract half of the tax rather than the full marginal rate of income tax. The minister stated that they were looking favourably to doing it in that way. Frankly, I do not see how they can do anything else because it is so deserving.

Perhaps we could have a comment on that. I may be in the policy area—

**Mr. Cohen:** The Senator is partially in the policy area, but he is also asking me to interpret what the minister was saying. I have not the text of what he said to this committee. I have what he said in the other place, in which he dealt specifically with two of the three points made and made no comment on the third, other than to say that he was looking at the general area.

**Senator Grosart:** I have been concerned with this matter as it affects the Senate. I was personally very happy with the minister's statement this morning. I think he did, in effect, commit himself, and went a little further than he did the other day. He used the words "a specific bill," which satisfied some of my doubts about what this committee should do at this particular time.

This is perhaps an interesting case, where we can say the committee has a degree of assurance on two-thirds of its doubts. It seemed to make sense, and I am sure that is what was in Senator O'Leary's mind, to bring the whole of

the amendment before the committee to see what its disposition might be at this particular time.

**Senator Everett:** May we have the operative words of the amendment?

**The Acting Chairman:** That the bill be amended in respect of section 147 and the subsections shown in the amendment.

**Senator O'Leary:** Mr. Chairman,—

**The Acting Chairman:** Senator O'Leary, would you mind? Senators Belisle, Bonnell and Phillips have indicated that they wish to ask questions. Senator Bonnell.

**Senator Bonnell:** Mr. Chairman, I am not a member of the committee. This committee has done a good job in their study, and it has made certain recommendations to the Minister of Finance, with certain priorities in relation to those recommendations. I think the Senate as a whole looks upon those recommendations favourably, as, I think, does the Minister of Finance. He feels they are worth consideration and amendment.

Perhaps I look at this thing in a different way from members of the committee or other honourable Senators, but what we have to think about, in my view, is whether or not we want the 4.7 million people who are below the poverty line to get their benefits immediately. If that is our desire, then we should pass this bill without amendment. If we start amending this bill in the Senate and, consequently, drag this thing out for another three months, a great many people below the poverty line will be faced with having deductions from their salaries for the first few weeks of the new year, and they will not get that money back for a year-and-a-half. These people need the money now.

Why do we not pass the bill now, without amendment, and make our recommendations to the Minister of Finance in the spring, when he brings down his amending bill?

I also feel that if we vote in favour of Senator O'Leary's motion today we will void the recommendations of the Senate Committee. If the motion does not carry, it will make them think that the Senate committee does not support its own amendments. The Senate committee, as I understand it, does, in fact, support the amendment, but what they might not support is putting it through now. As I say, if we vote against the motion we will give the impression that we are against the recommendations of our committee which, apparently, are all good recommendations.

**Senator Grosart:** That is up to the committee.

**Senator Bonnell:** In my opinion, the way to solve this is to have Senator O'Leary withdraw his motion and then put a motion to the effect that we will not accept any other motions at this hearing.

**Senator Grosart:** Oh, dear!

**Some Hon. Senators:** Oh!

**The Acting Chairman:** Senator Belisle?



**Senator Belisle:** Mr. Chairman, if you are an impartial chairman, and I believe you to be one, why do you not permit the motion to stand so that we can vote on it? After all, we are only six and you are over 20 in number.

**The Acting Chairman:** Senator Belisle, let me just say this: Whether I am an impartial chairman or otherwise depends upon the committee, but I do not determine the course of the committee. All I am here to do is to keep order.

**Senator Belisle:** The committee is here this afternoon, is it not, to consider Bill C-259, and only Bill C-259. It is not here to consider what the minister may or may not do at some time in the future. What is in front of us is the bill; it is not the minister's intentions. If that is not the case, then we are wasting our time and the taxpayers' money.

My honourable colleague who just spoke before me said that we should not propose any amendments. If you are not going to permit us to vote on any amendment, then we are wasting our time.

**The Acting Chairman:** Certainly, the chairman would never take that position under any circumstances.

Senator Phillips, you are next on my list.

**Senator Phillips:** Mr. Chairman, throughout the Government Leader's remarks—and I more or less gave him the assurance that I would not go after him personally today—

**Senator Martin:** I am always afraid of those attacks!

**Senator Phillips:** Throughout his remarks he kept telling us that there was no target date. He told us we could have as long as we wanted to consider this bill. I am now intrigued by the fact that his objection to the motion in amendment is that we would interfere with the target date of the legislation. What happened over the weekend that we now have a target date, and what is that target date?

**Senator Martin:** My statement was that there is no restriction on what the Senate does. That is quite clear. I made that clear; the chairman has made that clear. There is nothing to prevent this committee taking any course it wishes.

**Senator Cook:** We all know that.

**Senator Martin:** Yes, but Senator Phillips does not feel that is the case.

What I am trying to point out is that unless the due date is kept there will be certain serious legal consequences.

**Senator Phillips:** And what is the due date?

**Senator Martin:** That is why I would like an opportunity to ask Mr. Thorson and Mr. Cohen some questions in regard to this very point.

**The Acting Chairman:** You will have that opportunity in due course.

**Senator Cook:** Mr. Chairman, you will have to forgive my inexperience. I am trying to put forth a motion which, perhaps, might be in order.

**Senator Everett:** I wonder if I may interject with respect to a point raised by Senator Martin. It seems to me that the

questions he wants to ask of Mr. Thorson and Mr. Cohen, if they relate to what is the underlying effect of this motion, should validly be asked now. In my opinion, the committee needs that information in order to make its decision.

**Senator Grosart:** I agree.

**The Acting Chairman:** Is it the desire of the committee to proceed along the lines suggested?

**Senator Phillips:** Provided anyone else who has a desire to ask a question, in addition to Senator Martin, has that right.

**The Acting Chairman:** Oh yes.

**Hon. Senators:** Agreed.

**Senator Martin:** Mr. Thorson, how many parts are there to Bill C-259?

**Mr. D. S. Thorson, Associate Deputy Minister, Department of Justice:** Seventeen, sir.

**Senator Martin:** There are those that impose a tax on the redemption or acquisition by a corporation of capital stock; those that impose a special tax on excessive elections under section 83 of the new act; those that impose a special tax on taxable dividends received by private corporations; those which impose a refundable tax in respect of ineligible investments made by Canadian controlled private corporations. I suppose these might involve what are called transaction taxes. Could you tell us what would be the effect on those taxes and on the persons concerned if there were a delay in acceptance of this bill by Parliament?

**Mr. Thorson:** I must come back, of course, to the answer that the Minister of Finance gave this committee this morning, namely, that the problem is best expressed in terms of the kind of legal uncertainty that would result if the new law were not to come into force until after the commencement of the new year. The minister has spoken to this point both in the other place and before the committee. In the other place on December 10 he put it this way, that most taxpayers, particularly in the business community, would simply not know how to behave. This is the point he made and elaborated this morning. They would not know whether further amendments were coming which would reach back and affect transactions taking place between January 1 and the date of the tabling of an amendment; they would not know whether to assess their position under the 1948 Income Tax Act, the Act we now have, or under the 1972 reform bill. The minister gave a number of illustrations to indicate that measure of uncertainty.

Perhaps it would be helpful, though, in elaborating on the kind of examples he gave, just to develop the point that Senator Martin has brought to the attention of the committee concerning the other parts of the bill. Could I back up just this much, to say that, as all senators probably know, the main part of the bill, and by far the most important part, is Part I, which imposes a tax on both individuals and corporations measured by reference to their taxable income for a particular taxation year. A precise measure-



ment of taxation income for a particular taxation year can only be made after the end of the year in question. Nevertheless, it is important for a taxpayer, in the conduct of his affairs, to know with reasonable certainty the rules that govern the calculation of his taxable income for the year, in order that he may be guided by those rules in taking decisions that may affect his ultimate tax liability. Furthermore, for the purpose of calculating such things as payroll deductions at source, instalment payments of tax, et cetera, the taxpayer must have an understanding of the rules by which his or his employees' incomes, and therefore taxable incomes for the year, are computed, notwithstanding that the measure of ultimate liability for tax under Part I of the bill is taxable income for the whole year.

As Senator Martin pointed out, in addition to the tax imposed by Part I of the bill, there are other parts of it—and these are listed specifically in the appendix at the end of the printed volume of Bill C-259—that do not use the measure of a taxation year, but instead impose a liability to pay tax based on the happening of certain transactions or events. These are what might be called transaction taxes rather than income taxes in the strict sense. These various transaction taxes are, of course, related to the Part I tax, and are necessary to the total scheme of taxation envisaged by the bill.

I think Senator Martin gave some examples. In addition to the Part I tax there are no fewer than, I think, 13 parts in the bill by which various kinds of special taxes are imposed. I will not trouble you with all of them, but they include Part II, which imposes a tax on the redemption or acquisition by a corporation of its capital stock; Part III, which imposes a special tax on excessive elections under section 83; Part IV, which imposes a special tax on taxable dividends received by private corporations; and Part V, which imposes a refundable tax in respect of ineligible investments made by Canadian-controlled private corporations.

It will be seen that many of these taxes are conditional upon a corporation taking some particular action at a time when the new system is in effect. For virtually all of these new taxes the relevant time is the beginning of the new year. In each of the parts in question the date "after 1971" appears. Since many of these parts are new and have no counterpart in the present law, it will be obvious, I think, that the liability of taxpayers for tax may depend upon whether the new law is in fact in place at the time the corporation pays the dividend, redeems its capital stock, becomes a non-Canadian controlled private corporation, et cetera.

Mr. Chairman, I could perhaps give an illustration of this, if the committee will bear with me for a moment.

**Senator Phillips:** I presume it is in your prepared text, so you might as well give it.

**Hon. Senators:** Oh!

**The Acting Chairman:** That is not a proper remark to make to an official.

**Mr. Thorson:** I was elaborating by quoting from the outline at the back of the bill and from the minister's own comments.

An example, which I insist is only one single example in terms of the total problem, is the tax imposed by Part XIII of the bill, on payments made by residents of Canada to non-residents. Part XIII is the successor to what is now Part III of the present law. Part XIII requires a withholding tax of 15 per cent, until 1976, to be deducted and withheld by every Canadian resident making a payment of a dividend, interest or rent, et cetera, to a non-resident. The new Part XIII requires that tax be withheld against certain payments going to non-residents that are not now subject to the tax. For example, many pension and annuity payments will now be subject to the withholding tax where the payment is going to a non-resident.

If this part of the act, for example, were not brought into force until some time in the new year, one might ask oneself what would be the position of an employer or an insurance company, or, indeed, any other payer, who was directed by the substantive provisions of the bill to withhold tax from pension or annuity payments made at any time after 1971, which is the relevant date in the bill. If the employer withheld the tax provided for under Part XIII, he would have to do so without the authority of the Income Tax Act, since Part XIII would presumably not yet be in force, and he would be, in the interim, presumably liable to civil action by the recipient of the payment, to enforce payment of the full amount that ought to have been paid.

On the other hand—and I think this describes his dilemma, sir—if he did not deduct withholding tax from the payment and forthwith remit it to the Receiver General, he would be in default under the law as it is now written, at such time as Part XIII came into force, because when it did come into force it would be clear that he should have deducted or withheld the tax from any such payment made after 1971.

**Senator Grosart:** You mean, Mr. Thorson, that at that point his obligation would be due to retroactive legislation?

**Mr. Thorson:** Because of the way the bill is written, sir.

**Senator Grosart:** I am only just asking; I do not care how the bill is written. It would be an obligation that he would not have had at that time, but would be due only to the retroactive nature of the legislation you are speaking of.

**Mr. Thorson:** Because of the—

**Senator Grosart:** I do not care what the because is; it is yes or no.

**Mr. Thorson:** The person making the payment would be in a very uncertain position.

**Senator Everett:** I am sorry, but unlike Senator Grosart I do care about the "because," and I would like to get that straight in my mind.

**Mr. Thorson:** "Because" the bill, as written, provides that the liability to deduct, or withhold and remit to the Receiver General of Canada, on payments out to non-residents, exists in relation to any payment made after 1971; that is to say, from January 1, 1972 forward.

**Senator Everett:** Thank you.

**Mr. Thorson:** It would appear, therefore, that the payer is in something of a dilemma, Mr. Chairman. He may be in some difficulty if he decides he must be guided by the provisions of the new legislation, and he is certainly in difficulties if he chooses to ignore the new legislation.

I am fully aware that in relation to the above example—as I pointed out earlier, it is only one example—it could be argued that this type of situation is not unprecedented in the history of Canadian tax legislation. Indeed, I would readily concede that on occasions in the past taxpayers have been faced—as Senator Grosart will agree—with the kind of dilemma described.

The point that has to be made, it seems to me, however, relates to the order of magnitude of the difficulties that taxpayers would face under the new income tax act because of the complexity and size of Bill C-259. The examples of difficulties of the kind just mentioned would be legion, should there be any uncertainty as to the commencement of the new law.

Mr. Chairman, I think it is worth repeating that the major confusion—and this is the point which the minister stressed—the major confusion, if the commencement of the new law is left uncertain, will be in the area of corporate business activities. If a corporation cannot be sure about the tax consequences of paying out dividends to its shareholders, proceeding with a re-organization of its business, investing its surplus funds in one kind of asset, as opposed to another kind of asset, et cetera, the corporation will be effectively paralyzed in many important aspects of its business. This is the point that was made by Mr. Benson and that seems to me to be central to the problem of the difficulties that would arise should there be continued uncertainty as to the exact date of the commencement of the new legislation.

**Senator Grosart:** Mr. Chairman, I hope we will get back to the amendment, because, with all due respect, I would suggest that we are not faced with a position where, if this amendment is passed, the enactment of the bill will necessarily be delayed. This simply is not the case. We are faced with an amendment that this committee is asked to make. As I said before, it will go to the Senate; it may go to the Commons; it may be delayed in either place, it may not be. But we are faced here with a motion to amend the bill here and now. I do not think the consequences that are anticipated are realistic or likely to happen. Therefore, I suggest that a good deal of this discussion is irrelevant to the question as to whether we should pass or reject this motion.

The second point is that on the very area—and Mr. Thorson has given an adequate and eloquent description of the difficulties that will arise, and I am not denying it—we know already that the minister is going to make amendments. Most of them, as he said himself, are in the area of corporate taxation. So I am not greatly impressed with the uncertainty argument as it affects business. I think it is highly important as it affects the administration. Perhaps the greatest difficulty might be created in respect to the computerization problem, but I would hope the science of the Juggernaut without a driver is not going to be the main consideration here as to whether this bill is delayed or not.

With that, Mr. Chairman, I am prepared—and I am sure Senator O'Leary is, because he has so indicated to me—to see the amendment voted on.

**Senator McElman:** Mr. Chairman, I know we are all trying to seek a means whereby we can achieve the best bill possible, and in that light I should like to make a suggestion. For the first time, we are now seized of the actual bill. The committee made a series of recommendations, previously to its being seized of the bill. Perhaps the committee would like to confirm its support of those recommendations, which have been called "priority" and otherwise. It seems to me that there is a means of doing that.

This committee of itself cannot amend the bill; it can only report to the Senate, which can amend or not amend, as it may wish to do. It seemed to me that, if it were the wish of the committee to confirm the recommendations that it has made previously, it could so do by proposing them as amendments. Then, if it should be the consensus of this committee when it formulates and approves its report to the Senate, it could state that it understood the complexity of the situation, the dangers involved in the observance or non-observance of the January 1 date, the commitments that were received from the minister, and its wish that this be gotten on with. Up to this point, and up to the point of doing this with the bill now before us, we really have not, in effect, gotten any message to the minister. Once that becomes a paper of our house, accepted by the house, with such a codicil to it, it is not just our paper, it is a paper of Parliament and it is in the hands of the minister as well as of every member of Parliament.

**Senator Benidickson:** You mean, our report?

**Senator McElman:** Exactly. The report that we might now make. If the draft amendments were now confirmed by this committee, and our report should so state, that we understand the problem and that we accept the assurances that these, in such form, would reach the places that they should reach, it seems to me that we could achieve the purpose of all honourable senators in this committee, and in the Senate itself; and by consensus we can do anything we want in this committee by way of recommendation, be it amendments or representations to the Senate itself in our report, and then the Senate as well can deal with those things as it sees fit.

**Senator Grosart:** A very excellent suggestion, that there is nothing in the world to stop the committee rejecting these amendments and then telling the Senate it is sorry it did.

**Senator McElman:** That is not what I proposed.

**Senator Phillips:** Mr. Chairman, later on might be a more opportune time to ask this question. It seems to me we are getting into several different fields.

I would like some clarification on the various forms of pensions that are included in that. I defer to your wisdom, sir, on whether that should be decided now or at a later date. Perhaps we are getting sufficient before us now that it would be better to put this off until later.

**The Acting Chairman:** You can ask Mr. Thorson questions on that now, if you like, or you can raise the point at a later time. Whatever you say.



**Senator Phillips:** Well, I have it in my mind now, Mr. Chairman.

Mr. Thorson, you have mentioned pensions and annuities. What pensions are included in that?

**Mr. Thorson:** Specifically, senator, the additional amounts I was referring to are those set out in section 212(1)(h), pension benefits. That is on page 520. The paragraphs in question are 212(1)(h), (i), (j), (k), (l), (m), (n) and (o). These are the new provisions, sir, that I was referring to.

**Senator Phillips:** Specifically, are veterans' pensions affected in any way? I refer to both disability and war veterans allowances.

**Mr. Thorson:** Yes, they would be; yes, if remitted to a non-resident.

**Senator Phillips:** In other words, a non-resident in receipt of a disability pension under this act would now become taxable whereas, I understand, under the previous act he would not be taxable.

**Mr. Thorson:** That is right, subject to the qualifications set out in the concluding portion of paragraph (h).

**Senator O'Leary:** Mr. Chairman, if we cannot hear amendments moved, mine or others, what on earth are we doing here?

**The Acting Chairman:** I have not said that.

**Senator O'Leary:** I asked that there be a vote on my amendment, and the members of the committee are free to vote against it or for it.

**Senator Cook:** Mr. Chairman, I have been giving some thought to this matter and, with the co-operation of the committee, I think I have an amendment which meets my views and which might be in order. May I read my amendment to Senator O'Leary's motion?

That the bill be not so amended at this time, but that the proposed amendment be brought to the attention of the minister with the request that it be made part of the amending act promised for next year.

I move that as an amendment to Senator O'Leary's motion.

**Senator Grosart:** On a point of order, Mr. Chairman, I suggest that that amendment is completely out of order. The principle is clearly established that an amendment cannot completely negative a motion. The motion is that an amendment be made. This completely negatives that motion, because it starts with the words "That it be not now taken into consideration".

**Senator Cook:** I said, "at this time".

**Senator Grosart:** I suggest to you, Mr. Chairman, that if it were possible in any way, with an amendment, to make it impossible for an amendment to be carried, even if there are sub-amendments and you can go back to it, that would be denigrating the whole parliamentary process. Surely, we have the right to vote on an amendment.

**The Acting Chairman:** Senator Cook, I think that your proposed amendment to the motion does in fact do what

Senator Grosart has pointed out, namely, negatives the original motion, and I think we can do that on the vote which is taken on the main motion. I realize that a good many senators here are concerned about the effect of negating a proposal that has been made in respect of this measure already, and what the consequences would be if this amendment were voted down. I am assured by our counsel that the recommendations which we have made in respect of tax reform legislation still stand and that we can nonetheless deal with specific amendments of this character without affecting our general recommendations in respect of our general views on tax reform.

**Senator Cook:** With all respect, Mr. Chairman, the amendment is dealing with the report of the Standing Senate Committee on Banking, Trade and Commerce, and they are suggesting that it should be dealt with in such a way—in other words, to amend the act.

My suggestion is that the amendment be approved and be sent to the minister. I do not think it disposes of the original motion at all. The motion was dealing with the suggestion of the Standing Senate Committee on Banking, Trade and Commerce, which we are here, and the suggestion was that it be handled in a certain way. I am suggesting that it be handled in another way, and I do not think it vitiates it at all.

**Senator Grosart:** Mr. Chairman, in this motion of Senator O'Leary's we are not in any way dealing with any recommendation of this committee. We are dealing with the bill before us in the way that a committee of this kind is expected to deal with it.

**Senator Cook:** It seems to me that I have heard over and over again that these are recommendations of the Standing Senate Committee on Banking, Trade and Commerce.

**Senator Grosart:** It does not matter. It could be a recommendation from the race track.

**Senator Cook:** So long as it is clear that it is not a recommendation of the Standing Senate Committee on Banking, Trade and Commerce, but is a recommendation of Senator O'Leary's.

**Senator O'Leary:** You can vote against it.

**Senator Cook:** I intend to.

**Senator O'Leary:** Well, certainly.

**The Acting Chairman:** There seems to be some doubt as to whether or not we can vote upon an amendment. I think the committee is now in the frame of mind where it will decide whether or not we should vote on this amendment and what the disposition of it should be.

Those in favour of the amendment, please indicate in the usual way.

Those of the committee who are opposed to the amendment, also please indicate in the usual way.

There are five for and ten opposed.

I declare the amendment lost.

**Senator Hays:** Mr. Chairman, I would like to make a motion now that all the recommendations of the Standing



Senate Committee on Banking, Trade and Commerce be sent forward to the minister to be considered in the amending bill.

**The Acting Chairman:** In an amending bill?

**Senator Hays:** Yes.

**Senator Phillips:** What is the amending bill, Mr. Chairman?

**Senator Grosart:** Mr. Chairman, just to speak to that, I would have no objection to Senator Hays' amendment so long as the emphasis is on the word "all," because we have to remember that recommendations were made by this committee in its report on the White Paper, many of which are not incorporated in the bill as it stands. Many recommendations were made in the three subsequent reports known as the preliminary report, the second report and the final report. So this committee has made far more recommendations than those which merely appear as top priorities in the third and final reports. I think it should be clearly understood that we are speaking of all the recommendations of this committee.

**Hon. Mr. Phillips:** Would it not be in order to word the proposed resolution simply in the context of saying that the minister's attention is again drawn to the reports filed in the three instances?

**Senator Grosart:** I do not care how it is worded. Our job here is not to send messages to the minister.

**Senator O'Leary:** Hear, hear! We are dealing with Parliament, not the minister.

**Senator Grosart:** We are dealing with the bill, and we have to decide what we are going to recommend when we send this bill back to the House of Commons. I have no objections to this at all, so long as we remember that our obligation, our primary obligation, our minimum obligation, as a Senate, in dealing with legislation is to decide whether amendments should be made and, if so, to communicate those to the House of Commons. So long as we remember that, I do not mind this motion at all.

**Senator Martin:** I suggest, Mr. Chairman, that Senator Grosart may have his own concept of duty, but that does not mean that because he suggests that this is what we should do that it is of necessity what we should do.

**Senator Grosart:** I said that I "suggested".

**Senator Martin:** That is a question of technique, but what most of the members of this committee are concerned about is to see that the recommendations of the committee are met, if that is possible.

The minister said this morning that he would bring in an amending bill. He said that he was impressed with some of the recommendations, and that he would give consideration to other recommendations that had been made by the Standing Senate Committee on Banking, Trade and Commerce after its prolonged study, and if they satisfied him—and, of course, he had to add the Cabinet, without whom there could be no action taken by the executive—he would bring forward these as part of the amending bill.

**Senator Grosart:** We heard him.

**Senator Martin:** And we have heard you too, and I hope you will allow others to speak as well. That being the case, and since the members of the committee are anxious to see something done about their recommendations, surely we must ask what is the most effective way of getting these recommendations attended to.

Senator O'Leary has proposed one way, but that way, in the judgment of some of us, would clearly have a delaying result. Surely, in the light of what the minister said this morning—and everyone has commended his frankness and the assurance he gave—we are more likely to achieve what we have in mind by the kind of direction that Senator Cook and even Senator McElman mentioned than by the other method.

**Senator Benidickson:** And achieve a better result than we thought a week ago.

**Senator Martin:** Exactly, we would achieve a better result than we thought some time ago. But this explanation I think is due, because if we do not offer this kind of explanation it will be charged in one of the Ottawa papers—and I do not say which one—that senators were not anxious to support the bill, and were not anxious to continue to support the recommendations of the Banking, Trade and Commerce Committee, and that the only stalwarts in the country were the three horsemen from the Senate who sat in the front row of the Senate committee on this day prior to the day of St. Nicholas.

**Senator Grosart:** And one horsewoman.

**Senator Martin:** So that is the situation and Senator Grosart is a very sincere and active senator, as is Senator O'Leary, but so are other senators.

**Senator O'Leary:** But, Senator Martin, you are anxious to approve the bill, and I move an amendment with that anxiety in mind and you are against it. What do we do in that situation?

**Senator Martin:** I did not say we were against it.

**Senator O'Leary:** Well, if I were to judge by the tenor of the talk, you are. Let us be fair and frank. And if you are for it, then I am going to move that we have a vote.

**Senator Martin:** We just had it.

**Senator O'Leary:** I would like the members of the committee to stand.

**Senator Martin:** We have voted.

**Senator O'Leary:** Are we precluded from moving other amendments today? Is the same treatment to be given to other amendments that was given to mine?

**The Acting Chairman:** I do not answer for that; the committee has the answer to that.

**Senator Everett:** I wonder if we could answer Senator O'Leary's question by proceeding with the motion by Senator Hays, because if that motion is rejected, Senator O'Leary might very well be right.

**The Acting Chairman:** Could Senator Hays repeat the motion?

**Senator Hays:** I need some help, but you know what I mean.

**The Acting Chairman:** Perhaps the committee would help the chairman in this respect. Senator Hays moves that all the recommendations made by this committee in its three reports be submitted for consideration and appropriate action taken in legislation to be introduced at a later time.

**Senator Grosart:** As indicated by the minister.

**The Acting Chairman:** All right, as indicated by the minister.

**Senator Isnor:** Why not leave out the word "three"?

**The Acting Chairman:** I think the idea in Senator Hays' motion, as I recall it, is that all the recommendations made by this committee in its study of Bill C-259 in the fall of 1971 be placed before the minister for consideration, as was done again this morning and as he commented upon this morning.

**Senator Grosart:** Perhaps you would include the words "recommendations to the Senate".

**The Acting Chairman:** Now perhaps they become recommendations to the minister from the Senate.

**Senator Grosart:** But these were recommendations to the Senate.

**The Acting Chairman:** Yes, but they become that, perhaps, as a result of the action that might be taken here.

**Senator Grosart:** I would be a little careful about that because, as I said, we do not have any responsibility here to give advice directly to the minister, we are under the obligation to report to the House of Commons. But I will not argue about it.

**Senator Phillips:** If I may, Mr. Chairman, I would like to raise a point of order. I am not opposing the motion on principle, but I want to establish to whom we refer this motion. I think it is entirely wrong to refer it to the Minister of Finance; and we either refer it to the House of Commons or to Her Majesty's Privy Council, as someone a little more specific than a minister of finance. The Minister of Finance could change tomorrow.

**Senator Hays:** The Minister of Finance never changes.

**The Acting Chairman:** I think Senator Grosart has answered that point. Because if the recommendation is made from this committee it is carried to the Senate, and once it is in the Senate, surely, judicial notice is taken of it.

**Senator Benidickson:** Mr. Chairman, I have no quarrel whatever with Senator Hays' motion, but it is not a substitute, is it, for a final report?

**The Acting Chairman:** No. Is the committee ready for the question on Senator Hays' motion?

**Senator Phillips:** Before we vote on it, Mr. Chairman, I would like to know what I am voting on.

**The Acting Chairman:** I will try to reconstruct it again, and I will ask again for the assistance of the committee. It is this: That all the recommendations made by the Standing Senate Committee on Banking, Trade and Commerce, as contained in its three reports to the Senate, be submitted to the minister for consideration, and that appropriate action be incorporated in legislation to be introduced at a later date in accordance with the undertakings of the Minister given this morning.

That is not the same language that I used a moment ago, but is this the sense of the committee?

**Senator Isnor:** Why not leave out the word "three"?

**The Acting Chairman:** All right, we will leave out the word "three". I think I used the words "in the autumn of 1971".

**Hon. Mr. Phillips:** Yes, I think you should put that in.

**The Acting Chairman:** "in the autumn of 1971." Are honourable senators ready for the question?

**Senator Grosart:** I would suggest that we leave the precise wording to the acting chairman.

**The Acting Chairman:** Would you leave the wording with our counsel from Montreal, the gentleman sitting to my left, Mr. Phillips, and myself to work out?

**Senator Grosart:** We are indicating our confidence in you.

**The Acting Chairman:** I am sure Mr. Phillips and I both appreciate that gesture.

Is the committee ready for the question to be put on the unworded motion? You are showing great confidence.

Those in favour of Senator Hays' motion, please indicate in the usual manner.

There are 17 in favour of the motion.

Those who are opposed to Senator Hays' motion, please indicate by raising your hands.

There is one opposed to the motion.

I declare the motion carried.

Honourable senators, are there any other questions to be asked of the officials?

**Senator Grosart:** Yes, Mr. Chairman.

**Senator Benidickson:** Will we adjourn while the report is being drafted?

**The Acting Chairman:** No, Senator Benidickson. We will continue in committee, since Senator Grosart has questions to ask of the witnesses.

**Senator Grosart:** Mr. Chairman, I believe the witnesses have before them the draft amendments which were proposed by this committee. If I may, I will refer to them.

**The Acting Chairman:** Senator Grosart, may I identify this for the *Hansard* staff and make a copy of the draft amendments dated November 30, 1971 available to them?

**Senator Grosart:** Yes, by all means.

**The Acting Chairman:** Would you indicate the page number which you are quoting from?



**Senator Grosart:** There are no page numbers. However, it is the third page.

**Senator Martin:** From what document are you reading?

**Senator Grosart:** The document which was just referred to, the draft amendments. I would like to ask the officials a question concerning Clause 52(5)(b). It may have been changed, but it is suggested that this clause be amended to read as follows:

The beneficiary shall be deemed to have acquired the property at a cost equal to its cost amount to the trust at the time of the transfer.

This has been fully explained in the third report of the committee. I will not go into it except to ask the officials whether they see any reason why this amendment could not be incorporated in the bill at the present time.

**Senator Martin:** I am not clear with what Senator Grosart is dealing.

**Senator Grosart:** It is on the third page of the document.

**The Acting Chairman:** It is entitled, "Employees Profit Sharing Plans," and Senator Grosart is referring to item No. 2, Clause 52(5)(b) of Bill C-259.

**Senator Martin:** Thank you.

**Senator Benidickson:** Yes, but where does this document come from? Is it a part of the third report?

**The Acting Chairman:** I understand it has been taken verbatim from the third report of the Senate committee.

**Senator Grosart:** No, it is not in the report.

**The Acting Chairman:** It is not part of the recommendations of this committee?

**Senator Grosart:** Mr. Chairman, I have read these reports, and unless I have overlooked them, these amendments, as drafted, are not in the report which was presented to the Senate.

**Hon. Mr. Phillips:** Senator Grosart, the copy which has been submitted to us indicates that it is from Report No. 1.

**Senator Grosart:** Is it in Report No. 1? That is fine. I indicated it was not in the third and final report.

**Senator Benidickson:** Can we call it Report No. 3?

**The Acting Chairman:** No, Report No. 1, I am told.

**Senator Benidickson:** My recollection is that Report No. 1 related to policy, without any specific suggestions or amendments. Am I wrong in that assumption?

**Senator Beaubien:** You are looking at the White Paper.

**Senator Grosart:** Does anyone have a copy of Report No. 1?

**Senator Benidickson:** I am talking about the document dated November 30.

**Hon. Mr. Phillips:** Senator Grosart, I do not think it is contained in report No. 1.

**Senator Grosart:** That is what I said. My understanding was that these amendments were never incorporated in a report.

**Senator Benidickson:** That is what I want cleared up.

**Senator Grosart:** It was explained to us by the chairman that the committee had begun drafting amendments but, due to the lack of time, they had not completed them. Therefore, they merely set them forth in this mimeographed form.

**Senator Benidickson:** I see, they are on the shelf then.

**The Acting Chairman:** Does the same thing apply to Senator O'Leary's amendment?

**Senator Grosart:** Yes, exactly.

**The Acting Chairman:** Have these draft amendments, which have been identified, been the subject matter of a report by our committee?

**Senator Grosart:** No, they have not.

**Senator Benidickson:** I do not think so.

**The Acting Chairman:** Where do they originate?

**Senator Benidickson:** I discussed this matter with you yesterday; that is why I raised this matter.

**The Acting Chairman:** It is just as well that you did raise the matter.

**Senator Grosart:** I assure you that this is not a leak, and I was amazed that no one opposed to the original motion raised this matter regarding the fact that it was not part of the committee recommendations.

**The Acting Chairman:** I think that what was being proposed could have been made clear to the committee.

**Senator Grosart:** And it was amended by Senator O'Leary.

**The Acting Chairman:** Perhaps some of the concerns expressed by members of the committee are now dissipated completely.

**Senator Langlois:** What was the purpose of putting this handwritten note on the document?

**Senator Grosart:** I do not know. I did not put it on the document.

**Senator Langlois:** This is your document; you should know.

**Senator Grosart:** It is not my document.

**Senator Langlois:** Whose document is it?

**Senator Grosart:** I do not know. This document was distributed to all honourable members of the committee.

**Senator Benidickson:** It has the handwritten note, "Top priority."

**Senator Grosart:** It is a document which was distributed to senators by the staff of the committee.



**The Chairman:** It was given to the staff of the committee for distribution, I understand, from Senator Flynn's executive assistant. Coming from a high office such as that of Senator Flynn, it seemed to be appropriate that it should be distributed and dealt with on its face value. I directed that it should be distributed, but now we learn that it is not an official document of this committee. I do not know where it originates.

**Senator Beaubien:** Where does it come from?

**The Acting Chairman:** I have no idea, Senator Beaubien, where it comes from. I am as puzzled as anyone else.

**Senator Grosart:** It is a leak.

**Senator Phillips:** Was the document not part of the last motion?

**Senator McElman:** I might say that I was not taken in by it. Senator Grosart thought we all missed it. As this was distributed, I asked the question, "from where does it emanate?" I did not receive a direct answer, so repeated the question and asked very urgently for a reply. I was told that it had come from Senator Flynn's office, and I have not regarded it as an official document of this committee; and I do not now regard it as such.

**Senator Benidickson:** It is entitled "Top priorities, Report No. 1".

**Senator Grosart:** Mr. Chairman, I do not think we need to waste very much time on it. We know it came from the committee; it does not matter whether it is official or unofficial.

**The Acting Chairman:** Let us clear up the one point: Were any members of the committee aware of this document? I certainly was not until it was presented to me a moment ago. I thought the situation was that, for the convenience of the committee this afternoon, specific drafts of amendments as suggested by it originally were re-written. Obviously this is something else.

**Senator Grosart:** No, this has been around for three weeks.

**Hon. Mr. Phillips:** Mr. Chairman and honourable senators, the three reports of this committee in 1971 consist only of the following: the first dated November 4, 1971; the second dated November 24, 1971; and the third dated December 13, 1971.

**Senator Grosart:** Yes, we are all aware of that, except that we were told here, both by the chairman—

**Hon. Mr. Phillips:** This document of November 30, 1971 is not related to any committee report or activities as such.

**Senator Beaubien:** Was that not prepared by the Senate committee?

**Hon. Mr. Phillips:** If it was prepared by any of the staff of the committee, of which I am not aware, it is certainly not incorporated in the report.

**Senator Grosart:** I think we should be clear on one thing, that the chairman told us it was incorporated.

**The Acting Chairman:** No, I certainly did not say that.

**Senator Grosart:** Let us forget it then; I do not think it matters. We know it came from the committee.

**The Acting Chairman:** Is it a working paper of the committee? I think it is up to Senator Grosart, if he knows, to tell the committee where this came from. Is it a working paper of the committee which came into the hands of one of the members of the committee?

**Senator Cook:** Sure, Mr. Chairman, it is a working paper; it is a first draft.

**Senator Beaubien:** Our staff can tell us.

**Senator Grosart:** The staff can tell us. We know perfectly well that this was prepared by the staff of the Senate committee.

**The Acting Chairman:** But it has not come before the committee for approval.

**Senator Grosart:** No.

**The Acting Chairman:** Or for consideration.

**Senator Grosart:** No.

**Senator Cook:** It is only a first draft and has been superseded.

**Senator Beaubien:** Who made the draft?

**Senator Cook:** I think the chartered accountant on the staff.

**Senator Beaubien:** I think we should ask them.

**Senator Cook:** What is the trouble?

**Senator O'Leary:** We have disposed of it, anyway. What is the use of worrying about where it came from. I do not know where it came from, and I do not care.

**The Acting Chairman:** Perhaps we have said enough with respect to the document, because apparently no one will admit pride of parentage in any way. Nonetheless, the document itself contains material which may have a bearing upon the bill. If any honourable senators wish to direct questions on the basis of the document, without in any way contributing to its authenticity, they are perfectly at liberty to raise any point which may come to mind as a result of perusing it or, indeed, any other point that comes to mind.

**Senator Hays:** Mr. Chairman, do you have a record of the number of meetings that the Standing Senate Committee on Banking, Trade and Commerce held to consider the White Paper and since September 10 in dealing with the proposed legislation?

**The Acting Chairman:** I am sorry you did not hear my great speech, but I did put this information on the record. My memory is very faulty, usually, with regard to figures of this kind. I think, however, there were approximately 80 sittings in the consideration of the White Paper.

**Senator Grosart:** I do not remember, but it was a very impressive figure.

**The Acting Chairman:** Yes, it was a great figure.

**Senator Cook:** Fifty-five.

**The Acting Chairman:** That would be it, 55. I believe there were 26 hearings since September, 1971.

**Senator Hays:** Do you have a record of the number of witnesses who appeared?

**The Acting Chairman:** I did at one stage.

**Senator Grosart:** It is contained in the report.

**The Acting Chairman:** I stated these figures in the chamber. There were, I believe, 140 witnesses before the committee this fall, and a little more than 400 during consideration of the White Paper.

**Senator Martin:** And, Mr. Chairman, we were the only committee in Parliament that did hear witnesses with respect to the bill.

**Senator Benidickson:** From outside.

**Senator Martin:** From outside.

**The Acting Chairman:** That is true.

**Senator Grosart:** Which, I suggest, greatly increases our responsibility to the House of Commons, which did not have the opportunity to hear those witnesses.

**Senator McElman:** But they have the benefit of our reports.

**Hon. Mr. Phillips:** With the concurrence of the chairman, Appendix "A" to our final report contains the dates of the hearings with respect to the summary of 1971 tax reform legislation. It also sets out the organizations and/or individuals and groups which appeared before it.

**The Acting Chairman:** But, in addition to that, the committee held many other meetings, of course, at which there were no witnesses.

**Senator Hays:** Does that include these?

**The Acting Chairman:** No. I believe 26 is the overall figure for the number of hearings.

Senator Grosart, we have delayed you a long time. You have been very patient and have also contributed to the discussion in the meantime. Would you like now to proceed with your questions?

**Senator Grosart:** I think the officials have my question; I see them referring to the particular quote, if I may use that word, the unofficial quote I gave them.

**Mr. Cohen:** Senator, I am not sure how to answer your question, because I am not sure that I fully understand it. An amendment is a two-step transaction. The first part is a policy decision; the second part is a question of drafting.

**Senator Grosart:** Yes.

**Mr. Cohen:** I am not certain, sir, whether your question relates to the first or second point. If it is on the second point, although I cannot speak for Mr. Thorson, I have not

had sufficient time to examine this language in order to determine whether it is appropriate. I understand its intent in a policy context, but when you ask if it will work, I need more time to determine if the precise wording is appropriate.

**Senator Grosart:** I realize your problem. It was really, in the last analysis, a policy question, whether you see any reason why it should not be incorporated. In view of the fact that the minister has given us reasons for preferring to delay the decision, it is perhaps unfair to ask you.

**The Acting Chairman:** In any event, you would not ask these witnesses questions dealing with policy.

**Senator Grosart:** I would not ask them a difficult question if I could avoid it.

**The Acting Chairman:** Difficult questions are one thing; policy questions are another.

**Senator Grosart:** Mr. Chairman, I move that section 52(5)(b) of Bill C-259 be amended to read as follows:

52(5)(b) The beneficiary shall be deemed to have acquired the property at a cost equal to its cost amount to the trust at the time of the transfer.

**Senator Hays:** Is that one of the recommendations, Mr. Chairman?

**Senator Grosart:** One of the secret recommendations.

**Hon. Mr. Phillips:** It is not one of the formal recommendations referred to in the three reports.

**Senator Grosart:** It incorporates, in amendment form, I believe, the sense and intent of one of the recommendations appearing in final Report No. 3.

**Hon. Mr. Phillips:** I think you will probably agree, Senator Grosart, that the subject matter with which you deal in section 52(5)(b) is dealt with in Report No. 3.

**Senator Grosart:** This is an amendment which gives substance to the recommendation.

**Hon. Mr. Phillips:** It would be a matter of interpretation as to whether this wording does give sense to the report.

**Senator Martin:** We want to be precise. We cannot simply accept Senator Grosart's assurance. Would counsel tell us if the language in this document represents one of the recommendations of the Senate committee?

**Hon. Mr. Phillips:** No, it deals with the subject matter dealt with, but not with the formal recommendation.

**The Acting Chairman:** Is there further discussion on Senator Grosart's motion? Is it necessary for me to put the motion again? Senator Grosart has moved that section 52(5)(b) of Bill C-259 be amended to read as follows:

52(5)(b) The beneficiary shall be deemed to have acquired the property at a cost equal to its cost amount to the trust at the time of the transfer.

**Senator Hays:** Mr. Chairman, before you put the motion, this deals with charities, does it not?



**The Acting Chairman:** I am only putting the motion. Senator Grosart is moving it.

**Senator Hays:** But this motion may not be in order. If we have already moved that all of the Committee's recommendations be sent to the minister, how can we start amending it after we start making these recommendations?

**The Acting Chairman:** In the light of what counsel has told us, this amendment does not specifically reflect a recommendation of the committee. Is that so, Mr. Phillips?

**Hon. Mr. Phillips:** As I understand it, Senator Grosart's motion is by way of an amendment to Bill C-259.

**Senator Grosart:** That is right.

**Senator Martin:** It is not incorporated in the recommendations of the committee's report.

**Hon. Mr. Phillips:** The answer is that it is not incorporated in the committee's report other than in respect of the subject matter, but not in the proposed amendment.

**Senator Martin:** And in connection with this, we have had no explanation whatsoever as to its implications.

**Senator McElman:** As I understand it, this subject was considered by the committee, but it did not choose to make this recommendation. Is that correct?

**Senator Grosart:** That is not so.

**Hon. Mr. Phillips:** Probably we should state the following: In addition to the recommendations that were submitted to the Senate and approved, there was a certain amount of mental and intellectual exercise in terms of draftsmanship, in the hope that in due course, when we were dealing with the acceptance of our recommendations, we might be of assistance in the submitting of some phraseology.

**Senator O'Leary:** Would you say, sir, that this expresses the spirit and substance of the recommendations?

**Hon. Mr. Phillips:** I would say that it deals with the subject matter, but I am not prepared to state that it covers the spirit.

**Senator Beaubien:** If we are going to comment on this, we should know whether it fits in with the committee's wishes.

**Senator Hays:** Is it in order?

**Hon. Mr. Phillips:** As I say, the only recommendations approved by this committee and by the Senate are in the three reports. These so-called draft amendments are merely exercises in draftsmanship from the point of view of what might come before the Senate in due course in dealing with the subject matter of the legislation.

**Senator Martin:** I am sure that Senator Beaubien's remark is one that we all accept. We have to know more about what this means, its origin, and so on.

**Senator Buckwold:** Mr. Chairman, would you accept an amendment in the form of a referral motion, in which Senator Grosart's motion is referred to this committee for further study?

**Hon. Mr. Phillips:** No. This is a motion to amend Bill C-259.

**Senator Buckwold:** But the committee has not had an opportunity of reviewing it.

**The Acting Chairman:** I think we should deal with this matter as it stands. I am bound to say that when a member of this committee moves an amendment, as did Senator O'Leary, and as I am sure Senator Grosart is prepared to do, an honourable senator should be prepared to express the reasons why he moves an amendment in a specific form. If the committee is satisfied with his reasoning, it then votes accordingly. It can vote either in favour of the amendment or against it.

**Senator Grosart:** Mr. Chairman, I will gladly respond to the request that I indicate the purpose, intent, and origin of this amendment. If honourable senators care to refer to Report No. 3, Appendix "B" at page 8, they will find that this committee named nine proposed changes in the bill and described them as "top priority recommendations."

No. 2 is "Employees Profit Sharing Plans," which is the matter dealt with in my amendment. Report No. 3 refers specifically, for information, to pages 47-8 of Report No. 1. If the committee desires, I will be very glad to read almost the full column which fully explains this amendment and makes it very clear that its intent is to give effect to the recommendations made by the committee. I leave it in your hands, Mr. Chairman, whether the committee wishes me to read that. It is on page 47-8 in Report No. 1 under the same heading, "Employees Profit Sharing Plans".

**Senator Hays:** I suggest that this is out of order. We have had a motion, which we have dealt with unanimously, that all these go to the minister. I do not see how we can have an amendment on one of these recommendations. I do not think the motion is in order.

**Senator Cook:** Our colleague very properly keeps on giving top priority to the words "top priority". I would point out that this was done at the request of the minister. He asked us to let him know what we considered to be top priority, which we did. In committee he said that he would give them consideration. This top priority business was done at the request of the minister. He said, "You have a great number of items. Which ones do you want to be considered at the top?" We gave them to him, and he said he would give them consideration. I keep on making the point as to why, when the minister says he requires a little more time, we say to him, "No, you must take our amendments now." He said he would give them consideration at the earliest possible opportunity, and we are now saying, "No, do it now." It does not seem to me to make any sense.

**The Acting Chairman:** Is the committee ready for the question?

**Some Hon. Senators:** Yes.

**The Acting Chairman:** Those in favour of Senator Grosart's amendment will please signify in the usual way.

Four in favour.

Those against Senator Grosart's amendment will please signify in the usual way.



Ten against.

I declare the amendment lost.

**Senator Hays:** Mr. Chairman, I would like to move that this motion that has just been defeated be now referred to the minister for consideration in the amending bill.

**The Acting Chairman:** The chair is in a difficult position, Senator Hays. It has been almost impossible to determine the origin of this material.

**Hon. Mr. Phillips:** Mr. Chairman, may I deal with the subject? In Report No. 1 of this committee, Senator Grosart said at page 47-8, in the second column at the top—

**Senator Grosart:** Mr. Chairman, on a point of order. Is Mr. Phillips dealing with the motion which has just been defeated?

**Hon. Mr. Phillips:** No, I am not. Senator Hays has suggested a motion, Senator Grosart, to send your motion to the Minister of Finance for consideration. I am now referring to what you referred to where the subject matter of certain transfers acquired by a trust at a given moment is dealt with.

The amendment that the honourable Senator Grosart suggested is at variance with it on a particular technical point with respect to the cost to the trust of a capital asset.

**Senator Hays:** I will withdraw my motion.

**Hon. Mr. Phillips:** That which Senator Grosart was dealing with was the insertion of the phrase "at the time of the transfer," which goes to the whole question of the costing of the capital asset. That is why I said to Senator Grosart that that which he dealt with by way of his motion which has just been defeated, in so far as the subject matter is concerned, is dealt with in our report. When Senator O'Leary asked me whether that which Senator Grosart suggested was in accordance with the spirit of what we have reported, I said that I am not prepared to go that far because we were dealing with the crucial question of cost of a capital asset.

I am merely explaining the reason which justifies my saying that the proposed amendment now behind us does conform in spirit. I though I owed it to myself and to honourable senators to explain the reason for my dissent.

**Senator Grosart:** I am quite prepared to let the record speak for itself.

**Senator Phillips:** Mr. Chairman, earlier I had asked Mr. Thorson a question concerning the effect of this bill on veterans' pensions and war veterans' allowances. Since that time he has been good enough to send me a couple of notes indicating that neither the disability pensions nor war veterans' allowances are affected in any way by this bill. I am prepared to accept those notes, but I would like the record to show that they state that neither disability pensions nor war veterans' allowances are affected by this bill.

Am I correct, Mr. Thorson?

**Mr. Thorson:** That is so, senator, in terms of the Part 13 withholding tax on payment to non-residents.

**Senator Phillips:** And are there any other changes regarding war veterans' allowances or disability pensions in this act?

**Mr. Cohen:** I do not believe so, senator. The exemptions are contained in section 81(1)(d). They are identical with the old act.

**Senator Phillips:** I would appreciate you checking that. I am not an expert in tax matters, Mr. Cohen, and, like a good many members of the committee, I share concern in this regard, and I would like to have it clarified.

**The Acting Chairman:** Perhaps Mr. Cohen and Mr. Thorson can look up that point.

**Mr. Thorson:** The old provisions and the new provisions are identical with respect to that point.

**The Acting Chairman:** You are satisfied on that point now, Senator Phillips?

**Senator Phillips:** Yes, Mr. Chairman.

**Mr. Thorson:** That is on the exemption as far as a resident Canadian is concerned.

**Senator Phillips:** I did not mean veterans who are non-residents; I meant Canadian veterans, Mr. Thorson.

**The Acting Chairman:** They could be Canadian veterans who are non-residents.

**Senator Phillips:** Yes, but I mean residents in Canada.

**The Acting Chairman:** I think he has satisfied you on that point, about Canadian veterans who are resident.

**Senator Phillips:** Well, his last answer left me a little confused. I was satisfied up to that point that they were not being affected.

A Canadian veteran on disability or war veterans' allowance is in no way affected by Bill C-259, is that correct?

**Mr. Thorson:** That is correct.

**Senator Benidickson:** Mr. Chairman, I was out of the room for a few moments. Perhaps we are on this point now. I read hurriedly the other day that this bill might involve a change in the net receipt of a Canadian resident who, for retirement or other reasons, decided to go to the United States. Is there anything in this bill respecting the withholding tax for such an individual?

**Mr. Cohen:** Yes, there is a change in the withholding tax provisions, but there is also a protective clause which says that if the burden of the withholding tax is heavier on a pensioner who has retired out of the country than he would have paid had he stayed in this country, then he could take the latter option. He is no worse off.

**Senator Beaubien:** Mr. Cohen, if he goes to the United States, is that not covered by a withholding tax treaty?

**Mr. Cohen:** The withholding tax rate is effected by a treaty and some of the exemptions from withholding tax are covered by treaty, but there is a general provision in our act which would relieve a taxpayer from any heavier burden of Canadian income tax.

**Senator Beaubien:** If we have a tax treaty with the United States, how can we change it in this bill?

**Mr. Cohen:** We can reduce our tax.

**Senator Beaubien:** Does this bill reduce the tax?

**Mr. Cohen:** We are talking about the imposition of Canadian tax on Canadian source income. We can bring that down, notwithstanding the fact that there is a treaty.

**Senator Beaubien:** Well, if that is what we are doing, that is not what Senator Benidickson is concerned with, is it?

**Senator Benidickson:** I was referring to a news item of two or three days ago. We have had so many amendments that I was wondering if one of them provided some relief from the original hardship in this respect?

**Mr. Cohen:** My recollection, senator, is that that has been in the bill since it was first tabled, but I could be mistaken. It may have been by way of amendment, although I do not believe so.

**Senator Benidickson:** I am considering the position of a very moderate income earner who in old age decides to go to a better climate, and I thought this bill imposed some hardship upon him.

**Mr. Cohen:** Well, the answer is the same as before, and that is that there is an exemption in the United States treaty with respect to pensions and annuities.

**The Acting Chairman:** Are there other questions of the witnesses?

**Senator Phillips:** Yes, Mr. Chairman, I have several questions.

My first question is with respect to the sale of a property as a result of which there is a capital gains tax. I am thinking of the pattern in the last few years where large numbers of people who built apartment houses, office buildings, and so forth, went abroad for their financing. They probably received a lower rate of interest, but in return the people putting up the financing took an equity position, perhaps, 20 per cent or 30 per cent, we will say for the sake of discussion. I am not going to attempt to give you the section because there are so many of them, but what position are those people in now and how will this affect their source of money in this regard in the future?

**Mr. Cohen:** Again, I am not certain of the question, senator, but if you are asking how an individual who is not a resident—

**Senator Phillips:** Yes, a non-resident.

**Mr. Cohen:** If you are asking how a non-resident investor in Canada would pay his capital gain, it is in the same way as a Canadian resident. The capital gain would be the difference between the original cost of the property and the selling price. He would report that gain just as if he lived in this country. This is part of what we call taxable Canadian property.

**Senator Phillips:** Is that individual, bank or corporation subject to the 15 per cent withholding tax?

**Mr. Cohen:** Not on the capital gains portion.

**Senator Phillips:** But they are still subject to that 15 per cent withholding tax.

**Mr. Cohen:** On the annual rents or interest, yes, but not on the gain portion.

**Senator Phillips:** It seems to me that in this clause we are cutting off a very important source of money in a field in which we need it very badly at this time, in the construction industry and so on.

**The Acting Chairman:** This is policy, I think.

**Senator Phillips:** I know this is a matter of policy, and I am not going to involve Mr. Cohen or Mr. Thorson in this, but I believe it is a terrific mistake to cut off this source of funds at a time when we need them so badly. I hope that in all the generous entertainment our committee reports are to receive this point will also be included.

**Senator Everett:** Mr. Cohen, there are three areas of the legislation that bother me greatly, which I do not think this committee has dealt with adequately in all its hearings and examination of this bill: The first is the problem of ministerial discretion, which continues to exist in this amending bill; the second is the matter I raised this morning, that of corporate indistributed income; and the third is the lack of definition between capital receipts and income receipts. It would appear that under this bill it will still be a matter of jurisprudence, and it is quite possible that a whole new set of jurisprudence will be required to determine the difference between the two.

Dealing with the latter point first, I notice there have been recommendations that certain expenditures are not expenses for the purpose of gaining and producing income, and that is just by fiat. The one that I suppose comes readily to mind is yachts, where they just clamp down against yachts, regardless of for what they are used. I am not the owner of a yacht, so I do not have to disclose any particular interest here.

**Senator Martin:** Perhaps a skidoo.

**The Acting Chairman:** A prairie schooner.

**Senator Everett:** It has been possible in the formulation of this bill to have specific definitions of what is a business expense and what is not a business expense. I cannot understand why certain receipts would not have been classified as capital receipts and as income receipts. If, indeed, this did happen it would greatly simplify the operation of the act and would simplify the position of the taxpayer.

**Hon. Mr. Phillips:** Mr. Chairman, may I be permitted, from my position as counsel for this committee, to answer Senator Everett on one basic point? You were busy, Senator Everett, because you had a very important committee.

The three reports were not intended or claimed to cover the entire gamut of the proposed taxing statute. Because of the limitation of time, they dealt with a number of subject matters that this committee thought most urgent and which required current attention. In dealing with the subject matter, for instance, of deduction from income, or the difference between capital gains and ordinary trading



income and all that sort of thing, there were all sorts of areas that this committee did not cover that, had it been able to do so, it would have covered the entire gamut of the bill and all its ramifications. But it did cover some special aspects of it, and more particularly those that were brought to our attention by very important representative organizations and taxpayers.

**Senator Everett:** Mr. Chairman, I am sorry that the committee did not see fit to cover probably the three areas that have given more trouble in tax law in Canada than any other three areas.

**Hon. Mr. Phillips:** This might have been so had your advice and guidance been with us, senator, but you were absent in another committee.

**Senator Everett:** I am sorry, because perhaps if so we would have dealt with these subjects at that time. However, I am surprised that you did not do so, anyway, without the benefit of my advice.

**Hon. Mr. Phillips:** However, I thought I would clear up that point.

**Senator Everett:** You did indeed raise the point that you did not deal with them. It just seems to me that I would like to hear from you, Mr. Cohen, if I could, on this point. The minister says he is considering the problem of undistributed income but, because integration was not acceptable to the taxpaying community, he has left that out, although there might be other means of handling it. Indeed, I would like to hear what you have to say about the problem of definition of receipts and the really serious problem of ministerial discretion.

**Mr. Cohen:** Taking them in order, senator, and starting with the last one, the definition of capital gains versus income, two points should be made before I answer in general terms. One is that you thought there might be new jurisprudence. There is nothing in this act which would change the direction of the old jurisprudence. It is the same issue as that which existed previously, except that it is, in a sense, if you will, half as important as it used to be, because now it is either half an income or all an income. So we hope that there will be a great deal less pressure on this point in the future.

With regard to the business expense, we specify by fiat, as you suggest, that certain items are to be non-deductible. But they are few and far between. One still has the vast panorama of activities that raise a question on both sides of the fence—that is, the deduction side as well as the receipts side: Is it an expense that was incurred for the purpose of gaining or producing income, that may make it deductible? And on the other side, as to whether an asset is a capital gain receipt or in the nature of an inventory or income receipt.

We did look very extensively and very carefully at a number of tests, which I could describe as arbitrary, that is, holding periods, classifications of assets, and we found, frankly, that no set of arbitrary lines like that seemed to be very satisfactory. They produce too many anomalies, particularly right at the edge. You use a holding period of six months, and six months plus one day has a very different result from six months minus one day.

Similarly, when you try to deal with assets by category, the lines become very harsh and the problem of definition became rather overwhelming. We felt that there was a body of jurisprudence but, again, it being half as important, if I may—which is not to suggest that the problem will not continue. It has continued in the United States, notwithstanding their holding period rules. There is less at stake and hopefully there will be less pressure on this point, but so far, we have not been able to come up with a satisfactory precise and accurate definition that would distinguish and segregate capital receipts from income receipts. So we have continued the present regime.

On the point of ministerial discretion, senator, let me observe, first, that there is no additional ministerial discretion in this statute.

**Senator Everett:** No, I did not suggest there was.

**Mr. Cohen:** No, but I am taking the opportunity to speak to others as well, who have suggested that there is an increase in ministerial discretion. In point of fact, there are a number of areas where we have adopted a reasonable test, which is something that the courts can decide. However, I do concede to you that we have retained the ministerial discretion that was present in the previous act—again, I suppose in part because it was needed then and it is needed now and that becomes inter-related, if you will, with the problem of corporate surpluses.

The bulk of the discretion is in that direction. It deals with corporations. Section 138A. (1), using the old section numbers, is a problem of corporate distributions, of surplus stripping and things of that sort. Because we still have the problem of corporate surpluses, we felt we had at least for a number of years to retain ministerial discretion, until we found out whether the new rules worked better than the old ones did. I share with you a hope that some day we will be able to get rid of these.

With regard to the corporate surplus problem, I am not sure I can add a great deal more than was added by the minister this morning. You have an extra level of corporate tax in play, no integration and a capital gains rate that is half of the ordinary income rate. You are always going to get pressure to convert ordinary income streams coming out of a corporation into capital. There is always the pressure to convert dividends into capital gains, as the capital gains for certain taxpayers attract a lesser burden of tax. And given that set of infrastructure we just felt that we had to retain the rules relating to surplus withdrawals.

**Senator Everett:** I do not think that is really a serious matter from the taxpayers' point of view. The difficulty that obtains there, and I am speaking historically, is that there is a difference between the marginal rate and the corporate rate of any degree and without the provincial increment. I can see a difference when we are speaking in terms of the distribution of surplus of 30 per cent in this act. As long as there is that difference, taxpayers will elect to leave their profits in the form of undistributed income. What happens is that it builds up and up, and eventually the Government comes along and says that for a flat tax of 15 per cent you can get it out. So the net result is that there is a lot of manipulation during that period, during which smart tax layers like Mr. Phillips advise their clients.



**The Acting Chairman:** Or Senator Everett.

**Senator Martin:** Or senator Grosart.

**Senator Everett:** They advise their clients that by doing this or by doing that they can drain their surpluses out. They can use the charitable route, the brokerage route, or they can use another route, but they can get the surplus out. It just seems to me to be unfortunate that we are not addressing ourselves to that problem, because it is just going to be another problem in another ten years, and in another ten years there is going to be this pressure to amend the act.

**Hon. Mr. Phillips:** Senator Everett, you do not want to take the bread out of the mouth of the tax lawyers, do you? We need the grey areas so that we can advise our clients!

**Senator Grosart:** There is no danger of that in this bill.

**Senator Everett:** Well, I thought on the last ago-round' senator, that you made enough bread to retire for life!

**Mr. Cohen:** I would like to add one more point to the arguments we suggested to you this morning, senator. I do concede that the build-up will take place but, to put it in proper perspective, in addition to what we indicated this morning on small business deductions and pressure to pay out dividends there and the letting out of capital before surplus, in the same way that there is less pressure on the line between capital gains and ordinary income, now there is less pressure on the problem of surplus distribution because the essence of the surplus distribution under the old act was the fact that we were not taxing capital gains, so you could take it out for free.

Almost every surplus strip, at least that I know of, turns around a sale of the shares. That is going to produce a capital gain. So there is a lot less to be gained in the new system by a surplus strip and hopefully that too will relieve the pressure that does build up on these things. But I can see that over a long period of time surpluses may well reappear, and doubtless the government at that time will take another look at them.

**Senator Grosart:** Retroactively.

**Senator Everett:** In fact, it is retroactive, which is what you are now doing with the 15 per cent which is retroactive to the beginning of 1949, really. Two points arise out of that. The first is that there should be a recommendation from this committee that the minister give serious consideration to the on-going problem of corporate surpluses and their distribution, in some sort of conformity with the recommendation for post-January 1, 1972 surpluses. And the second point is that it seems that there should be serious consideration given to rulings by the minister on the subject of capital receipts versus income receipts and on those areas where ministerial discretion is exercised. As I understand the present ruling provisions, the Minister of National Revenue or the Department of National Revenue is not allowed to give a ruling on whether a receipt is a capital gain or income. Am I correct in that?

**Mr. Cohen:** Well, Mr. Pook is here from the Department of National Revenue, and he may be able to tell you about that.

**Senator Everett:** I am given to understand that under the present ruling provisions, which were invoked some few months ago, the department is not allowed to rule on whether a receipt is an income or capital receipt.

**Mr. Cohen:** I am not sure if everyone could hear Mr. Pook's answer, but he said that he is agreeing with the senator that the Department of National Revenue does not give rulings as to whether transactions are capital or ordinary income.

**The Acting Chairman:** In advance.

**Mr. Cohen:** In advance. You are talking now of advance rulings, senator?

**Senator Everett:** Yes, advance rulings—which I think would cut down the amount of difficulty that the taxpayer has and the amount of litigation that goes on between the minister and the taxpayer,—as to whether in specific cases the nature of a receipt is a capital or an income receipt; and the exercise of ministerial discretion. I think there should be a recommendation of that nature.

**Senator Martin:** I thought Mr. Gray announced, and indeed I said the other day in the house and quoted him, that an endeavour would be made, notwithstanding traditional practice to give opinions in advance of the maturity of a situation, subject, of course, to staff and so on. Is this one of the matters you are asking about senator?

**Mr. Cohen:** If I could answer that, the Minister of National Revenue did give a speech very recently in which he said that they were expanding the facilities for advance rulings; that he hoped to be able to maintain, at least, the time frame and even accelerate it; and that he was expanding his staff. I do not think that in his remarks he addressed himself specifically to the point that Senator Everett raises.

**Senator Everett:** Those points are of very great importance because under the present ruling provisions you pay \$150 to the Minister of National Revenue, and then you, as a taxpayer, put before him a certain set of facts. The taxpayer also pays a contribution towards the time put in on assessing those facts by the officials of the Department of National Revenue, and is billed for that, in addition to the \$150. Then a ruling issues. That ruling can be on the subject of ministerial discretion, although I gather from talking to other taxpayers that it is sometimes very difficult to get the rulings division to rule on the question of ministerial discretion, and they will not rule on the question of whether an income receipt is a capital gain or income.

**Mr. Cohen:** Forgive me for interrupting you, but by way of clarification, when you are talking about ministerial discretion it has a certain connotation for those of us in the trade; that is, a taxing power by the minister. You are not talking about that when you talk about ministerial discretion. You are talking about the minister exercising his capacity to give an advance ruling, whether it be favourable or unfavourable, as the case may be?

**Senator Everett:** No, I am talking about the taxing power, for example, as to whether corporations are or are not

associated. I am saying that you ought to be able to have advance rulings and exercise that discretion; and you should also have the discretion as to whether a receipt is income or capital gain based on the written facts which you put before the minister. I feel that recommendation should go to the minister.

**The Acting Chairman:** This is not the first time this point has been raised. It was considered during the course of our deliberations in September, October and November. Perhaps Hon. Mr. Phillips and other members of the committee can help me. It was taken into consideration but was not included in the specific recommendations which were made to the minister. We have now drawn it to the attention of the officials. Mr. Cohen has it in his mind, and I am sure that others, including Mr. Pook from the Department of National Revenue, are aware of the intention of the committee.

**Senator Everett:** I would like to accept that, but I feel very strongly about this matter. I do not necessarily want it was part of the recommendations which have been put forward. I am proposing it as a separate motion. After all, it is a recommendation to the minister, asking him to consider the matter and do something about it.

**The Acting Chairman:** Senator Everett, when this committee rises some time today, perhaps you would be kind enough to draft a few sentences which could be included in the report which we make to the house.

**Senator Everett:** As a recommendation to the minister?

**The Acting Chairman:** As a recommendation to the minister, and the committee will then decide if it will accept the report which contains your suggestion. This will point out more clearly your suggestion than my proposal, which was to have it was part of the record. Will you do that?

**Senator Everett:** I will. This recommendation is to the Minister of Finance or to the Minister of National Revenue?

**The Acting Chairman:** Let us make the recommendation to the Government.

**Senator Everett:** The recommendations we are making are to the Minister of Finance.

**Senator Martin:** Surely, a question on this matter regarding advanced rulings should be made to the Minister of National Revenue.

**Senator Grosart:** Why not make the recommendation to the appropriate ministers?

**The Acting Chairman:** Have you finished, Senator Everett?

**Senator Everett:** Yes. I am sorry to have taken up so much of the committee's time.

**Senator Phillips:** Mr. Chairman, I want to be very careful about calling these papers "official documents." I assume it is an official document, because it has the coat of arms and bears the name of the Honourable Senator Hayden and the Honourable Lazarus Phillips. These are the

recommendations contained in the White Paper referring to the accrual system?

**The Acting Chairman:** Senator Phillips, would you identify this document?

**Senator Phillips:** It is a condensed report of the committee study on the White Paper.

**The Acting Chairman:** What is the date of the report?

**Hon. Mr. Phillips:** "September, 1970" is all that is on the document. The committee was very definite in its rejection of the accrual system for taxpayers in the professions. Yet I find clauses dealing with the matter, and I have not received an explanation as to why it was felt we needed an accrual system for taxpayers in the professions.

**The Acting Chairman:** This is a policy question.

**Hon. Mr. Phillips:** I would like to answer Senator Phillips' question for the chair. The subject matter of the treatment of professional income was considered by Senator Hayden and the committee, and the decision was that it not be included as one of the recommendations referred to in the three reports, but that it be put separately in the recommendations of the Senate committee on the White Paper, and it was reflected in the three reports.

It was dealt with, but was not regarded as a point which would be pressed. I may say, en passant, that there were some of us who felt that it should have been considered but, as in all problems of this nature, the consensus was followed and the decision was not to include it in the recommendations. It was not overlooked by this committee in the deliberations from September until we ceased deliberating.

**Senator Phillips:** May I direct a technical question, which is causing a great deal of concern, relating to my profession? When a patient who is on welfare is treated, the bill is submitted to the Royal College of Dental Surgeons' Welfare Fund. We follow the Ontario Dental College fees schedule, but never know what we will be paid. There seems to be neither rhyme nor reason to it. Apparently, the amount disbursed depends upon the amount of money in the fund at the time. Which are we liable for, when we have no control over collection or the amount paid? Is it the full fee as prescribed by the Royal College of Dental Surgeons or the amount of the payment?

**Mr. Cohen:** I do not know whether I can answer that specifically. I suppose I would have to get into the details of it. In the final analysis, it is a question of administration by the Department of National Revenue. As a general observation, although we treat professionals on a billed basis, which is a quasi-accrual form of reporting income, there is a provision for bad debts and another for doubtful debts. I presume that if the debts were doubtful or bad they would not be brought into income. I cannot answer specifically on your point, because it is really a matter of interpretation and administration of the act. It is the same type of problem, in a sense, that many, many people have in non-professional, more traditionally business activities, as to when is a receivable a receivable on an accrual basis.



**Hon. Mr. Phillips:** All bills you send out automatically become income, so a reserve is set up equal to the amount of billing.

**Senator Phillips:** That was to be my next question.

**Senator Hays:** Is it not permissible to write off bad debts?

**Mr. Cohen:** Yes, sir.

**Senator Hays:** Well, is the situation not the same for all?

**Mr. Cohen:** Yes, sir.

**Senator Hays:** If I sell a bull and he does not produce and the man will not pay, I pay it and then receive it back if the bull was no good.

**Senator Grosart:** Now that Senator Hays has raised the question of paternity, we have had a problem as to the paternity of this document known as "Draft Amendments, November 30, 1971." I thought it might be helpful to the committee if at this stage I state that I have now recalled the paternity. I would not like this valuable document to be given the name usually applied to those whose paternity is in doubt, so I will read to the committee from its final report, dated December 13, 1971. I might say that that date was my birthday and I might not have been so bright as I should have been. The following paragraph appears on page 5:

With the approval of the Committee, a list of top priority items among the recommendations in our two Reports was submitted to the Minister, together with amendments which in the view of our expert advisers and our Committee would incorporate the substance of the top priority recommendations contained in your Committee's Reports.

I cannot think of any clearer answer to the suggestion that these amendments do not incorporate the substance, which was the word I used, of the top priority recommendations.

**Hon. Mr. Phillips:** I think it does. The amendments were not incorporated in the report and I, for one, am not aware—

**Senator Grosart:** It does not say that, Senator Phillips. You were not there. Let me make it clear that it says the committee reported two reports and amendments. I think it is a fair assumption that it can only refer to this document. I say that it is a fair assumption.

**Senator Cook:** Is that dated November 30? Our report is dated December 13.

**Senator Grosart:** The date could hardly be prior to November 30, because this refers to—All right, I will leave it.

**Senator Martin:** I would like to hear what Senator Phillips has to say.

**The Acting Chairman:** I think it is the second report that you are talking about, Senator Grosart.

**Senator Grosart:** This is part of the third report, which refers to the first two reports and says that amendments

were sent to the minister. I will have to read it again. It says very clearly that:

With the approval of the Committee, a list of top priority items among the recommendations in our two Reports—

And I interject to say that those top priority items appeared in Report No. 3:

was submitted to the Minister, together with amendments which in the view of our expert advisers and our Committee would incorporate the substance of the top priority recommendations contained in your Committee's Reports.

I leave it at that, and merely suggest that if that is not good evidence to rescue this document from this—

**Hon. Mr. Phillips:** Senator Grosart, let me tidy it up this way: there is no question but that some of the experts associated with me were dealing with the subject matter of drafting amendments as an exercise in relationship to the recommendations. Whether these amendments dated November 30, 1971 are the ones referred to in the third report of December, I do not know.

**Senator Grosart:** I merely say the assumption is that they were, because this document was distributed. It is the only list of draft amendments submitted, and it would seem to me absolutely impossible that the committee would send amendments to the minister without giving copies to the members of the committee.

**Senator Beaubien:** I was not given a copy of the amendments of the committee. It says here definitely that amendments were sent to the minister, but are these the amendments that were sent to the minister?

**Hon. Mr. Phillips:** I cannot tell you, Senator Beaubien. I do not know.

**The Acting Chairman:** I do not remember seeing them before today.

**Hon. Mr. Phillips:** They were not incorporated in the third and final report, although reference is made to the drafting of amendments. That is as far as we can go.

**Senator Grosart:** I have no further argument; I will let the record speak.

**Senator Phillips:** I received one.

**The Acting Chairman:** Where did you get it?

**Senator Phillips:** It was on my desk.

**Senator O'Leary:** I am sure that Senator McElman would now like to withdraw his charge that these documents were Tory propaganda. Those are the words he used. I believe that when a man makes a mistake he should admit it. He made the statement, and he should be prepared to withdraw it right now.

**Senator McElman:** I was told, Mr. Chairman, that they emanated from Senator Flynn's office.

**Senator Grosart:** Who told you?



**Senator McElman:** I was told by the staff when I inquired as to where they emanated from.

I will let the record speak for itself.

**The Acting Chairman:** Shall we move on, honourable senators? Are there other questions to be put to the witnesses?

**Senator Phillips:** Mr. Chairman, I place myself in your hands with respect to a point of order.

I would like to move that the section dealing with the basic herd be deleted. However, since we have already adopted the first three reports, I am left in some doubt as to the legality of my motion. As you know, I do not like to make things difficult for a chairman; I always try to be helpful.

**Senator Martin:** May I ask a question, Senator Phillips?

Did the minister not say that he could not accede to such a request?

**Senator Phillips:** Yet, that is why I would like to make the motion.

**Senator Martin:** He did say that.

**Senator Grosart:** Yes, he did.

**Senator Martin:** It is not one of the things which we could reasonably expect any action on, then.

**Senator Grosart:** No, but we have every right to move an amendment to the bill.

**Senator Martin:** Yes, of course.

**The Acting Chairman:** Senator Phillips, you may move an amendment to include the proposition for which you speak. I would just ask you to consider that the question of the basic herd has been included in our report and it will be part of the material which the minister will consider.

If you want to move an amendment in any way, you are certainly free to do so.

**Senator Hays:** Would the amendment be in order?

**The Acting Chairman:** I do not believe anyone would question it. I believe it is all right to move an amendment.

**Hon. Mr. Phillips:** Of course it is all right to move an amendment to the bill.

**Senator Phillips:** Then, honourable senators, I would move that section 29 of the bill, dealing with the basic herd, be deleted.

**Senator Grosart:** What page is that?

**Senator Phillips:** It begins at page 85. This will restore farmers to the position that they held under the old system and which has been held by farmers for generations. It is a position that is supported in the report of the committee as submitted to the Senate.

I am in somewhat of a difficult position, being the only member of this committee to vote against the adoption of this recommendation to the minister. However, my purpose in so doing was to have it in the form of a motion rather than a recommendation.

**The Acting Chairman:** And you so move?

**Senator Phillips:** I so move.

**Senator Hays:** It is in order?

**Hon. Mr. Phillips:** As I understand it, this is a motion to amend Bill C-259.

**Senator Martin:** Yes.

**The Acting Chairman:** It does not detract from the recommendation in any way. It simply proposes an amendment to the bill.

**Senator Grosart:** That is right.

**The Acting Chairman:** Those in favour of Senator Phillips' amendment will please signify in the usual way.

Those against Senator Phillips' amendment will please signify in the usual way.

**The Clerk of the Committee:** It is 7 against and 4 in favour.

**The Acting Chairman:** I declare the amendment lost.

Senator Grosart—

**Senator Martin:** There is some question with respect to the full vote.

**The Acting Chairman:** Well, I always ask honourable senators to signify in the usual way, hoping that they will hold their hands high enough and long enough for the clerk to take a count.

Will those against Senator Phillips' amendment please raise their hands and hold them up until the count is finished?

**The Clerk:** The count is now 10 against, Mr. Chairman.

**The Acting Chairman:** Senator Grosart?

**Senator Grosart:** Now that the hidden votes are in, Mr. Chairman, I have an amendment to suggest. I do not want to trespass on the time or patience of the committee, but I have amendments to make to clauses 69, 70, 91, 95, 127, and 212. All of them are contained in the document known as "Draft Amendments, November 30, 1971".

I wonder if you would accept a motion that these amendments, as contained in this document under the heading of the clauses I have just indicated, be passed by the committee? I do that rather than deal with them individually.

**The Acting Chairman:** In other words, Senator Grosart proposes to lump together proposed amendments to certain clauses. I did not count the number of clauses.

**Senator Grosart:** Six clauses.

**Hon. Mr. Phillips:** And you have referred to the actual clauses.

**Senator Grosart:** Yes.

**The Acting Chairman:** As contained in a document on which we have had some considerable discussion this afternoon.

**Senator Grosart:** Might I add that the clause numbers are taken from the draft bill as it was presented to the Committee of the Whole in the other place. They may not, and probably do not, coincide exactly with the numbers now.

**Mr. Cohen:** May I just comment that the numbering has not changed.

**Senator Grosart:** In that case, that observation is unnecessary.

**Senator Martin:** I would like to know what we are going to vote on. Are we voting on amendments that have been discussed here, or that have been discussed in the other place and have not been analyzed here?

**The Acting Chairman:** May I help, Senator Martin, in this respect. Senator Grosart's proposal is in respect of certain amendments set out in a document described as "Draft Amendments" and dated November 30, 1971. I ask Senator Grosart if he has the patience to give us the clause numbers again.

**Senator Grosart:** They are clauses 69, 70, 91, 91(2), 95(1)(b), 127(1), and 212(14). I am not breaking them down into whether they are paragraphs or subparagraphs.

**Hon. Mr. Phillips:** All related to Bill C-259?

**Senator Grosart:** All related to Bill C-259.

**Hon. Mr. Phillips:** And we are assured by Mr. Cohen that the numbers are the same as those that came from the other place.

**Mr. Cohen:** Yes. The numbers in this bill are the same as in the previous versions. There has been no change in numbering.

**The Acting Chairman:** Does the committee wish me to call the headings of the various clauses?

**Hon. Senators:** No.

**The Acting Chairman:** There is a consolidation of all of these amendments.

Shall the motion of Senator Grosart carry?

All those in favour will please signify in the usual way and hold their hands on high.

Those against will please signify in the usual way.

The voting was 4 in favour, 9 against. I declare the motion lost.

**Senator Grosart:** Horatius had only two with him.

**The Acting Chairman:** Are there further questions, honourable senators, that it is desired to ask of the witnesses?

**Senator Phillips:** The punitive clause, as I call it,—I have forgotten which one it is—seems to me a bit harsh. As I interpret it, certain things almost carry a mandatory jail sentence. I never prepare my own income tax, I always have someone do it. He does it on information I give him, and I give it to the best of my knowledge, with records, and so on. I would like to know why it is felt so necessary that the sentence should be so severe.

**Senator Grosart:** Policy!

**The Acting Chairman:** As Senator Grosart points out, it is a policy question.

**Senator Phillips:** I realize that it is a policy question. As the Honourable Mr. Phillips answered a question on policy for me earlier, perhaps he will be able to answer this one.

**Senator Grosart:** It is very little help to you, when you are behind the bars, to be told it is a policy question.

**An Hon. Senator:** Behind which bars?

**The Acting Chairman:** Are there other questions, honourable senators?

**Senator Hays:** Mr. Chairman, I move that we rise and report the bill.

**Senator Phillips:** Before we do so, do I not get any more explanation than that it is a matter of policy? Surely someone could answer that question for me?

**The Acting Chairman:** Senator Phillips, you ask of the witnesses—who cannot discuss policy properly for this committee, and we all recognize that—why the penalty is as harsh as it is in a certain section. Could you rephrase your question to comment on the character—

**Senator Phillips:** May I add to that, then, that at the next meeting we have an answer to the question? I realize that the witnesses are not in a position to do that, but we could have someone who could have an answer available at the next meeting.

**Senator Beaubien:** The Minister of Justice? I hope you get it.

**The Acting Chairman:** The next time that we are in a position to ask policy questions of a witness, at this committee, would be a satisfactory time for you to repeat your question.

**Senator Phillips:** I would be perfectly happy with that, and at our next meeting perhaps we can have some answer.

**Senator Quart:** Mr. Chairman, if all the business has been finished, may I end on a "thank you" note to Mr. Cohen and Mr. Thorson and the other gentleman who set me straight on one point?

**An Hon. Senator:** Were you going off the straight and narrow?

**Senator Quart:** Do not tease! I am not an economist or a learned person who could comment on this, and I did not dare bring it up this morning. However, I may be good for the economy of the country; I spend money. These gentlemen took a few minutes out this morning. I waylaid them in the corridor to ask about charitable donations and donations to churches, because a group of women asked me yesterday to ask and I really had cold feet this morning and did not ask, until I got these gentlemen alone—

**An hon. Senator:** Alone?

**Senator Quart:** There is safety in numbers, gentlemen! There were four of them, and I wish to thank them very much.



**The Acting Chairman:** Were you satisfied with the answers?

**Senator Quart:** Very.

**Senator Cook:** I do not know that the members of the committee want to come back again tonight and if there are no other matters of substance to be dealt with, I would move that we report the bill without amendment.

**The Acting Chairman:** Before we entertain that motion, Senator Cook, if you do not mind, I think Senator Everett, who spoke to me, has something to contribute.

**Senator Everett:** It was merely the motion on the recommendation in respect of corporate surpluses and ministerial discretion.

**The Acting Chairman:** You would like to see it included in the report?

**Senator Everett:** That is right—if that course is agreeable to the members of the committee.

**The Acting Chairman:** I would entertain Senator Cook's motion first, to make the proceedings tidy, so that we will know exactly what we are doing.

It is moved by Senator Cook that the bill be reported without amendment.

**Senator Martin:** Mr. Chairman, may I speak to that, by way of query? Do we not have to have a report?

**The Acting Chairman:** I will come to that in a moment.

Those in favour of the motion will please signify in the usual way. Please hold your hands up until the clerk has done the counting.

Those against will please signify in the usual way.

I declare the motion carried.

Now, honourable senators, as is our custom here, we prepare a report in writing for approval of the committee. Normally, what has been done is that the chairman asks for approval of the committee to consult with the committee counsel to prepare that document, and then we submit it to the committee. Would it be satisfactory to the committee if we adjourned for half an hour and then brought back to the committee the form of words for a report, for approval by the committee before we submit it to the Senate?

**Senator Everett:** Before we adjourn, I should like to make my motion.

**The Acting Chairman:** Certainly. Go ahead.

**Senator Everett:** My motion is as follows:

The Committee recommends to the Minister of Finance and the Minister of National Revenue as follows:

(1) A method be found to deal with the problem of the distribution of corporate undistributed income accrued subsequent to December 31, 1971 similar to the method proposed in Bill C-259 for dealing with corporate undistributed income accrued prior to January 1, 1972.

(2) That the Minister of National Revenue give binding advance rulings on a written set of facts as to:

(a) the exercise of ministerial discretion under the Income Tax Act;

(b) whether a receipt would be an income receipt or a capital receipt under the Income Tax Act.

**The Acting Chairman:** What you are moving is that those words be included in the report made by this committee?

**Senator Everett:** No, as a recommendation to the Minister of Finance and the Minister of National Revenue.

**Senator Isnor:** Did you say "binding"?

**Senator Everett:** The minister already gives binding rulings, Senator Isnor. That is an accepted practice.

**The Acting Chairman:** Senator Everett, am I to understand that what you would like here is the approval of this motion by the committee, but not to have the wording of the motion included in the report made by the committee to the house?

**Senator Everett:** I would like it in the report, I suppose. I do not see what is wrong with it.

**The Acting Chairman:** Our counsel tells me that he did not think that was your intention.

**Hon. Mr. Phillips:** If you desire it as a motion and it be passed, it is an independent item, but it can be included in the report, if you so desire.

**The Acting Chairman:** Would you like to have it not as a motion but included in the report? If so, would you give us the document that you have and we will include it in the report?

**Senator Grosart:** Mr. Chairman, on a point of order: Senator Everett has moved a motion. It will then be up to the committee to decide whether or not to include that in its report, just as it would with any other motion.

**The Acting Chairman:** Even that is satisfactory.

Those in favour of Senator Everett's motion, please signify in the usual way.

**Senator Everett:** It is not a serious point. I am prepared to withdraw the motion if the committee agrees to let it go forward as part of the recommendations in the report.

**Senator Grosart:** The committee cannot agree at this time.

**The Acting Chairman:** Not until it hears the report.

**Senator Everett:** Very well. If we vote on the motion, we will get an answer, so I will let the motion stand.

**Senator Buckwold:** Under paragraph (A), in which you are asking for a report on undistributed surplus similar to the legislation of 1971, is not that too rigid in its application?

**The Acting Chairman:** Why don't you ask the witness?

**Senator Buckwold:** You are indicating it should be done at 15 per cent.



**Senator Everett:** No, it could be described as "similar in method". I did not have a rate in mind.

**Senator Buckwold:** What worries me is the nature of the wording and the fear of an ad hoc decision on these things. I am worried, with all respect, about three items which I am very much in favour of, and that instead of being part of this report they be again referred for further study to this committee so they can be properly worded.

**Senator Everett:** I have already shown the material to Mr. Thorson, and we have gone over the wording of the recommendation.

**Senator Cook:** It is only a recommendation anyway.

**Senator Everett:** It is a recommendation which will be fully understood by the minister and may or may not be acted upon, but it is a serious problem and it is going to be a continuing problem, and I think it should be brought to the attention of the minister. I am prepared to stand or fall on the motion.

**The Acting Chairman:** Those in favour of Senator Everett's motion will signify in the usual way.

Thirteen.

Those against Senator Everett's motion will please signify in the usual way.

One.

I declare the motion carried.

**Hon. Mr. Phillips:** Senator Everett, I take it that if the chairman and his counsel come to the conclusion that the substance of this motion be not included in the recommendations we will be framing for a report, you will not take it amiss that it was not included in the report now that you have it on the record?

**Senator Grosart:** I do not think we should anticipate what the committee will do.

**Senator Everett:** I think it should be part of the report.

**The Acting Chairman:** Is it agreed that we should adjourn now and take recess for half an hour to reassemble in this room at 20 minutes to 6?

**Hon. Senators:** Agreed.

The committee adjourned.

Upon resuming at 5.45 p.m.

**The Acting Chairman:** Will the committee please come to order.

**Senator Grosart:** Is this being held in camera, Mr. Chairman?

**The Acting Chairman:** No.

You have asked Hon. Mr. Phillips and myself to provide a report on the proceedings of the committee, and we are suggesting the following for the consideration of the committee:

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred the Bill C-259, An Act to amend the Income Tax Act and to make certain provisions and alterations in the statute law related to or consequential upon the amendments to that Act, has, in obedience to the Order of Reference of Saturday, December 18th, 1971, examined the said Bill and now reports the same without amendment.

Your Committee, however, considers it urgent that the following observations be made.

As a result of a reference to your Committee by the Senate on September 14, 1971, your Committee considered the Summary of 1971 Tax Reform Legislation and the Bill based thereon, being Bill C-259, which Bill received first reading in the House of Commons in June. The present Bill C-259, although amended in part, is in substance substantially the same Bill which received first reading in June in the House of Commons.

As this Committee's first preliminary report states—"your Committee has heard a number of representations and has received a number of written submissions on the proposed legislation." As a result of its deliberations and studies your Committee submitted to the Senate its First Preliminary Report on November 4th, 1971, its Second Preliminary Report on November 30th, 1971, and its Third and final Report on December 13th, 1971.

These Reports include a series of recommendations for suggested amendments to Bill C-259. In approving this Bill today this Committee reiterates with the greatest possible emphasis that the recommendations for changes in the Bill as contained in these Reports, are of continuing importance and relevance.

Your Committee further recommends to the Minister of Finance and the Minister of National Revenue the following:

- (1) That a method be found to deal with the subject-matter of the distribution of corporate undistributed income accrued subsequent to December 31, 1971, in a manner similar to the method proposed in Bill C-259 for dealing with corporate undistributed income accrued prior to January 1, 1972; and
- (2) That the Minister of National Revenue give binding advance rulings on a written set of facts as to:

- (a) The exercise of ministerial discretion under the Income Tax Act; and
- (b) As to whether a receipt would be an income receipt or a capital receipt under the Income Tax Act.

Your Committee is aware that the House of Commons has at times questioned the right of the Senate to amend legislation designed to impose taxes. Without discussing that issue in any way, your Committee nonetheless is of the view that the compendious context of the Bill urgently calls for a series of amendments which will clarify and simplify certain sections thereof and excise others.

In view of the statements made by the Minister of Finance before your committee on December 13 and this day, your committee confidently expects that the Government will give meaningful consideration to the recommendations of your committee in respect of Bill

C-259 in amending legislation to be presented to the House of Commons as soon as possible in 1972.

It is therefore expected that the Government will give intensive and meaningful attention to the views expressed herein having regard to the important role that the Senate of Canada has played and is playing in the Government of this country as one of its two constituent parliamentary chambers.

"Respectfully submitted," blank, "Acting Chairman".

**Senator Cook:** That is pretty good.

**Senator Beaubien:** I think it is good.

**Senator O'Leary:** No, Mr. Chairman, I beg your pardon. It should be stated in this report to the Senate, which will be printed in the press tomorrow morning, that the motion to report the bill without amendment was carried on division. I think it must be made clear that we did not agree to report this bill at this time.

**Senator Belisle:** And it was in vain that we wasted our time today.

**Senator Martin:** I understand that is never done.

**Senator O'Leary:** Never done?

**Senator Martin:** No.

**Senator O'Leary:** It is as well to create good precedents as to follow old ones.

**The Law Clerk:** It is not customary; I have never heard of it.

**Senator Grosart:** There is a rule, in effect by indirection, against a minority report. It is not quite clear.

**The Law Clerk:** No, it is ambiguous.

**Senator Grosart:** The rule says that it shall contain the report of the majority, but I see no reason why it should not be stated in the report that it was not unanimous.

**The Law Clerk:** May I suggest that the report could be adopted on division?

**Senator O'Leary:** I would accept that.

**Senator Martin:** For instance, you refer to the advice given by the Minister of National Revenue as a binding set of rulings. That is quite different from the statement of the Minister of National Revenue, which was that advice would be given in anticipation. It is not necessarily binding, is it, Mr. Phillips?

**Senator Grosart:** These are two different matters.

**The Chairman:** I would like to deal, first of all, with the question of whether or not we should reflect in the report the fact that the motion was passed on division. What is the feeling of the committee in that respect?

**Senator Martin:** What is your view, in your long experience, Mr. Chairman?

**The Acting Chairman:** It has not been done before, but that does not bother me very much.

**Senator Martin:** Even on division?

**The Acting Chairman:** No, we have never actually done it. As a matter of fact, Senator O'Leary, in commenting on the report or at the third reading stage you could always indicate that the motion was passed on division.

We are in the hands of the committee, which is the master of its own decision.

**The Law Clerk:** That is correct.

**Senator O'Leary:** Is this debatable when the report is presented?

**The Acting Chairman:** Yes.

**Senator O'Leary:** I am satisfied as long as I have the opportunity to state to the country that we did not unanimously in this committee decide to pass this report at this time.

**The Acting Chairman:** That is your undoubted right.

**Senator O'Leary:** Leave it to me; I will do it.

**Senator Phillips:** Mr. Chairman, I do not know why it is necessary to insert a sentence dealing with the historical argument between the Senate and the House of Commons with respect to the Senate's right to deal with a money bill. I do not think that question was raised at any time in these deliberations and I wonder why it is necessary.

**The Acting Chairman:** We did raise it. The whole tenor of Senator Hayden's dealings has been because of that. I am not too sure that generally it is understood to be one of the facts of life in the Senate. I thought, as did Senator O'Leary who says you have to bring this out, that we can do it effectively in a report such as this. At least, that is what my counsel advises.

**Senator Beaubien:** Senator Hayden has always maintained that we can amend.

**Senator Grosart:** I agree with Senator Phillips. I cannot see that it is in any way germane to this report that we should argue that which never came up in committee.

**The Acting Chairman:** Yes, it came up this morning.

**Senator Grosart:** I was here and did not hear it. The point is that we have an appropriation bill which comes to us with the consent of the Senate. Why should we worry about that in this report?

**Senator Martin:** Senator Connolly, you are an experienced man. You must have had good reason. What was in your mind?

**The Acting Chairman:** I was thinking only of the constitutional position of the Senate and not entering the debate, to say that without discussing that issue at this time your committee is of the view that the bill does call for a series of amendments. We are prepared to see it done, as a result of the minister's statement to us, through the House of Commons rather than through a direct amendment from here. In other words, it is to avoid a clash between the two houses of Parliament. However, if it is not the type of



recommendation that the committee would now like to make to the house, we could say this—

**Senator Martin:** I think it is a very wise thing for the Senate.

**Senator O'Leary:** Were we asked to express our opinion on this?

**Senator Beaubien:** No.

**Senator Martin:** But do we not want to support the proposition?

**Senator Phillips:** It is not in our terms of reference.

**Senator Beaubien:** I think the Senate passed the bill without amendment because it felt that delay would be a bad thing. I think that was the idea of the Senate majority in its willingness to pass the bill. I do not doubt for one moment that had we received the bill at the beginning of the month we would have inserted the amendments we thought we should have in the bill.

**The Acting Chairman:** The Honourable Mr. Phillips and myself are not married to this form of wording, but we have had to do things pretty fast since we returned to the committee.

**Senator Grosart:** I am sure that Senator Hayden would not like it. He has said on many occasions that had we received this bill in time we would have sent back amendments.

**Senator Goldenberg:** Would the Acting Chairman again read that short section?

**The Acting Chairman:** I will read it first without the words which we are now discussing:

nonetheless your committee is of the view that the compendious context of the bill urgently calls for a series of amendments which will clarify and simplify certain sections thereof and excise others.

The words which we propose to strike out are:

Your Committee is aware that the House of Commons has at times questioned the right of the Senate to amend legislation designed to impose taxes. Without discussing that issue in any way.

Is it the committee's desire to remove those words?

**Senator Phillips:** I would so move.

**Hon. Senators:** Agreed.

**Senator Martin:** I can see the great wisdom in that statement.

**The Acting Chairman:** We can, of course, raise this question in debate on third reading.

**Senator Grosart:** I should like to raise one small point.

**The Acting Chairman:** Before you do so, I want to make sure that I have the wording correct. It will read:

nonetheless your Committee is of the view  
et cetera.

**Senator Grosart:** I think that when you read the word "context", you meant content, compendious content.

**Hon. Mr. Phillips:** It could be both. I am guilty of the word "context".

**Senator Grosart:** It is the compendious content that worries us, not the context.

**The Acting Chairman:** We will therefore eliminate "x" and put in "n".

**Senator O'Leary:** What is "compendious" in doing that?

**Hon. Mr. Phillips:** Do we want that out?

**Senator O'Leary:** I do not see what it is there for.

**The Acting Chairman:** It is agreed:

that the compendious content of the Bill urgently calls for a series of amendments.

**Senator Grosart:** Content and context.

**Hon. Mr. Phillips:** We would then leave out the word "compendious".

**The Acting Chairman:** It will read "content and context", and we leave out the word "compendious".

**Senator Lafond:** It seems to me that earlier the acting chairman used the word "substantially" for the words "in substance".

**Senator Grosart:** I was going to raise that point.

**The Acting Chairman:** I noticed that when I was reading. Give me a moment to find it.

**Senator Goldenberg:** It is right near the beginning.

**Senator Martin:** Could you read that paragraph, Mr. Chairman?

**Senator Grosart:** You said it was substantially the same bill. I do not think your friends would like that very much.

**Senator Martin:** The Senate has been able to facilitate many changes in this bill.

**The Acting Chairman:** Shall we take out "in substance" or "substantially"?

**Senator Goldenberg:** Take out "substantially".

**Senator Martin:** Does that take into account the changes that have been made in the bill?

**Senator Grosart:** It is not the same bill. Who is kidding who?

**The Acting Chairman:** I think it puts us clearly on the side of people who feel—

**Senator Grosart:** The angels.

**The Acting Chairman:** —people who feel substantial amendments, certainly along the lines recommended by this committee, should be recommended.



**Senator Grosart:** They have already made quite a number of amendments. I do not recall what the number is.

**Senator Martin:** Look at the changes they have made in the White Paper. The fact is that there are eight Senate proposals that have been accepted with respect to this bill.

**Senator Grosart:** The minister stated there were 44 changes made.

**Senator Martin:** That is on the White Paper. I am talking about the bill.

**The Acting Chairman:** Senator Martin, with all due respect, I believe, in the deliberations of the committee today, we did not extract from the officials the details of those eight amendments to which you referred. I do not think we should tie ourselves down to those eight amendments.

**Senator Grosart:** It surprises me, Mr. Chairman, that we should start off a discussion with three possible amendments coming out of Senator Everett's motion—and a good motion it was—without referring to the priority items. I feel there should be a clear reference in this report with respect to the fact that this committee still feels that these nine top priority items should be dealt with and are going to be dealt with.

The way it reads now, we go right into three things which are quite narrow, and it gives the impression that those are all we are worried about.

**The Acting Chairman:** I would suggest, Senator Grosart, that that is covered in the subsequent paragraph which reads, in part:

In view of the statements made by the Minister of Finance before your Committee on December 13th and this day, your Committee confidently expects that the Government will give meaningful consideration to the recommendations of your Committee in respect of Bill C-259 in amending legislation to be presented to the House of Commons as soon as possible in 1972.

**Senator Grosart:** I would like to see us use the phrase, because I think it adds substance to our report, "top priority items". That is in our Report No. 3.

**The Acting Chairman:** In drafting this clause, Senator Grosart, what I was concerned with was that it would be clear that all of the recommendations proposed by the committee should receive top priority consideration.

**Senator Martin:** Mr. Chairman, is this not a private meeting at this stage?

**The Acting Chairman:** No.

**Senator Grosart:** That has always been the case when we are discussing the report of a committee.

**The Acting Chairman:** Perhaps it should be a private meeting.

**Senator Martin:** There are members of the other house present and we also have members of the press here.

I think it should be a private meeting.

**The Acting Chairman:** Well, I would ask members of the press and other strangers to retire until we complete this report.

I would ask the gentlemen of the press to observe the amenities in this respect, and to consider that they have been sitting in on an *in camera* meeting.

**An Hon. Senator:** Mr. Chairman, are you suggesting that the two members of Parliament are strangers in this house?

**Senator O'Leary:** This thing is going to sound like a *Toronto Star* editorial by the time we are finished.

**Senator Grosart:** I think you had better leave it the way it is, Mr. Chairman. If any harm has been done, it has been done.

**Senator Phillips:** Mr. Chairman, may I ask why, considering the means we have for photostating, each of us could not have had a copy of this in front of us?

**The Acting Chairman:** It was just impossible to do it in the time we had, senator.

**Senator Isnor:** And the staff had already gone home.

**The Acting Chairman:** Honourable senators, with these changes, is it agreeable?

**Hon. Senators:** Agreed.

**The Acting Chairman:** I am afraid that the typing of this document cannot be completed in time for presentation to the Senate this evening, unless we are prepared to sit at a later time.

**Senator Cook:** It is now past 6 o'clock, so we have to wait until 8 o'clock anyway, I believe. Perhaps Senator Grosart could tell us; he knows all the rules.

**The Acting Chairman:** The Senate has to reassemble in order to adjourn for the day. Perhaps Senator Martin would give an indication. Is it the intention to reassemble the Senate now, and then adjourn?

**Senator Martin:** I think we have to meet and adjourn, and then we will assemble at 2 o'clock tomorrow.

**The Acting Chairman:** Then the report will be prepared in time for the meeting of the Senate tomorrow afternoon. At 2 o'clock tomorrow?

**Senator Martin:** At 2 o'clock.

**The Acting Chairman:** Is there a motion for adjournment?

**Senator Langlois:** I so move.

**Senator Martin:** I should like to move a vote of thanks to the chairman, to our former colleague the Honourable Mr. Phillips, and to Senator O'Leary.

The committee adjourned.





THIRD SESSION—TWENTY-EIGHTH PARLIAMENT  
1970-71

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON

## BANKING, TRADE AND COMMERCE

The Honourable JOHN J. CONNOLLY, P.C., *Acting Chairman*

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No. 53

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FRIDAY, DECEMBER 31, 1971

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First Proceedings on Bill C-176

intituled:

“An Act to establish the National Farm Products Marketing  
Council and to authorize the establishment of national  
marketing agencies for farm products.”

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(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Hayden
Argue	Hays
Beaubien	Isnor
Belisle	Lafond
Benidickson	Lang
Bourget	Langlois
Buckwold	* Martin
Choquette	McElman
Connolly ( <i>Ottawa West</i> )	Molgat
Cook	Molson
Desruisseaux	O'Leary
Everett	Phillips
* Flynn	Quart
Goldenberg	Sullivan
Grosart	Walker
Hastings	Willis

\* *Ex officio members*

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 31, 1971:

A Message was brought from the House of Commons by their Clerk with a Bill C-176, intituled: "An Act to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products", to which they desire the concurrence of the Senate.

The Bill was read the first time.

The Honourable Senator Hays, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*) that the Bill be read the second time now.

After debate,

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Molgat, that further debate on the motion be adjourned until Tuesday, 11th January, 1972.

The question being put on the motion,

The Senate divided and the names being called they were taken down as follows:—

## YEAS

### The Honourable Senators

Argue,	Grosart,
Bélisle,	McGrand,
Benidickson,	Molgat,
Fergusson,	Phillips,
Forsey,	Sparrow—10.

## NAYS

### The Honourable Senators

Aird,	Hays,
Basha,	Lafond,
Bourget,	Langlois,
Bourque,	Lapointe,
Connolly	Lefrançois,
(Ottawa West),	Martin,
Davey,	McElman,
Duggan,	McNamara,
Fournier	Michaud,
(de Lanaudière),	Petten,
Goldenberg,	Stanbury—21.
Hastings,	

So it was resolved in the negative.

Debate was resumed on the motion of the Honourable Senator Hays, P.C., seconded by the Honourable Senator Fournier (*de Lanaudière*), for the second read-

ing of the Bill C-176, intituled: "An Act to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products".

The debate was interrupted, and—

The Honourable the Speaker having put the question whether the Senate do now adjourn during pleasure to reassemble at the call of the bell at approximately two o'clock p.m., it was—

Resolved in the affirmative. 1.15 p.m.

The sitting of the Senate was resumed. 2.05 p.m.

After further debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hays, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

With leave,

The Senate proceeded to Notices of Motions.

With leave of the Senate,

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C.:

That the names of the Honourable Senators Argue, Hastings and Molgat be substituted for those of the Honourable Senators Burchill, Gélinas and Giguère on the list of Senators on the Standing Senate Committee on Banking, Trade and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
Clerk of the Senate.

# Minutes of Proceedings

Friday, December 31, 1971.

(69)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 3:45 p.m. to examine and consider Bill C-176 intituled:

"An Act to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products."

*Present:* The Honourable Senators Aird, Argue, Belisle, Benidickson, Bourget, Connolly (*Ottawa West*), Goldenberg, Grosart, Hastings, Hays, Lafond, Langlois, Martin, McElnan, Molgat and Phillips—(16).

*Present, but not of the Committee:* The Honourable Senators Davey, Duggan, Fergusson, Forsey, E. E. Fournier, S. Fournier, Michaud, McNamara, Petten, Sparrow and Stanbury—(11).

*In attendance:* Mr. R. L. du Plessis, Acting Parliamentary Counsel.

In the absence of the Chairman and upon motion duly put, it was Resolved that the Honourable Senator Connolly (*Ottawa West*) be elected Acting Chairman.

*The following witness was heard:*

The Honourable H. A. Olson, Minister,  
Department of Agriculture.

*Present, but not heard:*

Mr. S. D. Williams,  
Deputy Minister,  
Department of Agriculture;

Mr. C. R. Phillips,  
Director General,  
Production and Marketing Branch,  
Department of Agriculture.

It was Moved by Senator Hays that the Bill be reported without amendment.

It was Moved by Senator Molgat, in amendment, that the Committee adjourn to a subsequent date.

After discussion both the motion and the motion in amendment were duly withdrawn.

At 6:30 p.m. the Committee adjourned until 11:00 a.m. Thursday, January 6, 1972.

ATTEST:

Georges A. Coderre,  
*Clerk of the Committee.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Friday, December 31, 1971.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-176, to Establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products, met this day at 4.45 p.m. to give consideration to the bill.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, the honourable H. A. Olson, the Minister of Agriculture, is present. Is it your pleasure that the minister come forward and discuss the bill?

**Hon. Senators:** Agreed.

**Senator Grosart:** We very much appreciate the presence of the minister. I am sure that he will not want to stay too long. I move that we receive a statement from the minister and then adjourn until an appropriate time in order to continue our proceedings. It is rather late in the afternoon to attempt to discuss the bill, and it is New Year's Eve. It seems to be a fairly general feeling that there are other witnesses whom we should call, at which time perhaps the minister might make himself available.

**Senator Martin:** The minister is familiar with the background of the debate, and we may wish to ask him some questions, particularly with regard to procedure.

**The Honourable H. A. Olson, Minister of Agriculture:** Mr. Chairman, I do not have a prepared statement, but I will be happy to make an opening statement with regard to the provisions of Bill C-176.

**Senator Benidickson:** As amended?

**Hon. Mr. Olson:** As amended and amended and amended.

Mr. Chairman, the history of Bill C-176 is based on a determination by both levels of government, provincial and federal, to try to find the means, under Canada's Constitution, whereby we could set up a legal structure, and the administrative machinery within that legal structure, to deal effectively with the marketing problems which have been faced by agriculture over a long period of time.

As honourable senators know, the federal Government has not assumed that it has constitutional jurisdiction to deal with intraprovincial trade in agricultural products. Further than that, the Government has never assumed that it has the power to deal with production controls or quota allotments based on that kind of jurisdiction within

a province, whether the product were to move in intra- or interprovincial trade.

The consequence of this, in historical terms, has been that the provinces have set up marketing legislation in their respective provinces under their legislative competence. That is now true of all of the provinces of Canada. Their experience has been that while they have the constitutional right to make laws, rules and regulations respecting intraprovincial trade and to do other things to achieve that purpose, they do run into severe difficulties with respect to interprovincial trade as a result of these marketing boards either having failed to co-ordinate their efforts or, indeed, having failed so far to have it set up under a national scheme to which both levels of government could delegate their authority.

That, Mr. Chairman, is briefly the basis on which we have brought this bill before the Parliament of Canada. This bill has been carefully drawn so that we do not make any attempt to invade provincial jurisdiction in so far as law-making is concerned, but it has also been carefully drawn to make sure that the administrative machinery that is set up under the provisions of Bill C-176 is capable of both receiving and administering delegated powers from both levels of government in order to achieve the purposes that I outlined some time ago.

Part I of the bill, that is, clauses 3 to 16, are those sections that set up the National Farm Products Marketing Council, which shall have the power to inquire into the merits of establishing a marketing plan, that give them the right to do market research, and all other such things, to determine whether or not they wish to recommend to the minister and to the Governor in Council whether or not a market agency for specific commodities should be established.

There are other clauses that deal with marketing agencies themselves, but I should say very briefly that the National Farm Products Marketing Council, that will be in some respects overseeing all of the specific commodities agencies, is not permitted to recommend to the minister or to the Governor in Council that a marketing agency be established unless it is able, by a positive indication, to say that there is majority support of the producers of the particular commodity for the establishment of that agency.

There are, of course, clauses dealing with such things as the requirement to hold public hearings; this is dealt with in clauses 8, 9 and 10. Clauses 11 to 16 deal with the organization of a National Farm Products Marketing Council. Clause 17, in Part II of the bill, deals with what the Governor in Council is required to do before issuing

the proclamation setting up a marketing agency and the plan that it will administer. You will note in clause 17 that the Governor in Council must be satisfied that a majority of the producers of the farm product, or each of the farm products, in Canada is in favour of such an agency. Subclause 2 of clause 17 deals with the manner in which the Governor in Council shall determine whether a majority of the producers is in fact supporting the establishment of an agency.

**Senator Martin:** May I ask a question? What is the exact position of the provinces with respect to this bill? Senator Hays, in his excellent presentation today, stated that it was the wish of the provinces to have this bill passed. Can you tell us if this is in fact so?

**Hon. Mr. Olson:** I have sent for my file so that I can read it verbatim, but in the meantime I will try to recite it from memory.

**Senator Benidickson:** Some of us are particularly concerned about how the provinces feel about the amendments which came down yesterday and this morning, and their attitude to them.

**Hon. Mr. Olson:** I will deal with it from memory. At the meeting held in Ottawa on November 25 or 26 the provinces recognized the urgency, if I may put it that way, and the essential need for national enabling legislation. They went on to say, in the communique that was agreed to by all of the ministers, that if we were to amend the bill in a way that would require further action on the part of Parliament naming the commodities, that is, with the exception of poultry and poultry products, to be included in the bill, they would then urge the speedy passage of this bill. I did ask unanimous consent of the other place to introduce such an amendment to clause 18, and I received that consent. It was amended there yesterday to that effect.

**Senator Martin:** Mr. Minister, may I ask you this, pending the arrival of your notes containing the verbatim position of the provinces: Is it a fact that this bill, with its amendments, represents the wish of the nine provinces, subject to the one reservation of the Province of Manitoba?

**Hon. Mr. Olson:** Yes, sir.

**Senator Martin:** Is that unmistakably the position?

**Hon. Mr. Olson:** Yes, sir. For Manitoba, the minister, Mr. Uskiw, made it clear that Manitoba had a reservation. They had no reservations about the provisions that are in the bill. His one reservation was that there should be another amendment to the bill, which would require unanimous consent of all of the provinces for each marketing plan. My reply to him is that if you put it around the other way, that will also give each province a veto on each marketing plan, whether or not they were a significant producer of the commodity involved, and I informed him that I was not willing to accept that. In fact, the other provincial ministers were not willing to accept that either.

**Senator Bélisle:** May I ask a supplementary question to Senator Martin's? If you have this, have you got it in writing from the nine provinces, and was it as of this morning, when the alleged statement came out in the other place?

**Hon. Mr. Olson:** I think I can give you an unqualified "Yes" to that question, because I will give you the exact text of the communiqué that was agreed to by all provincial ministers. I am sure you will agree with me when you read the qualification to Bill C-176 that they put on an endorsement of that bill, recommending speedy passage, and that the amendment you have respecting clause 18 does in fact meet the request of the qualification in that communiqué.

**Senator Forsey:** That is subclause (3), is it?

**Hon. Mr. Olson:** Of clause 18?

**Senator Forsey:** Of clause 18.

**Hon. Mr. Olson:** Yes.

**The Acting Chairman:** It is the new subclause added to clause 18.

**Senator Forsey:** That appears to be subclause (3).

**The Acting Chairman:** Yes, that is right.

**Senator Grosart:** May I ask you a further supplementary question, Mr. Minister? We have had some discussion of the effects of clause 2(c)(ii). Does this mean that a province or provinces can veto a national scheme?

**Hon. Mr. Olson:** No, sir.

**Senator Grosart:** What does it mean, then, when it says that any other natural product and any part of that product is not a farm product within the meaning of the act unless there is a declaration by the provincial governments?

**Hon. Mr. Olson:** If you would not mind, Mr. Chairman, I will try to explain the meaning of the whole of that subclause.

As you can see, "farm product" for the purposes of Part I—which is clauses 3 to 16, that is, the functions of the council—means any natural farm product or any part thereof. Of course, that will be set out from Day 1 of the proclamation of this act.

After that, paragraph (c)(i) puts eggs and poultry in that category, so that there does not have to be a further declaration from the province.

Then, paragraph (c)(ii) says "any other"; so in regard to any natural product of agriculture, other than eggs, and poultry, and any part of any such product, that would be capable of being defined as a farm product under this interpretation clause, the Governor in Council would have to be satisfied, as a result of a declaration of provincial governments, following plebiscites or otherwise—and here I want to point out that we must not tell the provinces how they can determine this—that the majority of the producers thereof in Canada is in favour of the establishment of this agency. My interpretation would be, first of all, if we were going to set up a national marketing agency for the commodity involved, that we would have to be satisfied that the majority of the producers in Canada were in agreement.

It does not require that each individual province should make that declaration that they were willing to delegate their legislation.



**Senator Grosart:** It seems to state very clearly that it must be as a result of declarations by provincial governments—to become a farm product.

**Hon. Mr. Olson:** Yes.

**Senator Grosart:** To come within the definition of a farm product. This is part of the definition section. This clause would seem to say that one of the conditions is a declaration by provincial governments.

**Hon. Mr. Olson:** That is right. I think it says two or more governments.

**Senator Grosart:** No, it says by provincial governments.

**Hon. Mr. Olson:** Yes.

**Senator Grosart:** Does this mean that there must be two provincial governments to make this declaration?

**Hon. Mr. Olson:** Mr. Chairman, there would be no need to set up a marketing agency under the national legislation if there were but one province which wished to have it within that province—because, of course, clearly this would be within its own jurisdiction. So it has to be two or more, or there would be no need for the national legislation to apply.

**Senator Grosart:** Yes, but what I am asking, Mr. Minister, is this: Is a declaration by a provincial government a requirement or condition before one of these other products can be described as a farm product within the meaning of the act?

**Hon. Mr. Olson:** For purposes of this act, yes.

**Senator Grosart:** This is a fundamental change in the bill.

**Hon. Mr. Olson:** I would like to comment on that, very briefly.

**Senator Grosart:** Perhaps I should have said, "Is it a fundamental change...?"

**Hon. Mr. Olson:** It is not a fundamental change in the bill because there are other clauses that require the Governor in Council to be satisfied that a majority of the producers of that product—

**Senator Grosart:** Yes.

**Hon. Mr. Olson:** So what it is really doing is stating again what has been stated in the bill, in other places.

I refer you to clause 17(2), which was in the bill for several months, that the Governor in Council, in order to determine whether a majority of producers of a farm product are in favour of establishing an agency, may request that each province carry out a plebiscite of the said producers. That says they may request a plebiscite. But if there is this declaration, other than by plebiscite—and we cannot impose our rules on the provinces—it is essentially the same meaning.

**Senator Grosart:** But it has to be a declaration which is not technically a part of the bill until this amendment is made.

**Hon. Mr. Olson:** No.

**Senator Goldenberg:** May I say that Senator Grosart is rather confused by the word "declaration"? Does not this word "declaration" really mean a report of that provincial government that a vote has been taken and that the result is such and such?

**Senator Grosart:** It means a declaration.

**Senator Goldenberg:** It means, as a result of the plebiscite.

**Senator Grosart:** It says "a plebiscite or otherwise".

**Senator Goldenberg:** "Or otherwise" means if there is no plebiscite.

**Senator Grosart:** But there must be a declaration by provincial governments—more than one—before anything other than eggs or poultry is a farm product within the meaning of the act. That is all I am concerned with.

**Senator Martin:** Could we just have the answer to that?

**Hon. Mr. Olson:** I have already answered yes to that. The other part of the question was whether this was something new in the act, and as far as I am concerned it is not.

**Senator Grosart:** "May" in clause 17 has now become obligatory. It was "may" before, but now it is an obligation.

**Senator Martin:** That is a matter of interpretation.

**Senator Goldenberg:** They both remain in effect because of the "or otherwise".

**Senator Grosart:** No, the "or otherwise" refers only to the alternative to the plebiscite.

**Senator Langlois:** No, it refers to the requesting of the plebiscite alone. Nothing else.

**Senator Phillips:** Mr. Chairman, as a supplementary, may I have a definition of the word "otherwise" when it comes my turn for questioning? And while we are on this clause, I wonder why the word "otherwise" has been included in here.

**Hon. Mr. Olson:** Mr. Chairman, the basic reason is that it is not competent, so I am advised, for the federal Parliament to pass laws that impose instructions or conditions on how the provinces administer law that is passed within the competence of their legislature. When you ask what is the definition of "or otherwise", there are three provinces in Canada, Quebec, Prince Edward Island and Alberta, that require a vote before they can set up any marketing agency under their own legislation. There are six provinces that have written their legislation in such a way that they can set up a marketing plan and an agency with or without a vote. Those provinces are Manitoba, Saskatchewan, Ontario, New Brunswick, British Columbia and Nova Scotia. The three that require a vote are Quebec, Prince Edward Island and Alberta.

So they have other means of determining whether there is a majority, and whether we agree with it or not in this case is irrelevant, because I do not believe we have the right to tell them how they should determine this. They do



it by public hearings. They do it by many means that are not strictly defined as a plebiscite.

**Senator Molgat:** Mr. Chairman, "producer" is defined by the province in every case.

**Hon. Mr. Olson:** Yes.

**Senator Molgat:** And can vary substantially from province to province.

**Hon. Mr. Olson:** Well, that is right. It does at the present time, Mr. Chairman, for the purposes of the provincial legislation. But remember that, if we set up a national farm marketing agency, all of the provinces will have to agree to the same plan—the marketing plan for the commodity. The provinces have already indicated that, if they are all going to delegate their legislation—and the definition of "producer" is, of course, done by regulation in any event for the various commodities,—they would have to agree to the plan that would be applied nationally. If that was done, then, of course, it would be uniform across the country.

**Senator Molgat:** But that would be after the plan was in effect.

**Hon. Mr. Olson:** Yes.

**Senator Molgat:** The decision to go into the plan would be made by producers defined by the province.

**Hon. Mr. Olson:** I think that it might be possible to define for the purposes of the National Farm Products Marketing Council something much different, but I have to draw to your attention here that there are different regulations in different provinces respecting the depth to which a marketing plan might go—that is, if it goes for a commission or if it goes for a one-desk selling agency, or if it goes even farther where it sets quota production, and so on. If we set up a marketing plan which the provinces may tentatively agree to, they would also have in some cases an obligation to go back to their producers if they intend to increase the powers of a marketing agency. And so I think that by the time we got to the point where we had a draft plan that was more or less tentatively agreed to, that we would use the terms and conditions laid down in that plan for other things, but more specifically for the definition of a producer so that the vote would be applied uniformly.

**Senator Molgat:** But in clause 2. (c)(ii), when you get a declaration from the province, that declaration is based on the definition that that province has established at that point what a producer is. When the province comes to you and says, "By plebiscite or by some other means, we say to you that the majority of our producers are in favour," the "majority of producers" means as defined by that province.

**Hon. Mr. Olson:** I would think that that is probably technically correct, but I should also draw to your attention that there is a great deal of work which the National Farm Products Marketing Council will do prior to having reached that position that you are now talking about, and that is where you take the vote. The National Farm Products Marketing Council has, of course, power to make inquiries and to do research and to do a lot of things to

determine whether or not they wish to recommend that favourable consideration should be given to a plan. And, of course, the Governor in Council, or the Minister as a representative of the Governor in Council, would set in motion other requirements under this act, and one of them would be to devise a marketing plan which is provided for in clause 2 (e), where it says:

(e) "marketing plan" means a plan relating to the promotion, regulation and control of the marketing of any regulated product . . .

And then it goes on in the other subsections and says that the marketing plan may do such things as is the determination of those engaged in the growing or production of the regulated product. And of course this would constitute the electorate or the voters' list, if you like. As I said, I think that once we had a marketing plan, and all the provinces were going to subscribe to it and it included the definition of producer, then it would be uniform across the country.

**Senator Molgat:** But that again would be after the plan was in operation?

**Hon. Mr. Olson:** Not necessarily, and in fact I think it would be very unlikely that that would be the case. There is an exception to that, of course. I suppose, for example, that where they already have provincial marketing plans that have been voted and supported by the producers, and they already have a full-scale marketing plan in each province, it may be possible under those conditions for us to put together a plan that would simply co-ordinate the operations of those already there.

**Senator Molgat:** What would be the situation if there were three provinces, for example, opposed to the plan and the other seven were in favour, and those seven constituted a majority of producers?

**Hon. Mr. Olson:** If the seven constituted a majority of producers, that would satisfy the requirement under the amended clause 2(c). But here is a situation where we have to have the National Farm Marketing Council use some judgment and discretion. Certainly there is no point in embarking on a national farm marketing agency if there is enough of the product outside of the jurisdiction of the agency to bring about a high chance of failure before it started. So some discretion is required, and what I have consistently said throughout the public debate going on for many months concerning this is that if there was a province which did not wish to join the plan but was at the same time a significant producer in terms of the national production of the commodity that I would be very reluctant, if I did not completely refuse, to move forward with that plan until all of the provinces who had significant production of that commodity in question were agreeable.

I do not think that can be spelled out any more rigidly than that. We hope the Farm Products Marketing Council will exercise a certain amount of discretion in these matters.

**Senator Molgat:** But if a decision were made, there would be no opting out.

**Hon. Mr. Olson:** Clause 39 provides for opting out by a province.

**The Acting Chairman:** That is the dissolution of an agency in respect of which an order has been made.

**Hon. Mr. Olson:** Yes. That is right, but clause 32, which deals with federal-provincial agreements, provides that a province making an arrangement or entering into a contract for a period can designate the length of time for which they will delegate their authority and be party to such agreement. The province can put a terminal on it, as is the case with any other agreement or contract.

**Senator Molgat:** That is not how I read clause 32, which indicates the possibility of the federal Government making an arrangement with a province.

**Hon. Mr. Olson:** Mr. Chairman, if the province withdraws its delegated authority under its provincial jurisdiction, that is the power to deal with intraprovincial trade, market and production controls, then, of course, the function of the national agency is dead in that province.

**Senator Molgat:** Could that province market as it wishes? Would there be quotas, and could it sell throughout Canada?

**Hon. Mr. Olson:** The federal Government exercises that jurisdiction.

**Senator Molgat:** For example, if there were a hog marketing board established and the Province of Saskatchewan did not wish to participate, it would be free to produce all the hogs it wished and sell throughout Canada?

**Hon. Mr. Olson:** No, it could without signing the agreement, of course, and I suppose it would be given some access to its traditional market. That is included in another clause. In this example, if Saskatchewan would not sign an agreement but there was a majority and an overwhelming quantity of hogs produced in Canada subject to agreement, that province then could and would, perhaps, be given access to its traditional markets on the same basis as other provinces when that product was sold into other provinces.

**Senator Molgat:** But that is not written out in the bill.

**Hon. Mr. Olson:** Well, I am not sure what you mean by, "It is not written out in the bill." This act, of necessity, is based on an agreement to agree. If there is not an agreement to agree, then obviously we have to do the best we can to try to put some kind of marketing plan together, bearing in mind the various interests and the sovereignty and jurisdiction of provinces, which is like putting many pieces together.

**Senator Phillips:** I am not sure whether I understood the minister correctly. Senator Molgat has raised a very important point. If one province, which we will call Province A, has a surplus of hogs, and it then decides to withdraw from the marketing council, is that province free to ship into Province B which is still under the marketing plan?

**Hon. Mr. Olson:** I do not believe that the other provinces and the federal Government would agree to allow a province to wreck the marketing plan, but I think they would

probably have access to the market place for their traditional supply.

**Senator Benidickson:** But the traditional supply may be responsible for the general chaos in the market.

**Senator Phillips:** How do you relate that to section 121 of the BNA Act, if the province is exercising its right in interprovincial trade?

**Hon. Mr. Olson:** I think the honourable senator is asking for a legal opinion on the Constitution of Canada, which I am not sure that I am competent to give.

**Senator Martin:** But you are competent to give to the committee details of what the provinces wired to you.

**Hon. Mr. Olson:** I will have to be guided by the Acting Chairman.

**The Acting Chairman:** I think the agreement was that the communiqué would be put on the record.

**Senator Benidickson:** It is not a telegram; it is a communiqué. Senator Martin referred to a telegram.

**Hon. Mr. Olson:** It is a communiqué that was issued following a meeting of provincial Ministers of Agriculture and the federal minister. Would the committee like me to read it in toto? It is dated Ottawa, November 23, 1971.

**The Acting Chairman:** Would the committee like to have the entire communiqué on the record?

**Hon. Senators:** Agreed.

**Hon. Mr. Olson:** It reads as follows:

Agreement was reached today by the federal and provincial Ministers of Agriculture on the principles necessary to establish policies and programs aimed at assisting Canada's rural areas and provide improved opportunities for low income farm people.

These principles draw upon basic documents prepared by the Canada Department of Agriculture and upon the report by the provincial ministers presented to the federal minister in Ottawa on November 22.

The agreement includes principles which take into account the social as well as the economic aspects of the rural sector.

Principles include provisions to enable farm people to more readily acquire the land and capital resources essential to improving their income. In addition, improvement will be made in existing information and advisory programs. Programs to be developed will aim primarily at assisting small family type farms.

Further details of the program providing minimum acceptable levels will be developed immediately by a joint federal-provincial technical committee. Individual provinces will then be able to enter specific agreements with the federal Government in accordance with the particular needs of farm people in that province. Such agreements will be within an agreed national framework.

Administration of the program by federal and provincial agencies within a province will be carried out



on the basis of the agreement and the program will be under continuing review by an advisory group drawn from federal and provincial officials.

The group also focussed attention on the immediate need of some producer groups for national marketing agencies including supply management systems for poultry to allow them to meet the demands of the market place and avoid the disastrously low prices resulting from surpluses. There was majority agreement that legislation was necessary to provide the legal framework for a coordinating agency and to ensure speedy passage of bill C-176. It was suggested that amendments be made to ensure that supply management features of the bill were not provided to producers of commodities other than poultry and poultry products without a new amending bill. In effect this would provide the opportunity for poultry and poultry product producers to utilize all features of the bill while other commodity producers would only have available to them, without further parliamentary action, the non supply management features of the bill.

It was noted that the Canada Grains Council has a study well under-way on the pricing of feed grains in Canada. When the report is available ministers will consider whether further study is required to arrive at a recommendation on equity of treatment across Canada.

Related problems including price stabilization, export development, farm and rural credit and the impact of low priced imports were discussed extensively and it is planned that further consultation be held next month to formalize proposals in these areas to ensure a strengthening of Canadian agriculture and to improve producer income.

**Senator Benidickson:** Would you mind re-reading the section which you feel indicates that any changes made yesterday are not incompatible with the communiqué?

**Hon. Mr. Olson:** The significant part of the communiqué which deals with that is as follows:

There was majority agreement that legislation was necessary to provide the legal framework for a coordinating agency and to ensure speedy passage of Bill C-176. It was suggested that amendments be made to ensure that supply management features of the bill were not provided to producers of commodities other than poultry and poultry products without a new amending bill. In effect this would provide the opportunity for poultry and poultry product producers to utilize all features of the bill while other commodity producers would only have available to them, without further parliamentary action, the non supply management features of the bill.

**Senator Argue:** When was that communiqué issued?

**Hon. Mr. Olson:** November 23, 1971.

**Senator Argue:** And we are still having speedy passage!

**Senator Bélisle:** I asked you a question a while ago supplementary to Senator Martin's question and you

answered an unequivocal "yes". Did you only have the communiqué in mind when you answered my question, or did you have something else in mind? I believe my question was, "As of this morning, do you have something in writing?"

**Hon. Mr. Olson:** I think your question related to whether the provinces were satisfied that the two amendments passed last night in the other place were compatible with the wishes of the provincial government. I think that is what you asked. I answered, "Yes" to that question, because the request that is made here by way of the amendment is, I think, completely satisfied by the two, and I think it is fair to say the only two, amendments of significance that were made last night.

**Senator Sparrow:** I am not a constitutional expert, although we have some here. The minister has mentioned a couple of times that we cannot impose our rules on provinces, and that we have not the constitutional right to say how a province determines what its producers' wishes are. I think that is what he said. If that is what you said, and if that is what you meant, how can you relate that, when you that Parliament cannot dictate to the provinces? How in clause 2(c)(i) in the same bill can we dictate at this time that eggs, poultry and any part of such product can be in that. If paragraph (i) can be in that constitutionally, why cannot paragraph (ii) be constitutional as well, to say that it must be a plebiscite?

**Hon. Mr. Olson:** What clause 2(c)(i) says is that a farm product for the purposes of this bill is eggs, poultry and any part of any such product, and there is no qualification to that. That is all it says.

**Senator Sparrow:** So are we not then dictating to the provinces that those items are in it, regardless of how it is determined? They do not even have the right to determine.

**The Acting Chairman:** I would gather from the communiqué that the provinces wanted those two. They agreed.

**Senator Sparrow:** But the communiqué is not law. This bill happens to be law, if it is passed. I am concerned with the fact that the words "or otherwise" are in the bill. The minister used the word "impose". If we can impose paragraph (i) without a vote or any decision by the provinces, such as by legislation, why can we not impose the same thing, that a plebiscite be held in each province?

**The Acting Chairman:** I think what the minister is saying is that in respect of eggs and poultry the provinces have delegated, and for that reason the federal authority is assuming jurisdiction. It is part of an interprovincial agreement. In respect of the other, they write it quite differently to take into account the position, and the undoubted jurisdiction, of the provinces.

**Senator Phillips:** You say it is an agreement, Mr. Chairman. Has that agreement been tabled in Parliament at any time?

**Hon. Mr. Olson:** No. The communiqué has been tabled.

**Senator Phillips:** There is no reason why Parliament should not see the federal-provincial agreement. Why the secrecy? Why cannot we have it tabled?



**The Acting Chairman:** I do not think there is any question of secrecy, if you are taking that from what I said. All I said was that there was agreement. I did not say that there was a written agreement, and it is obvious from the communiqué that there is agreement, a meeting of minds between the federal and provincial ministers of agriculture. And that is as far as I would like to take it.

**Senator Phillips:** I do not think it is a signed agreement, then.

**Hon. Mr. Olson:** If I may answer that, Mr. Chairman, I do not know how you can have a signed agreement with the Government of Canada, which receives its authority from Parliament, before Parliament gives the authority under which it could enter into such an agreement.

**Senator Sparrow:** On the "majority of producers" aspect in (ii) again—and Senator Molgat touched on this—that is the basis on which each province will determine what a "producer" is. There may be an area in Canada, for example, in cattle, where they could produce a number of cattle, a greater extent in numbers, with less producers. So an area could supply the greater number of animals on the market, with less producers. How do you relate that to the "majority"?

As an example, if a province said that under its provincial regulations a "producer" would be one who has two animals on his farm, or 12 on his farm, at such-and-such a date, then you might have, in theory, 30,000 of those, or whatever the case may be, in an area, "producing". You might have 30,000 head of cattle and half of them would be owned by many producers, as against a few producers of 50,000 head of cattle. This would be the concern. I would suggest, for areas that are heavy producers in any commodity, where it is the lifeblood of the country that is involved.

**Hon. Mr. Olson:** Mr. Chairman, I am advised that all the provincial legislation calls for one man one vote. What they do from there on is to set out what qualifications are necessary for a man to vote. Once he has that qualification to vote, there is no further distinguishing between the weight of that vote. It is one man one vote. In some provinces, the requirement is that they sell \$500 worth of the commodity in an area. In other places it is so many hogs and they must have so many acres of potatoes, whatever it may be.

I would not like to repeat what I have said—unless you wish me to do so—about the marketing plan. It is the responsibility of the national farm council to inquire into the merits of establishing a marketing plan for a commodity. Once they have done that and are recommending to me, as the minister—and of course also to the Governor in Council—that a marketing plan should be established, then we would have to go to the provinces and work out this marketing plan. As I pointed out, that marketing plan can, and in my view would be, applied uniformly across the country. That marketing plan would define or specify the qualifications on who is to vote. Just to use round figures, supposing they said you need to have 20 head of cattle or 100 head of cattle, and that that is applied uniformly across the country—even if a man is qualified to vote, because he has the minimum requirements for a

vote, he does not get more than one vote because he has twice as many cattle.

**Senator Sparrow:** Mr. Chairman, may I pursue that for a moment? Assuming that that producer was someone with a thousand head of cattle, that would mean restricting it in certain areas of Canada with a great many producers. If the reverse were true, that they said ten head of cattle, then you relate it to the area of production, so that the production of a few producers then exceeded the production in another area with a lot of producers than would otherwise be the case. The bill says it is the "majority of producers". It is the importance of that market or that commodity to an area.

**Hon. Mr. Olson:** Mr. Chairman, I do not think that we can get into a position—nor would I like to get into a position either—where we distinguish between the votes of individuals. I am talking about people. Once they are qualified to vote it is one man-one vote. But in the area that you are talking about, where it may be significant, certainly all the people in that area would have a vote providing they had the minimum qualifications for a vote.

**Senator Fournier (De Lanaudière):** Mr. Chairman, although I am not a member of the committee, may I be permitted to make one little remark?

**The Acting Chairman:** Certainly.

**Senator Fournier (De Lanaudière):** A moment ago Senator Sparrow suggested that we were imposing something. We are not here to impose our will. Everybody is free. It will be the common desire or vote of the committee. I do not like the word "impose". If it becomes the law, it will be the law of the land. I am not prepared to accept that I am an imposer. Of course, I am not a member of the committee and what I say would have effect only in the Senate, but I should like Senator Sparrow to revise that expression.

**The Acting Chairman:** I believe Senator Sparrow was referring to the imposition of the view of the federal Government upon the provincial authority. I think the minister has corrected that point. He said that the desire was not to ride roughshod, even if the federal authority had the constitutional right to do so, but to co-operate and to fit in with the schemes of the provinces. Is that fair, Mr. Minister?

**Hon. Mr. Olson:** Yes.

**Senator Fournier (De Lanaudière):** I am happy with that.

**Senator Goldenberg:** Mr. Olson, was this legislation discussed with representatives of farm organizations and others?

**Hon. Mr. Olson:** Yes, sir, very extensively with hundreds of organizations.

**Senator Goldenberg:** With all of the principal organizations?

**Hon. Mr. Olson:** Yes, sir.

**Senator Martin:** Mr. Olson, in the light of the reply you have just given to Senator Goldenberg, am I right in saying that there was a parliamentary committee that

went among the farm organizations and ascertained their opinions?

**Hon. Mr. Olson:** Yes, sir. There was a parliamentary committee that sat for hundreds of hours. The figure was given for so many hundreds of hours, but I am not sure how many it was. They held extensive meetings here in Ottawa over quite a long period of time. In addition to that they held hearings in Halifax, Quebec City, Ottawa, Toronto...

**Senator Martin:** And Windsor?

**Hon. Mr. Olson:** I am not sure about Windsor, but they held hearings in Winnipeg, Regina, Edmonton and Vancouver.

**Senator Argue:** What year was that?

**Hon. Mr. Olson:** 1971.

**Senator Argue:** When did they finish those hearings?

**Hon. Mr. Olson:** I think the travelling hearings were completed in February of 1971.

**Senator Phillips:** And you found unanimity and support for the bill, of course!

**Hon. Mr. Olson:** No, I would not say we found unanimity for all the clauses of the bill, but I think it would be a fair statement to say that the major farm organizations, and I am talking now about the national ones like the Canadian Federation of Agriculture and the National Farmers Union and several others, agreed with the principles and concept of the bill and generally with the bill itself. We have stacks of telegrams from these organizations asking that it be passed, but there are, of course, some details that they made recommendations on, and we have tried very sincerely to reconcile the many conflicting recommendations to come up with the most acceptable bill possible.

**Senator Phillips:** Have you heard from the National Farmers Union today?

**Hon. Mr. Olson:** No. I have heard through the press, but not directly.

**The Acting Chairman:** Are there any other questions of the minister at this time?

**Senator Martin:** What I am concerned about, Senator Olson,—I mean Mr. Olson. I keep wanting to promote you, and I hope it will come to you after your continuous period of good service—is this: we have from you now the view that the provinces want this legislation.

**Hon. Mr. Olson:** Yes, that is right.

**Senator Martin:** And we have from you a statement that there has been an exhaustive committee examination of this bill by the other house of Parliament. We have the third statement that the amendments to this bill represent likewise the wish of the nine provinces, in fact of the 10 provinces with the exception of the one reservation that Manitoba makes.

**Hon. Mr. Olson:** Yes.

**Senator Martin:** Now what is your timetable? You have heard the debate today and you have heard the desire of senators to make an examination of the bill. How do you see your schedule in relation to the problems that face the provinces? For instance, in my province, and I suppose this is true of all the others, the Government would have to enter into arrangements with farm organizations, and this would be quite an extensive thing. We are meeting at an unusual time of the year, as did the other house, and all of us, regardless of our position, are actuated by the best of all possible motives; in other words, we want the best legislation possible. But what is your timetable? I ask that so that we can address ourselves to that in the light of our own situation.

**Hon. Mr. Olson:** Mr. Chairman, I will try to answer that question. It is very difficult to be specific that there is some critical date. As far as I am concerned, that critical date is somewhere behind us, because there has been a great deal of financial suffering in some commodity groups, and in this case particularly the poultry, eggs and turkey producer group, because we have been unable so far to accommodate them by setting up a national marketing agency. But at this point in time with every day that passes this continues to be the case, and as I said, or at least as I am advised, the producer organizations in all ten provinces respecting eggs, for example, have come to an agreement, but they do not have any legal structure on which to formalize and administer that agreement until this bill is passed. There is a further complication with respect to your province, Senator Martin, and that is that they are now in the final stages of attempting to obtain the majority producers' support that this bill talks about.

If I may put it in very concise terms, the public debate indicates that the Province of Ontario would probably wish to enter into a marketing arrangement provided they were satisfied that it would be administered on a national basis. They are not, however, so sure that they would wish to do that if it were to apply only to Ontario and not on a national basis. It is therefore critical that we can say to the producers of egg and poultry products, not only in Ontario, but particularly Ontario because of the timing, that if they come to an agreement with respect to a marketing agency we at least have the legal structure on which we are prepared to sign an agreement with them and the other provinces who have also agreed.

As I said, the provinces have indicated to me, if I may rephrase what they said, that they wish to see speedy passage of Bill C-176. I realize that was a month ago, but its urgency is just as acute today, if not more acute than it was then. I realize that the attempt to achieve, first of all, majority producer support, then agreements from the provincial and federal jurisdictions, involves many pieces which have to go together as a result of negotiation and agreement.

It therefore seems to me that if we are at that point in time at which there is a very high level of agreement and disposition to enter into a satisfactory arrangement, every day that passes is damaging to a very large part of the rural and agricultural sector of the economy.

**Senator Benidickson:** With respect to the question of urgency, when you answered Senator Martin you put first



the question of poultry and eggs. I am no farmer, but I am a consumer. I recall some months ago the papers contained many reports with regard to the chaos in this particular production field. I have not heard of it recently, but I know I am paying higher prices for all poultry products. I therefore wonder if it has settled down? There do not seem to be bargain prices for those products such as there were at a certain point in time. What has happened in the meantime?

**Hon. Mr. Olson:** There has been a kind of gentlemen's agreement, if you like, among the provinces in an endeavour to hold down some of this surplus production.

**Senator Benidickson:** Was it dumping?

**Hon. Mr. Olson:** It was to hold down the surplus production so that there were not great quantities of surplus eggs and broilers on the market at disastrously low prices. As a consumer, you probably refer to them as bargains, but it is a disaster to the farmer producing them. The federal Government took action on two occasions to assist in this situation. In July, for example, we entered into a program under which we brought 50,000-30-dozen cases of eggs. We took them off the market, dried them and included them in our world food program. That took some of the pressure off the market. It did not raise the price, but it helped the situation from becoming all the more disastrous.

On November 1, I announced a fowl slaughter program which hopefully would have taken off another 320,000 to 350,000 fowl, which would otherwise be recycled and put back into the laying pens. That was not so terribly successful, I have to admit. We hoped that if we could reduce production by something like 3,000 to 5,000 cases per week, we would stabilize the market to some extent.

These three things—the kind of agreement to stop cutting each other's throat, the program where whereby we took some of these eggs and put them in the world food program, and the fowl slaughter program to accelerate that slightly—have worked together to stabilize the situation somewhat.

I have to say that I am very, very fearful about what could develop two or three months ahead unless we are able to give legal status to the agreement which seems to have been reached.

**Senator Argue:** I am interested particularly in the role that farmers and farm organizations will play in this. I notice that the proposed council is to have between three and nine members. Perhaps the minister is in a position to tell us whether the number is likely to be three or nine. In other words, will the proposed council be as broad as nine might make it, or as narrow as three might make it?

**Hon. Mr. Olson:** There will be three to start with. There may be more, but there will have to be at least three.

**Hon. Mr. Argue:** Of which two will be farmers?

**Hon. Mr. Olson:** The bill says producers. I would be extremely anxious to obtain three highly competent people in this field immediately.

**Senator Argue:** Do you have anyone in mind?

**Hon. Mr. Olson:** Obviously we have done some canvassing of the prospects. Perhaps one commodity, such as poultry, might be enough to start with. However, let us assume that potatoes were to come in. They may not be very far behind poultry, and certainly I would want one person on the council who was thoroughly familiar with the marketing of potatoes. The council would expand in proportion to the number and variety of commodities that came in. I am sure that Senator Argue realizes that there is quite a significant difference in the marketing of various products that might come in. In other words, farm products are certainly not all marketed in the same manner.

**Senator Argue:** The proposed council seems to have an enormous amount of power, but it seems to me that there is not necessarily adequate assurance that the voice of the producers will be well represented. I know that could be argued.

**Hon. Mr. Olson:** The majority of them would be producers. We start out from that point. The National Farm Marketing Council is then responsible to the minister, the minister is responsible to Parliament, and the honourable senator knows to whom Parliament is responsible. There is a chain there. It is pretty important that the producers' interest be paramount.

**Senator Argue:** The word itself would denote a much larger body than this. I would have thought there would have been some formula whereby there was greater assurance that the producers themselves, in a fairly direct way, would be represented. So it will not be misunderstood I am in favour of the bill as it stands, in my opinion, a great deal of progress has been made, but, nonetheless, as a farmer I would like to see a greater voice at the grass roots level.

Correct me if I am wrong in my interpretation of this . . .

**Hon. Mr. Olson:** May I just say one thing?

**Senator Argue:** Yes.

**Hon. Mr. Olson:** I just want to make the point that the agencies themselves will be operating the marketing plan, and here again there is a requirement for a majority of producers on the board of each agency. There is a double situation where you must have 50 per cent of the producers on the council and you also must have 50 per cent or a majority, is the word that is used, of persons on the agency itself.

**Senator Argue:** What I was going to refer to was the clause that deals with advisory committees of the agencies. I must admit I get mixed up with all of the draft bills that we have received. I marked the earlier one because it was the only one I had, until this later one came in, and they are not exactly the same. In any event, in the one which was passed by the House of Commons last night, at page 19, subparagraph (g), it states:

For the establishment of consultative or advisory committees—

that is of the agencies.

. . . consisting of members of the agency or persons other than members or both; . . .



That would suggest to me, right off hand, that this provision is for the agency to be adviser to the agency, because members of the advisory committee can be members of the agency.

It would seem to me that if it were to be an independent advisory committee they would need to have members of the agency on the committee. I may be wrong in my interpretation.

**Hon. Mr. Olson:** Mr. Chairman, we have a number of these consultative or advisory agencies set up at the present time. For example, we have one with the Wheat Board; we have one with the Canadian Dairy Commission; and we have one with the . . .

**Senator Argue:** You have one with the Eastern Feed Board.

**Hon. Mr. Olson:** Yes. On every one of them there is one member of the agency who is also a member of the advisory committee, and they sit with them. We put them in there so that one of them, either the chairman or someone designated by him, could sit with the advisory committee. However, it is one member of the agency only. For example, the Chairman of the F.C.C. sits with the advisory committee, but all of the others are producers.

**Senator Argue:** If that is what it means, then I have no objection. As it is, it seemed to me that the agency was advising the agency. The other part I question is as follows:

. . . consisting of members of the agency or persons other than members or both; . . .

It would seem to me that it might have been advisable to spell out that these would be representatives of producers or farmers or farm organizations, or whatever you want to call them. In other words, this would be a grassroots voice in an advisory capacity to the agency, rather than, as it would seem to me, giving the agency the power to select its own advisers, subject to the veto of the council.

**The Chairman:** Who else could they get?

**Senator Argue:** You would be surprised. They might load it with packers or directors of banks.

**Hon. Mr. Olson:** Mr. Chairman, there is certainly a great need and desire to have producers on these agencies. I am sure Senator Argue would agree with me that if we are going to set up advisory committees to marketing agencies it might be extremely useful to have someone who was competent in marketing, maybe domestically, maybe internationally, and so on.

**Senator Argue:** In the council, you said, they will be producers, but in the advisory agency it is left wide open. I would think you might strengthen it from the producers' point of view if it read a little differently.

**Hon. Mr. Olson:** I can assure you that has been the result of those committees that have been set up.

**Senator Molgat:** Mr. Minister, you referred a number of times to the vote after a plan is established. There is no provision that there must be a vote. The provision that I see is that you may ask for a plebiscite, but a plan could be

set up simply if enough provinces indicate to you that they are in favour, and that this represents the majority of producers. Is that not correct?

**Hon. Mr. Olson:** I am not quite sure I get the gist of the timing of your question.

**Senator Molgat:** Let us assume that a sufficient number of provinces, say eight provinces, give you a declaration that the majority of their producers are in favour of a plan, and this represents the majority of the producers in the industry in your view, it can then proceed without a vote; the plan can be set up, can it not?

**Hon. Mr. Olson:** Three provinces—Quebec, Prince Edward Island and Alberta—cannot, because they require a vote under their own law. That varies, too. Quebec requires a 66 2/3 per cent majority; so does Prince Edward Island; Alberta requires a 51 per cent majority. I want to be practical here. If you try asking me to show you the exact legal terminology in the bill that calls for this, I will find it difficult.

Here is the sequence of what would happen. In the first instance, the provinces would come to the National Farm Marketing Council and suggest that they think there ought to be a national farm marketing plan for, let us say, potatoes. The council is required to inquire into the merits of that, to look into it and have proposals, and perhaps do some work on drafting a marketing plan that could be operated. That is about as far as that would go up to that point. If it were subsequently determined that the national council wanted to recommend that to the Governor in Council, I think the provinces would go back and, by agreement, look at the marketing plan that was proposed to be agreed to. They would apply the rules that were set out in that proposed marketing plan to their own situation within that province, including what you are concerned about, which is the definition of who can vote, the qualification of who can vote.

It would be at that point, which would be several stages after the initial consideration was taken into account, that they would then apply the terms and provisions of the proposed marketing plan in establishing whether the majority of those producers gave their approval. At that point, as I said, I am relatively certain that the provinces will have to agree that they are going to apply essentially the same criteria as other provinces in making that determination. Here we get into some difficulties about my trying to say, either in statutory law or otherwise, what exactly then provinces have to do, because they have to agree to agree. But once they have agreed to what the marketing plan is going to be, or the tentative marketing plan is going to be, then it would be my opinion that that would be applied uniformly in those provinces, and they would have to apply the same criteria in that uniformity.

**Senator Hastings:** The concern in the west is largely from the red meat producers. There seems to be agreement in so far as poultry and eggs are concerned. The people concerned in livestock groups, the cattlemen, have not seen these agreements, obviously. These came out during the course of yesterday's debate, did they not?

**Senator Argue:** They are part of the bill.

**Hon. Mr. Olson:** I do not think they saw the exact wording, but the representation that we have seen, is that they were aware that the provinces had made this representation some time ago, I am fairly sure.

You see, there is a difference of opinion here, I think, on what was in the bill prior to these two amendments going in last night. I have stated, and I am still of the same opinion, that in practical application of the law, what those two amendments do, with one or two exceptions, is a repetition of what was in the bill before.

I do not wish to try to mislead you in any way that all of the qualifications as to "a farm product" were in it, but I am saying that when you get to the point of setting up an agency all these steps would have to be taken in any event.

There is one difference in the amendment to clause 18, that is, it requires a further action by the Parliament of Canada to name a commodity after all the other measures have been taken. That was not in there before, but that means we have to bring in an amending bill, naming the commodity, and put it through both houses of Parliament, if we want "supply management" as a feature of the program.

**Senator Hays:** I wish to preface my question with an observation. It is only a little less than eight years ago that we had something like 450 million pounds of butter in Canada, with millions of pounds of powdered milk, and so on. The fact that this has been agreed to is, I believe, sufficient. I would like to move that we rise and report the bill without amendment.

**Senator Bélisle:** I object.

**Senator Phillips:** I object.

**The Acting Chairman:** I have a motion from Senator Hays, that the bill be reported without amendment.

**Senator Argue:** I wish to say a few words. It would be a great mistake to pass this motion, certainly with the minister here. He has been very competent and I wish him all the success in the world. He told us that the last time the farm organizations were heard was February of this year. We were told that by various people—not by the minister.

**Hon. Mr. Olson:** I do not want to leave any misunderstanding. I said, when the committee was travelling.

**Senator Argue:** Was that the last time the committee heard the farm organization representatives?

**Hon. Mr. Olson:** No. There have been meetings since then.

**Senator Argue:** I do not think they were heard for some months. I think this is one of the questions being asked. I do not believe the farm organizations have been heard for some months, and I believe the amendments before us are exceedingly important. I have not heard anything yet that would suggest that if this bill is not passed today this whole thing is going to collapse. I think there is a gentleman's agreement, based on speedy progress, speedy passage of required legislation. I think the Senate could bring about the speedy passage of this legislation after some further sessions of this committee, and after we have made the bill available to farm organizations and hear

them, if they wish to be heard. Therefore, I feel that we would be doing a great disservice to the Senate and to the country by shutting off our deliberations by this means at this time.

**Senator Phillips:** Mr. Chairman, in the course of my remarks this afternoon I left out certain portions of my notes. Perhaps unwisely I accepted the word of the Leader of the Government in the Senate that we would be able to ask questions, that we would have all the time we wanted here, and that we would be in the hands of the committee. We have not been in here long enough to even hear a statement from the minister. And now we get a closure motion. It is absolutely ridiculous, and it is a double-cross of the worst kind.

**The Acting Chairman:** It is in the hands of the committee. There is no closure.

**Senator Martin:** No, there is no closure.

**Senator Phillips:** If there is no closure, then why the motion?

**The Acting Chairman:** Any member of the committee is entitled to move a motion at any time and the committee will decide it.

**Senator Forsey:** There are several of us who have questions to ask. I have two questions of importance that I want to put. I am simply staggered by this motion.

**Senator Phillips:** It is a double-cross of the meanest kind.

**The Acting Chairman:** Well, it is open to any member of the committee to amend the motion, if he so desires.

**Senator Molgat:** In the course of the debate this afternoon there was some feeling that the debate should be adjourned to some time next week or to some other date. From further discussion I understood that a compromise was reached and that Senator Langlois was prepared to move a motion that this committee adjourn to some time probably next week. At that stage I was not a member of this committee, and that is why he did that. But once I became a member of the committee Senator Langlois indicated to me that he expected me to do so.

**Senator Hays:** Mr. Chairman, if there are more questions, I would be glad to withdraw my motion.

**Senator Martin:** I would think so at this stage. It is difficult for me at this time because I am a colleague of Mr. Olson's, but this Senate is trying to do its job. It has spent a lot of time today in a general debate. It has this bill before it now. Obviously, the senators, as you can sense from their remarks, are anxious to have a full examination of this bill. If it could be established by you, Mr. Olson, now, that this bill must be passed now or there will be a disaster, then there is no doubt in my mind what senators would do. But some of them wish to have the opportunity of further examination of certain situations.

Can you help us in this, Mr. Olson?

**Hon. Mr. Olson:** Mr. Chairman, perhaps this will be a slight repetition of what I said a few moments ago, but my view is that a great deal of urgency has been expressed by



the Government, and by the governments of all ten provinces, but to put a date on which a disaster will occur if the bill is not passed and so on is not possible. I do know that there is a serious situation for producers of poultry. That situation applied to other provinces as well, but I confine my remarks solely to poultry for the moment because they are at the stages where they have advised me that they are ready to sign an agreement, if they can have the legal structure under which to do so. The situation is that they have suffered a great deal financially over the past few months. You know about the "chicken and egg war" as well as I do. With every day that passes there is going to be more damage to the industry.

I wish to say also, and I say it very sincerely, that I am fearful of agreements breaking down as more and more time passes. We have seen this happen in international agreements where there has not been an overall co-ordinating agency that has been agreed to. Inasmuch as the poultry producers are at that stage at least, they have been telephoning, wiring and telegraphing me and coming in to see me almost every week, pleading with us to try to do something to get this legal structure so that they can get on with the agreement they have been waiting weeks for.

The fault obviously is not with the Senate. This bill has not been to the Senate until today. The fault for that holdup lies elsewhere, as you all know very well.

**Senator Martin:** It certainly does not lie here.

**Hon. Mr. Olson:** But the point is that the urgency that I see not only for the whole of the national marketing plan that could be set up now is one thing. I do not want to repeat the situation in Ontario, but in my view and in the view of the Minister of Agriculture and Food in Ontario that is also critical, and so I do not know how I am going to convince you, but I tell you my own opinion.

**Senator Martin:** I am not asking you to convince me. I am asking you to help me.

**The Acting Chairman:** Perhaps I might intervene at this moment. It is obvious to the Chair, at least, that there are a number of questions that a number of the members of the committee have to ask, and at this stage the question which I put to the committee is this: Is this the appropriate time to do so? In considering that I think it is fair to say to the minister that the Senate, certainly this committee, has no intention of introducing any protracted delay in connection with the consideration of this legislation. But there may be some delay that is required for senators to satisfy their responsibility as legislators in this country. That, I think, is the idea that motivates members of this committee. It may be that that can be satisfied very quickly, but perhaps not now. Senator Forsey's remarks seem to indicate that. So I think we have a motion before us that the bill be reported without amendment. I have not had any contrary motion or amendment.

**Senator Molgat:** I was in the process of proposing the amendment that has been discussed this afternoon in the Senate. I regret the minister was not in the gallery at the time of that discussion because he would have heard the views of the senators, as expressed at that time, and what was said by Senator Langlois. The amendment I wish to

propose is that the committee do not report but rather adjourn until Thursday, January 6.

**Senator Belisle:** I second that motion.

**The Acting Chairman:** There is no seconder required in committee.

**Senator Hays:** Mr. Chairman, if there are some more questions to be asked, I will be glad to withdraw my motion.

**Senator Phillips:** In support of Senator Molgat's motion, I am prepared to come back tomorrow or Monday, but I do not see how we can deal with it now. I have at least one hour's questioning of the minister, and I do not see how we can possibly come into a committee or ever accept the word of the Leader of the Government again if we are going to close . . .

**The Acting Chairman:** There is no question about that, Senator Phillips. I do not think you have to worry about that part. As to the question of the word of the Leader of the Government, I do not think we raise that here. Do not do that.

**Senator Hays:** I would be glad to withdraw the motion.

**The Acting Chairman:** Perhaps you would like to take a lead from the Chair on this point. Senator Molgat suggests Thursday.

**Senator Benidickson:** Senator Hays said he will withdraw his motion.

**The Acting Chairman:** I know, but Senator Molgat has an amendment. Let us take it that Senator Hays' motion is now withdrawn. Is that agreed?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Senator Molgat, perhaps you would now care to introduce a motion? I would like to suggest that you consider a Wednesday sitting because of the fact that the work week in Parliament ends on Friday. It is not desirable that the Senate be constricted by any time factor which would prevent adequate consideration.

**Senator Molgat:** As was discussed in the house this afternoon, Mr. Chairman, my only concern is to be able to contact producer groups in my province with respect to the new amendments. In view of the long weekend that a number of them will take, there may be problems in contacting them in time for a Wednesday meeting. On the other hand, I recognize the minister's legitimate request to deal with this as quickly as possible. I do not wish to delay any longer than is necessary. As far as I am concerned, Thursday would be more suitable. If the following Tuesday is preferred, I do not care.

**The Acting Chairman:** Do you move, Senator Molgat, that the committee rise now and reassemble at 11 o'clock in the morning on Thursday, January 6, 1972?

**Senator Langlois:** 2 o'clock in the afternoon.

**The Acting Chairman:** We have to ascertain if our star witness can be present. Would the minister be available on January 6 at 11 o'clock, or at 2 o'clock?



**Hon. Mr. Olson:** Mr. Chairman, I would have to cancel some meetings, but I regard the passage of this bill as so important that I will attempt to do that.

**The Acting Chairman:** So you will be here?

**Hon. Mr. Olson:** Yes, I will.

**Senator Phillips:** Mr. Chairman, with respect to the hour of the meeting, we should bear in mind that members of the other house will probably be returning for royal assent. Therefore I favour the committee meeting at 11 o'clock, with the hope and expectation that we could complete our study on that day.

**The Acting Chairman:** On Thursday? I do not think Senator Phillips, we can anticipate that, and I consider it to be a very chancy business. If the committee is of the opinion that we could start at 11 o'clock in the morning, the Chairman will be here and, I hope, a quorum of the committee. The questioning can continue and go on into the afternoon and evening, if you so desire.

**Senator Belisle:** Will we be permitted to invite outside witnesses?

**The Acting Chairman:** That is up to the committee. I do not think we will cross that bridge before we come to it.

**Senator Belisle:** If the committee decides it will not, what is the use?

**The Acting Chairman:** Perhaps the committee is in a position to make a decision now. However, I do not think so, because there are still questions to come.

**Senator Belisle:** Senator Molgat said he would like to invite other witnesses.

**Senator Langlois:** It should be pointed out that it has been the long-standing practice of Senate committees to accept requests of witnesses to appear. I see no reason to change this.

**Senator McElman:** Mr. Chairman, is it practical to suggest to the minister that between now and the next meeting of the committee he could perhaps contact the provinces? I ask because there seems to be doubt in the minds of some senators, and we would like confirmation that the amendments are not in conflict, in any sense, with the agreed protocol.

**Hon. Mr. Olson:** Mr. Chairman, I will certainly have my office make an attempt to do that. I am aware that some provincial Ministers of Agriculture are away on holiday. I do not believe that I can get an opinion from anyone other than the ministers that would satisfy the request, but we can try.

**Senator Forsey:** You told us how urgent this was. You have been telling us that the sky would fall in if the bill did not go through in jig time. Tell them the same thing.

**The Acting Chairman:** In fairness to the minister, he did not say that.

**Senator Forsey:** But that was the sense of it.

**The Acting Chairman:** That is not what the minister inferred.

**Hon. Mr. Olson:** In reply to Senator Forsey, I say to him, without qualification, that what is in the bill now before you has the endorsement of all the ministers.

**Senator Forsey:** Why did you not say that to Senator McElman just now?

**Hon. Mr. Olson:** That was not the question. He asked me if I would contact them again.

**Senator Forsey:** He said some of us were uneasy about this.

**Senator Benidickson:** I think we have to take the minister's word on this.

**Senator Martin:** Mr. Chairman, before you put the question, I would like both yourself and Senator Langlois to address yourself to this point. How long the matter takes is, of course, for the committee to decide. A moment ago Senator Phillips thought that we had to take into account the other place if we were going to have royal assent. Senator Langlois and I have to know whether we must recall the full Senate. What do we do? Has Senator Langlois an idea? The members of the committee are not sufficient in number to constitute a quorum of the Senate.

**The Acting Chairman:** Perhaps I can help the honourable senator to some extent. The Speaker has the authority to summon the Senate at will. I assume that the motion to adjourn today will be to a date in January, certainly after January 6. If the committee should finish its deliberations on the 6th, perhaps it would be appropriate to recall the Senate for the 7th.

**Senator Benidickson:** You would have to consult the officers of the other house. It does not matter when we are recalled.

**The Acting Chairman:** Certainly the other house will have to be recalled, but the other house has it within its power, by an order made this morning, to be recalled for royal assent.

**Senator Martin:** But the point made by Senator Phillips is very important. He thought that the proceedings might be finished on Thursday; but I do not think it is clear that that will be the case. Can we, in fairness, ask others to come here when they have no immediate business?

**The Acting Chairman:** I do not wish to give advice to the Leader of the Government, but depending upon the result of the committee's first day of sitting, a decision could then be taken as to when the Senate should be summoned.

**Senator Martin:** That would clearly mean that it would not be until the following week.

**The Acting Chairman:** Not necessarily.

**Senator Martin:** How could we sit unless it were on a Saturday?

**The Acting Chairman:** As I understand it, under the rule that the Speaker now works on, the Senate can be summoned at any time and there is no notice required.

**Senator Martin:** We would have to give adequate notice, but it is not only the Senate that is affected; the other place is also affected if this bill is going to be made law after it has been dealt with by the Senate.

**The Acting Chairman:** That is their responsibility, but between the two houses there could be an accommodation worked out. In any event, I feel this is beyond the purview of this committee. While we would like to help the Leader of the Government, I think that the way is fairly clear for him to decide on what steps he should take following whatever disposition is made of this bill by this committee.

**Senator Martin:** I must say, with great respect, that I do not think there would be any chance, unless we pass the bill quickly on Thursday, of our being able to provide royal assent before the following week.

**The Acting Chairman:** That may be.

**Senator Martin:** I want Mr. Olson to be aware of the implications of this. In my opinion, we would not be able to give royal assent to this bill before January 10.

**Senator Bourget:** We are at the call of the chairman.

**Senator Martin:** Yes, but the chairman might not know Thursday night what to do.

**The Acting Chairman:** Senator Martin, I think we are all sympathetic to your problem, but so far as this committee is concerned it cannot decide . . .

**Senator Martin:** I realize that, Mr. Chairman, but I am just seeking advice.

**Senator Phillips:** See me after the meeting, and I will give you advice.

**The Acting Chairman:** I will put the question to the committee. Shall the committee rise now and reassemble at 11 o'clock on Thursday, January 6, 1972?

**Hon. Senators:** Agreed.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT  
1970-71-72

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON  
**BANKING, TRADE AND COMMERCE**

The Honourable JOHN J. CONNOLLY, P.C., *Acting Chairman*

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No. 54

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THURSDAY, JANUARY 6, 1972

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FINAL PROCEEDINGS ON BILL C-176

intituled:

“An Act to establish the National Farm Products Marketing  
Council and to authorize the establishment of national  
marketing agencies for farm products.”

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REPORT OF THE COMMITTEE

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(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Hayden
Argue	Hays
Beaubien	Isnor
Belisle	Lafond
Benidickson	Lang
Bourget	Langlois
Buckwold	* Martin
Choquette	McElman
Connolly ( <i>Ottawa West</i> )	Molgat
Cook	Molson
Desruisseaux	O'Leary
Everett	Phillips
* Flynn	Quart
Goldenberg	Sullivan
Grosart	Walker
Hastings	Willis

\* *Ex officio members*

30 Members (Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 31, 1971:

"A Message was brought from the House of Commons by their Clerk with a Bill C-176, intituled: "An Act to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products", to which they desire the concurrence of the Senate.

The Bill was read the first time.

The Honourable Senator Hays, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*) that the Bill be read the second time now.

After debate,

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Molgat, that further debate on the motion be adjourned until Tuesday, 11th January, 1972.

The question being put on the motion,

The Senate divided and the names being called they were taken down as follows:—

## YEAS

### The Honourable Senators

Argue,	Grosart,
Bélisle,	McGrand,
Benidickson,	Molgat,
Fergusson,	Phillips,
Forsey,	Sparrow—10.

## NAYS

### The Honourable Senators

Aird,	Hays,
Basha,	Lafond,
Bourget,	Langlois,
Bourque,	Lapointe,
Connolly,	Lefrançois,
( <i>Ottawa West</i> ),	Martin,
Davey,	McElman,
Duggan,	McNamara,
Fournier	Michaud,
( <i>de Lanaudière</i> ),	Petten,
Goldenberg,	Stanbury—21.
Hastings,	

So it was resolved in the negative.

Debate was resumed on the motion of the Honourable Senator Hays, P.C., seconded by the Honourable Senator

Fournier (*de Lanaudière*), for the second reading of the Bill C-176, intituled: "An Act to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products".

The debate was interrupted, and—

The Honourable the Speaker having put the question whether the Senate do now adjourn during pleasure to reassemble at the call of the bell at approximately two o'clock p.m., it was—

Resolved in the affirmative. 1.15 p.m.

The sitting of the Senate was resumed. 2.05 p.m.

After further debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hays, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

*With leave.*

*The Senate proceeded to Notices of Motions.*

*With leave of the Senate,*

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C.:

That the names of the Honourable Senators Argue, Hastings and Molgat be substituted for those of the Honourable Senators Burchill, Gélinas and Giguère on the list of Senators on the Standing Senate Committee on Banking, Trade and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Thursday, January 6, 1972.  
(71)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 11:00 a.m. to examine and consider Bill C-176 intituled:

"An Act to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products."

*Present:* The Honourable Senators Argue, Bélisle, Benidickson, Bourget, Buckwold, Connolly (*Ottawa West*), Goldenberg, Grosart, Hastings, Lafond, Lang, Langlois, Martin, McElman, Molgat, Phillips and Quart—(17).

*Present, but not of the Committee:* The Honourable Senators Haig, Forsey, McNamara, Michaud and Sparrow—(5).

*In attendance:* Mr. R. L. du Plessis, Acting Parliamentary Counsel, and Mr. Pierre Godbout, Director of Committees, Assistant Law Clerk and Parliamentary Counsel.

In the absence of the Chairman and upon motion duly put, it was Resolved that the Honourable Senator Connolly (*Ottawa West*) be elected Acting Chairman.

*The following witnesses were heard:*

Mr. Roy Atkinson,  
President,  
National Farmers' Union;  
Mr. Charles A. Gracey,  
Manager,  
Canadian Cattlemen's Association.

*Present, but not heard:*

Mr. S. D. Williams,  
Deputy Minister,  
Department of Agriculture;  
Mr. C. R. Phillips,  
Director General,  
Production and Marketing Branch,  
Department of Agriculture.

At 12:55 p.m. the Committee adjourned.

At 2:35 p.m. the Committee resumed.

*Present:* The Honourable Senators Argue, Bélisle, Bourget, Buckwold, Connolly (*Ottawa West*), Goldenberg, Grosart, Hastings, Lafond, Langlois, McElman, Molgat, Phillips and Quart—(14).

*Present, but not of the Committee:* The Honourable Senators Haig, Forsey, Fournier, McNamara, Michaud and Sparrow—(6).

*In attendance:* Mr. R. L. du Plessis, Acting Parliamentary Counsel and Mr. Pierre Godbout, Director of Committees, Assistant Law Clerk and Parliamentary Counsel.

*The following witnesses were heard:*

Mr. Joe Hudson,  
Lyn, Ontario;

Mr. J. Pringle, M.P.,  
Fraser Valley East, B.C.:

Mr. David Kirk,  
Executive Secretary,  
The Canadian Federation of Agriculture;

The Honourable H. A. Olson,  
Minister,  
Department of Agriculture;

Mr. S. D. Williams,  
Deputy Minister,  
Department of Agriculture.

*Present, but not heard:*

Mr. C. R. Phillips,  
Director General,  
Production and Marketing Branch,  
Department of Agriculture.

A brief submitted by the Consumers Association of Canada was ordered to be printed as an appendix to these Proceedings (See Appendix "A").

Upon motion duly put it was Resolved to proceed to a clause by clause examination of the Bill.

It was moved by the Honourable Senator Grosart that the comma after the word "plebicite" on line 25 of Section 2(c) be deleted.

The question being put on the motion, the Committee divided as follows:

YEAS—3      NAYS—10

The motion was declared passed in the negative.

It was moved by the Honourable Senator Phillips that in clause 3(1) the following words on lines 11 and 12 "to hold office during pleasure" be deleted.



The question being put on the motion, the Committee divided as follows:

YEAS—4    NAYS—9

The motion was declared passed in the negative.

It was moved by the Honourable Senator Phillips that paragraph (ii) in clause 18(1)(a) be deleted.

The motion was duly withdrawn.

It was moved by the Honourable Senator Argue that paragraph (g) in clause 26 be deleted and replaced by the following:

“(g) for the establishment of consultative or advisory committees consisting of members of the agency, primary producers, or persons other than members or primary producers; provided that a majority shall be primary producers.”

The question being put on the motion, the Committee divided as follows:

YEAS—5    NAYS—8

The motion was declared passed in the negative.

It was moved by the Honourable Senator Phillips that the following be added as a new subsection (2) to clause 38 of Bill C-176, the remaining subsections being renumbered accordingly:

“38 (2) Every person who

(a) wilfully discloses or makes known directly or indirectly to any person not entitled to receive the same, any information submitted to the Council or an agency or required to be submitted to the Council or an agency pursuant to a requirement under subparagraph (iii) of paragraph (h) of subsection (1) of section 7 that might

exert an influence upon or affect the market value of any regulated product, or (b) uses any such information for the purpose of speculating in any regulated product, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding three thousand dollars.”

The question being put on the motion, the Committee divided as follows:

YEAS—3    NAYS—9

The motion was declared passed in the negative.

It was moved by the Honourable Senator Phillips that lines 40 to 43 in clause 39 of Bill C-176 be deleted and replaced with the following:

“but an order or proclamation under this section becomes effective only on the expiration of nine months from the date of publication thereof in the *Canada Gazette*, or such other period of time from the date of publication thereof in the *Canada Gazette* as is recommended by the Council.”

The question being put on the motion, the Committee divided as follows:

YEAS—3    NAYS—9

The motion was declared passed in the negative.

It was unanimously Resolved that the Committee report Bill C-176 without amendment.

At 6:55 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Georges A. Coderre,  
*Clerk of the Committee.*

# Report of the Committee

Thursday, January 6, 1972.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-176, intituled: "An Act to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products", has in obedience to the order of reference of December 31, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

John J. Connolly,  
*Acting Chairman.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, January 6, 1972

The Standing Senate Committee on Banking, Trade and Commerce met this day at 11 a.m. to give further consideration to Bill C-176, to establish the National Farm Products Marketing Council and to authorize the establishment of national marketing agencies for farm products.

**Senator John J. Connolly** (*Acting Chairman*) in the Chair.

**The Acting Chairman:** Honourable senators, we have with us this morning Mr. S. B. Williams, Deputy Minister, Department of Agriculture, and Mr. C. R. Phillips, Director General, Production and Marketing Branch, Department of Agriculture.

I should like to say a few words about some developments that have taken place since the last meeting. Although I ceased being Acting Chairman when that meeting adjourned, a number of inquiries have nevertheless been directed to me in connection with representations that are desired to be made to the committee. After discussing the matter with officials of the Senate Committees Branch, I informed those people making inquiries that, if they cared to appear here at eleven o'clock, the committee would consider whether or not they should be heard.

I may say that the practice has always been to hear witnesses appearing before the committee. Without presuming upon what decision the committee might make this morning, I thought you should know that all those people who made inquiries were told that the committee would certainly consider their request to be heard.

I should also like to inform the committee of two or three other developments.

**Senator Grosart:** Excuse me, Mr. Chairman, but will you tell us the names of those who requested to appear?

**The Acting Chairman:** I will come to that in a moment, Senator Grosart. First I should like to put on record some telegrams that I have received.

The first is a telegram that was addressed to me, which I received on January 4. It reads as follows:

Senator J.J. Connolly, Acting Chairman Banking Trade Commerce Committee, The Senate, Ottawa, Ontario

The consumer interest has been overlooked in the hasty passage by the House of Commons of Bill C-176. While denying the consumer the advantages which competition provides and the opportunity for free choice, the legislation fails to provide for consumer representation upon or public scrutiny of the agencies

which may be established under this act. It also fails to provide for the right of appeal from any actions taken by such agencies.

On behalf of the sixty thousand members of the Consumers Association of Canada I urgently appeal to you to grant us the opportunity of presenting to your committee the reasons for our strong opposition to this bill and our suggestions for amendments which would assist in safeguarding the public interest.

Maryon Brechin, President Consumers Association of Canada, 100 Gloucester Street, Ottawa.

I directed the officials of the Committees Branch to inform Maryon Brechin that the Standing Senate Committee on Banking, Trade and Commerce would be meeting at 11 o'clock this morning. I do not know whether or not the lady in question is now present. In any event, I thought the committee should have that information.

I have just been handed a further telegram addressed to the committee, for my attention. That telegram is dated January 6, 1972. It comes from Woodstock, Ontario, and reads as follows:

Banking Trade and Commerce Committee of the Senate Attention: John Connolly, Ottawa, Ontario

We strongly urge you to delay passing Bill C-176. The public is unaware of its contents in its amended form. Strong opposition is being registered by Consumers Association of Canada. Negotiable quotas will add to food costs but not to farm income. Opposition by major farm groups and individuals has been well documented. This bill will decrease agricultural exports and raise agricultural imports due to artificially raised prices. Having a long look at this bill would enhance the public image of the Senate. We would be willing to discuss this in Ottawa at your request.

Don Hart, Vern Kaufmann and Fred Cohoe.

This morning I had a telephone call from Mr. John R. Stewart, R.R. 6, Strathroy, Middlesex County. He describes himself as a dirt farmer, and is opposed to marketing schemes in general. He says he is a free enterpriser, and that he would be glad to come and in fact, he would be anxious to come to make a five-minute presentation, but he is up near London at the moment. I promised I would report his desire and view to the committee in the general way I have done.

This morning Mr. C. A. Gracey, Manager of the Canadian Cattlemen's Association, who lives in Toronto, came to my office and said that he would attend the committee meetings this morning and that he had a short presenta-



tion to make. Mr. Gracey informed me he was one of the witnesses who appeared before the Agriculture Committee of the House of Commons. I understand Mr. Gracey is here.

Mr. Roy Atkinson, President of the Farmers Union, is here and desires to make representations on this bill. I am also informed that a Mr. Joseph Hudson, an egg producer who lives in eastern Ontario in a place called Lyn—and I understand that is near Brockville—desires to appear before the committee. He cannot be here this morning, but I am informed that he could be here at 2.30 this afternoon.

Those are the only people whose interest in the work of the committee has been directed to me, and I wonder if there are any others present for the purpose of making representations.

Apparently there are not.

Now, honourable senators, what is your wish in respect of these people who desire to make representations?

**Senator Molgat:** I move that they be heard.

**Senator Phillips:** Before you bring that up, Mr. Chairman—and here I am deliberately trying to be careful in my remarks not to criticize you—

**The Acting Chairman:** You can criticize me if you like.

**Senator Phillips:** I fully realize the difficult position you are in, but I have here the unrevised version of the report of the last meeting, and I quote Senator Langlois where he said:

It should be pointed out that it has been the long-standing practice of Senate committees to accept requests of witnesses to appear. I see no reason to change this.

A number of us had interpreted from that that witnesses would automatically be heard, and I hope that the fact that we had to refer the decision back to this committee did not discourage anyone from appearing.

**The Acting Chairman:** I do not think that is the case. Everyone I spoke to appreciated the fact that the committee ultimately had to make the decision. Now Senator Molgat has moved that those who are here should be heard. Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Acting Chairman:** I think it might meet with the views of all if we heard Mr. Atkinson first. I understand he has a plane to catch, and I think Mr. Gracey will not mind if we do that.

**Senator Goldenberg:** Do I understand that witnesses will be heard on the principles of the bill, that is, on all aspects of the bill, or only on the changes which were made in the House of Commons before Thursday last? There were three major changes which we discussed in the Senate.

**The Acting Chairman:** Perhaps we had better ask Mr. Atkinson specifically, and we can ask Mr. Gracey afterwards.

Is it your intention, Mr. Atkinson, to speak mainly to the amendments?

**Mr. Roy Atkinson, President, National Farmers' Union:** It was my intention to speak to the bill.

**The Acting Chairman:** But you will be mentioning the amendments?

**Mr. Atkinson:** Yes.

**Senator Grosart:** Before we hear Mr. Atkinson, may I ask if the minister will be here?

**The Acting Chairman:** I am sorry; I should have told you this earlier. I rather anticipated that the committee would take the decision it has taken to hear witnesses, and because I thought there might be questions of policy raised by the various witnesses it might be more appropriate if the minister were held in reserve so that he could deal with questions of policy, and the officials here could deal with questions of administration and detail.

**Senator Grosart:** Could I make the suggestion now that before we complete our consideration of the bill we should take it clause by clause? The reason I make that suggestion now is that I think it will simplify our discussion if we know that we are going to come to it *seriatim*, clause by clause, rather than questioning here and there and all over the place. So, if you will accept the motion, I move that we take the bill clause by clause.

**The Acting Chairman:** I do not think the committee normally has any objection to that. When Senator Hayden is here we do not as a rule move at an early stage to do this, for the simple reason that sometimes later in the development of the work we find there is no necessity to go over them all. Why not leave your motion until we have heard the witnesses? I think we could proceed in an orderly way if you did.

**Senator Grosart:** I am in your hands on that.

**The Acting Chairman:** In other words, let us keep it in mind that we will be calling the bill clause by clause before we adjourn.

**Senator Phillips:** And there may be further questions put before we begin clause-by-clause study.

**The Acting Chairman:** Certainly.

Now, Mr. Atkinson, would you like to make a statement?

**Mr. Atkinson:** Honourable senators, my submission this morning will be an oral one. I heard of the opportunity to appear before your committee and made the decision to appear yesterday, at noon, while I was at another conference, so I was not in a position to prepare any written material. I will attempt to keep my remarks brief.

The first item I would like to present for your consideration is what we deem to be an important principle which is contained on page 14, clause 19 of the bill which has to do with the appointment of the council members and their duration in office. Subclause (1) of clause 19 states that the members shall hold office at the pleasure of the minister or the Governor in Council.

When one examines clause 7, on page 6 of the bill, and the underlying subclauses, one finds that this council is given a great deal of responsibility, as a matter of fact a

very onerous responsibility, in reviewing and making decisions upon regulations and other regulatory matters having to do with the agencies.

In our view the appointment of council members during pleasure gives the Governor in Council and the minister extraordinary powers. It could possibly affect the decisions made by those responsible for operating the council. Therefore we believe that in order to give some independence to the council, and I say "some" independence, its members should be appointed for a definite period. Notwithstanding that proposition, council members should only be dismissed on the basis of a firm reason, which should be divulged.

**Senator Grosart:** Mr. Atkinson, in your opinion, should that apply also to clause 3, which provides for appointment to the federal council during pleasure?

**Mr. Atkinson:** It should apply to all clauses under which appointments, to arrive at very responsible decisions, will be made.

**Senator Argue:** For what length of time?

**Mr. Atkinson:** That is a matter of judgment. Five years would seem to be reasonable.

**Senator Phillips:** Should the appointment be renewable once during a term?

**Mr. Atkinson:** It could be renewed, depending on the performance of the members.

**Senator Martin:** Mr. Atkinson, will you please indicate the particular subclause of clause 7, or do you refer to the whole clause?

**Mr. Atkinson:** A number of clauses are involved.

**The Acting Chairman:** Clause 19(1) refers to agencies and clause 3(1) refers to the Council.

**Mr. Atkinson:** It applies in both positions.

**Senator Martin:** I do not understand your observation.

**Mr. Atkinson:** I say that the principle of appointment at pleasure applies in both positions.

**Senator Goldenberg:** No, Mr. Atkinson, it does not apply to agencies. Clause 19(1), at page 14, provides:

The members of an agency shall be appointed by the Governor in Council to hold office during pleasure, or in such other manner including election by producers, . . .

**Senator Forsey:** "and for such term".

**The Acting Chairman:** Mr. Atkinson, are your comments directed to clause 3(1), rather than to clause 19?

**Mr. Atkinson:** That is correct.

**The Acting Chairman:** We can thank Senator Goldenberg for his wise legal counsel in this regard.

**Mr. Atkinson:** I am using clause 19 as the basis for speaking to other clauses.

**Senator Forsey:** But it is quite different.

**Mr. Atkinson:** I am also using clause 3(1).

**Senator Phillips:** Despite the wise counsel of Senator Goldenberg, I still feel that since the members shall be appointed by the Governor in Council and there is nothing to say that the alternative will be used, the Governor in Council can still appoint.

**Senator Goldenberg:** Of course, one or the other.

**Senator Argue:** But they cannot be appointed to stay in office longer than the life of the agency. It therefore seems that either they will have an indefinite period of time, which would be very long, or a period which would be the life of the agency. I suppose you would wish to appoint them for a longer period of time than the life of the matter with which they are dealing?

**Mr. Atkinson:** My concern is really that one clause provides that members of agencies shall be appointed at pleasure.

**Senator Forsey:** Clause 19(1) does not provide that, but for appointment "during pleasure, or in such other manner" and so on, surely.

**Mr. Atkinson:** My point is that the discretion contained in the clause should be removed.

**Senator Grosart:** In my opinion, Mr. Atkinson's point is well taken. As long as the Governor in Council has the right to appoint during pleasure, that may be done. In Mr. Atkinson's opinion the power to appoint during pleasure should not exist, regardless of any alternatives.

**Senator McNamara:** Mr. Chairman and Mr. Atkinson, it is my understanding, in which I may be wrong, that this is quite normal. Appointments to such marketing boards as the one with which I used to be associated were during pleasure. It used to be during good behaviour. There was always a definite weakness with regard to the setting of a period of time as the duration of an appointment. I know from my own experience that "pleasure" means pleasure and it did not in any way affect the operation of the Wheat Board.

There are two sides to the argument that it might be better for an appointee to be appointed during the pleasure of the Governor in Council rather than for a definite period of time. In the event that it was desired to remove a person from office, a definite period of appointment might prove to be too long.

**Mr. Atkinson:** I have presented the point for your consideration and will not debate it.

**Senator Grosart:** Do you know if any farm organizations with which you are familiar have strong feelings in this regard?

**Mr. Atkinson:** I can only speak for the organization which I represent. It does have strong feelings.

**Senator Grosart:** Do you see any dangers in it?

**Mr. Atkinson:** The opportunity is always open for excessive pressure on members to carry out the will of the Government, if you will, as an expedient measure of the time. That illustrates the reason for our position.



**Senator Grosart:** Have you seen any indication of that danger actually arising in connection with the many marketing boards which have been in operation in Canada?

**Mr. Atkinson:** Generally speaking, provincial marketing boards are producer boards, to which members are elected. In this case we are not referring to the board, but the council or the regulatory body. At times we have witnessed denial to a producer board of a decision made by it. An example is the white bean marketing board in Ontario, which in its wisdom decided to enter the marketing and storage aspects. A decision of the regulatory body prevented this.

**Senator Grosart:** Mr. Chairman, I wonder if we could ask the deputy minister to comment with regard to this, not as a matter of policy but as to why appointment during pleasure was included?

**The Acting Chairman:** Yes, Senator Grosart, he should be asked. However, in view of Mr. Atkinson's problem of time, perhaps the deputy minister would take note of this particular point, because we will deal with it. Perhaps Mr. Atkinson could complete his presentation, after which we will call on the deputy minister for point-by-point discussion.

**Senator Belisle:** Mr. Atkinson, is it your intention to make the same presentation to the Ontario Government when they are preparing their legislation?

**Mr. Atkinson:** We would have to examine the legislation. Certainly we are interested in making representation with respect to any new agencies, and have already done so in the case of those existing.

**The Acting Chairman:** Does your organization include representatives from the province of Ontario?

**Mr. Atkinson:** We operate throughout the country.

**The Acting Chairman:** Are appointments during pleasure made to any provincial boards?

**Mr. Atkinson:** I am not aware of any, but there may well be.

**Senator Grosart:** Did you say the majority are elected?

**Mr. Atkinson:** I would not make a judgment in that respect.

**The Acting Chairman:** Please continue, Mr. Atkinson.

**Mr. Atkinson:** The next item of concern is clause 24, on page 18, which has to do with market sharing. It says:

... the marketing agency shall consider the principle of comparative advantage of production.

It seems to me that that is a rather discretionary clause. It is a matter of considering. But beyond that, the historical basis of judgment is based on production rather than a sharing of the market, which has been traditionally penetrated by a province outside the particular jurisdiction that this may happen in.

The question I raise concerns the historical aspect, of it being based on the market share rather than production.

**Senator Forsey:** You would prefer it to be based on the share of the market.

**Mr. Atkinson:** I would think that would be more appropriate, because production might not reflect the market share.

**Senator Molgat:** Do our statistics provide adequate information on market shares for all potential products?

**Mr. Atkinson:** I would say so; or if they do not, it is a matter of providing for those kinds of statistics. It is physically possible to do that.

**Senator Forsey:** Do I understand you to say that this has been done in other cases?

**Mr. Atkinson:** I have not said that this has been done. I am recommending that it be done in this instance.

**Senator Forsey:** I thought you said something about the historical way of doing it.

**Mr. Atkinson:** The historical pattern of marketing. I suppose you could say it was the historical way, because it was the pattern.

**Senator Forsey:** But not in regulation by marketing boards?

**Mr. Atkinson:** This is, in fact, a new concept, as a result of the bringing into being of national legislation, which impinges on the historical market practice of marketing in the country of a particular product or a group of products. Let us take, for example, one that you all know, namely, the matter of eggs, and the movement of eggs from Manitoba to eastern Canada—or in another direction.

**Senator Martin:** When the parliamentary committee of the other place was examining this problem, did you make representations there?

**Mr. Atkinson:** Yes, back in 1970.

**The Acting Chairman:** In the fall of 1970?

**Mr. Atkinson:** I am not certain.

**Senator Grosart:** We are dealing with a clause which is a last-minute amendment?

**The Acting Chairman:** Yes. This is one of the three amendments.

**Senator Martin:** Were you addressing yourself to your previous evidence or to the particular amendment?

**Mr. Atkinson:** To the particular amendment.

**Senator Grosart:** It does not matter whether it is to a particular amendment. He is dealing with a clause in the bill.

**Senator Phillips:** I intend to bring this up later, when we are doing our clause-by-clause study. I have considerable difficulty in deciding exactly what is meant by "comparative advantage of production." You, who represent a large group of farmers, can help us by giving us your interpretation of that.



**Mr. Atkinson:** I would say that classically an area of comparative advantage would be an area in which a product can be produced, giving a profit at least cost, given the resources at hand, between regions or even between farms.

**Senator Phillips:** In other words, if it is cheaper to produce hogs in Saskatchewan than in Ontario, you produce them in Saskatchewan?

**Mr. Atkinson:** That is the theory.

**Senator Grosart:** Can you give us an example of a possible major change in productive capacity between provinces? It might occur and it might make this clause very difficult to administer.

**Mr. Atkinson:** Again, this has to do with the principle of comparative advantage. The wording is "shall consider". It does not say "will" consider.

**Senator Grosart:** It says also, "shall allocate that quota on the basis".

**Mr. Atkinson:** Yes, but it does not say that that is the final basis for making the judgment. It says that it shall consider that as part of the basis of making the judgment.

**Senator Goldenberg:** Only in allocating additional quotas, not the original quota.

**Mr. Atkinson:** Right; but that is also an important element in the total proposition. As an example, at the moment Ontario is proposing to put a good deal of public money into the development of cow-calf operations which could well be a subsidy. As a result of that subsidy the production pattern may shift. That may be the only area in the country which introduces it, which means that it will disadvantage other areas in which cows and calves are being operated.

**Senator Forsey:** It appears to me that clause 24, taken in conjunction with clause 18(3) can apply only to eggs and poultry or parts of eggs and poultry.

**Mr. Atkinson:** At the moment.

**Senator Forsey:** Not at the moment, but altogether. It seems to me, if I read the legislation correctly, that the whole business of quotas can apply only to eggs or poultry or parts of eggs or poultry, unless there is a subsequent amendment to the act.

**Mr. Atkinson:** That is correct.

**Senator Forsey:** So your example of calves is not terribly relevant at the moment.

**Mr. Atkinson:** I will use a different example, that of poultry. I think the *Globe and Mail* had a story about the kind of buying and the kind of difficulty that the guy who does the work gets into. He owes the money to Maple Leaf Mills, which is really an integrator. You get that kind of subsidy being played with by integrators in order to get control of the market. Your point is very relevant and valid. It could have the effect of moving the production around through artificial means.

**Senator Grosart:** Do I take it that you are not objecting to the requirement that the quota be allocated on the basis of production, but only to the requirement that whoever makes up the marketing plan—presumably it will be approved by the council—must consider the principle of comparative advantage? You are not objecting to the first part of the clause?

**Mr. Atkinson:** No; but that has to be an important element, otherwise you get into the business of manipulation of the movement of production by existing growers subsidizing those who are manipulating.

**Senator Argue:** The result of this legislation, as we understand it, will be to bring poultry and eggs under the legislation at an early date. Since the egg marketing business in Canada is obviously in serious trouble today—and Mr. Atkinson referred to the article in the *Globe and Mail* which, in my opinion, pinpointed some of the difficulties—I am wondering whether Mr. Atkinson could give us a brief idea of the way in which he would like to see an egg marketing plant operated; how quotas should be set and, more specifically, whether or not he feels that there should be a maximum limit on quotas from individual producers. The article in the *Globe and Mail* points out that the Kaiser brothers produce 5,000 dozen eggs a day and the money is put up by Maple Leaf Mills.

Are you, as an organization, interested in having a board that takes the production or a percentage of the production of this type of company, and to what extent is the egg production business today in the hands of feed mills or packing companies, or other integrated operations? Would you want to see a ceiling, and do you want an egg marketing board for the ordinary rank and file producer solely, or will it also apply to these huge integrated producers?

**Mr. Atkinson:** Our position is documented in a brief which we presented yesterday to the inquiry on egg marketing in Ontario. We are recommending, in light of the situation, that quotas have a maximum level of 30,000 hens. The general feeling in that respect was a quota of around 100,000 hens. However, we took the position of 30,000 hens because that takes into account most of the individual hen or egg producers. Beyond that you get into these integrated operations.

An interesting sidelight to this is that in the income study in Ontario, "The Challenge of Abundance" which was conducted in 1968, I believe, it was recommended at that time that the quota be 5,000 to 15,000 hens, so you can see the type of disturbance there has been in the egg business since then, resulting in production increases from 5,000 to 15,000 up to an average of 30,000.

**Senator Argue:** Do you feel that a 15,000, 20,000, or 30,000 hen producer is as efficient an operation as a much larger producer, or more efficient?

**Mr. Atkinson:** You have to look at certain situations. Certainly in terms of use of management and capital, it is a more efficient operation.

**Senator Argue:** Which one?

**Mr. Atkinson:** The 30,000 hen producer or even down to 15,000. It seems to me that the larger operations are the

ones that are in real difficulty at the moment, and they are generally the ones being assisted by feed companies and other outside investors. Integrated operations are carried on either through subsidies, or the individual's capital is being transferred to the integrated company and he finally goes bankrupt.

**Senator Argue:** Would you say there is some sympathy for the point of view you put forward, or is the large integrated operation going to be in on it?

The article in the *Globe and Mail* states—and I feel badly that they are losing so much money—that if you had this type of system set up they would stand to gain \$165,000. Now, as a member of the Government of Canada, I am not interested in doing something to rescue Maple Leaf Feed Mills, but I am interested in the ordinary producer and what the ordinary producer feels. Could the ordinary producer, if given the chance, produce at least as efficiently as the larger integrated operations?

**Mr. Atkinson:** The answer to that question, in my opinion, will depend on the nature of the agencies and the legislation that they function under. This very important item that I have raised is a factor in determining the net result.

**Senator Molgat:** Do you think this five-year time limit will work unfairly in certain commodity groups?

**Mr. Atkinson:** Well, I was only able to get hold of this this morning, so I really have not had much time to think it through. Inasmuch as it relates to poultry, it may well be an appropriate consideration, but if other kinds of production are brought in, it may well be that one would have to look at each one, bearing in mind the cyclical trend, and it may well be that a different type of time span may be required. I realize I am not answering your question with a straight yes or no. It is not that easy a question to answer.

**Senator Goldenberg:** This does not mean that there will not be a different time span; clause 24 clearly applies only to eggs and poultry. Amending legislation could provide for a different time span for cattle or any other farm product.

**Mr. Atkinson:** I think what you are really saying is that if other commodities are brought in under this legislation, this clause would require amendment.

**Senator Goldenberg:** Yes.

**Senator Sparrow:** It may not necessarily require amendment.

**Mr. Atkinson:** No, but it may.

**Senator Forsey:** Do you feel the five-year period is appropriate for eggs and poultry?

**Mr. Atkinson:** I would think the answer to that, because there has been quite a shift in the whole business of poultry and technology and development in recent years, is that it probably is an appropriate period.

**Senator Sparrow:** Would you suggest that the wording be amended to read "a minimum of five years", giving a discretion for a longer period should it be required?

**Mr. Atkinson:** I am not really certain on that. Rather than answer your question, I would just say I do not know.

**Senator Grosart:** Mr. Chairman, it should be stated that we should not consider these clauses at the moment on the basis of what amendments might come down if other products come under the act. These clauses relate to the whole principle of a national marketing plan that may take in any natural farm product. Therefore, I do not believe it is a valid argument to say that this now only applies to eggs and poultry. It is the fundamental concept in the bill that we should look at. Otherwise, we would have to look at every single clause and say, "Will this have to be amended if some other product comes under the Act"? The bill that is before us relates to all natural farm products, and I feel we should read the clauses, having in mind, of course, that they can be amended . . .

**The Acting Chairman:** I think that Senator Goldenberg and Senator Forsey—both of whom, I am sure, are experienced farmers!—follow that line of reasoning, Senator Grosart.

**Mr. Atkinson:** I have two more points to make. One of my points is that this legislation is inadequate in the sense that it accepts the proposition of maintaining existing marketing structures on a provincial basis. This, in my opinion, is an inadequacy, and it will prove to be one in the future. The time has come in this country to integrate provincial matters in this respect, and rather than operating autonomous provincial agencies that come under the umbrella of this legislation, I feel that the provincial agencies should be integrated into a national agency.

**The Chairman:** The problem is one of jurisdiction.

**Mr. Atkinson:** I realize it is a jurisdictional question.

**Senator Goldenberg:** You would have to amend the Constitution.

**Senator Grosart:** Is that not the whole purpose of the bill?

**Senator Goldenberg:** To co-ordinate, not to integrate.

**Mr. Atkinson:** I believe the weakness, if you will, in this is that it is an accommodation to do something, but the accommodation is not going to be effective because of these imperfections. I just want to make that point.

**The Acting Chairman:** It is a good point to be made, but it is a problem that besets any federal state. Is that not so, where you have these?

**Mr. Atkinson:** I think it could be accommodated in this way, and I recognize it requires the agreement of the various jurisdictions, to transfer power.

**The Acting Chairman:** I should tell you that at the last meeting there was some discussion about how far the provinces approved this proposal, and the minister undertook to canvass that situation. I understand that matter will be clarified at a later time. The problem remains that consultation is essential because of the divided jurisdiction.

**Senator Martin:** Apart from the constitutional problem, which is obviously a long one, I am sure Mr. Atkinson is aware of the provincial ministers' meeting, to which the minister referred.



**Mr. Atkinson:** Right.

**Senator Martin:** That provides an inevitable premise, I think, for us, does it not?

**Mr. Atkinson:** I think we need some real strong leadership in this respect, and I could see no more appropriate body for that leadership to come from.

**The Acting Chairman:** You flatter us. Senator Martin, of course, is not a farmer; he is a constitutionalist.

**Senator Grosart:** Mr. Atkinson, are you saying, in effect, that an established provincial marketing board, an intra-provincial marketing board, should be forced to integrate its activities, should be required by law to integrate its activities with other boards, with other areas or regions?

**Mr. Atkinson:** That is correct.

**Senator Grosart:** This is a new concept.

**Mr. Atkinson:** You used the word "forced".

**Senator Grosart:** They are required by law, by this bill.

**Mr. Atkinson:** I think this would help expedite the movement that is necessary.

**Senator Argue:** It could be required by provincial law too.

**Mr. Atkinson:** Yes, it could.

**Senator Martin:** Apart from the merits of your proposal, do you know of any provincial government, that takes that position?

**Mr. Atkinson:** I am not aware of any specifically. I think there is a lot of thinking in this country that feels that way.

**The Acting Chairman:** What about the situation in the States? It is a federal state. Is there anything comparable there?

**Mr. Atkinson:** No. They operate on marketing orders and things like that.

**Senator Grosart:** In making that remark, are you in effect expressing some concern about the possibility of balkanization?

**Mr. Atkinson:** I do not think it is a possibility. I think it is a probability. I think that kind of thing already exists. I do not think this bill will help that.

**Senator Goldenberg:** Would you not say that under this bill there would be less balkanization than there is now?

**Mr. Atkinson:** Well, I am from Missouri.

**Senator Goldenberg:** Is that not the intention?

**Mr. Atkinson:** Well, the road to hell is paved with good intentions. I am being serious now.

**Senator Argue:** But you are in favour of the bill as far as poultry and eggs are concerned. You would not like to see it defeated?

**Mr. Atkinson:** Let us put it this way. I would be in favour of the bill if there were some practical improvements made in it, much more in favour of the bill.

**Senator Argue:** You are not opposed to it now though?

**Mr. Atkinson:** I am opposed to it on the ground—and this is another factor involved—that there is really no effective collective bargaining mechanism between the farmers and the agencies. I know that we can get into an argument and say the agencies could be the bargaining instrument. Experience is that this is not necessarily so.

**Senator Goldenberg:** You know that the council, which is to recommend the setting up of these agencies, must hold public hearings; it is not done privately.

**Mr. Atkinson:** That is true.

**Senator Goldenberg:** The various parties will have an opportunity to be heard.

**Mr. Atkinson:** Right.

**Senator Buckwold:** We have heard a rather mild statement from you today, far different from what I heard on my local television station, when you heaped nothing but scorn on this bill.

**The Acting Chairman:** Let us say "reasoned" rather than "mild".

**Senator Buckwold:** All right, reasoned. What is worrying me is that here we are moving into a marketing bill, presumably a step forward in the relationship of farmers and their production, their price structures and adequately meeting the market demands; hopefully a progressive bill. You based your television comments at least, in quite a drastic statement, on the basis that (a) the farmer still has no collective position in bargaining with the agencies, and, although you did not say it, (b) the problem of integrating all the provincial bodies does not meet with your approval. What you do not say is what is the constitutional problem. With respect to collective bargaining, we have had it pointed out today that the agencies will be holding hearings. What other steps in this bill would you be proposing to try to meet the points you have raised?

**Mr. Atkinson:** I think the proposals I have made are the ones that would meet the points.

**Senator Buckwold:** The proposals you have made here so far?

**Mr. Atkinson:** Yes.

**Senator Buckwold:** Where does that help the collective bargaining position of the farmer vis-à-vis the price of his products?

**Mr. Atkinson:** I have not specifically outlined a section which would build into this the collective bargaining process, because obviously it will not happen. I just point this out as a weakness. The agencies that will emerge as a result of this legislation will be not unlike the ones that already exist. I think that is the point. There is the question of the inter-provincial conflicts, if you will, or the differences of interest, to start off from that proposition, because it is really what it starts with—they become conflicts of interest and then become really heated struggles—as long as producers, which is what we are now talking about, operate in that kind of structure, whether a pro-



ducer or anyone else, there is a decision-making process that takes place in terms of their needs in another jurisdiction, and the thing becomes a conflict of interest. What I am trying to point out is that in order to change that process, to get them making decisions together, that integration has to take place. It is pointed out, rightly, that we have a jurisdictional question. This then brings into focus the importance of resolving that jurisdictional question.

**Senator Buckwold:** I think we all recognize that.

**The Acting Chairman:** But you are not suggesting that integration should be forced from above?

**Mr. Atkinson:** I would put it this way. It would be nice to see some leadership taken.

**The Acting Chairman:** Leadership is different, though, from the imposition of a view.

**Mr. Atkinson:** Imposition is already here with many people.

**The Acting Chairman:** I think Senator Goldenberg just pointed out that here what was sought was co-operation, and if it had not been for some co-operation between the federal and provincial authorities we probably would not have this at all, so they are working in the direction you are pointing. Perhaps they are not going as quickly or as far as you would like, but that is the direction of the move.

**Mr. Atkinson:** Sometimes compromise is worse than nothing at all. That is the point.

**Senator Goldenberg:** Are you saying this bill is worse than the present situation? I thought you said a little while ago that it was an improvement, that there would be less balkanization.

**Mr. Atkinson:** No, I did not say that.

**Senator Goldenberg:** Well, the bill aims at less balkanization.

**Mr. Atkinson:** Yes. What I said was that balkanization is already taking place, and it was my view that this bill in itself would not overcome that problem. As a matter of fact, it may irritate that problem.

**Senator Goldenberg:** How would it irritate that problem?

**Mr. Atkinson:** I think some of the trade-offs that will be made between the provinces will be irritating.

**Senator Molgat:** Trade-offs, you mean between different products?

**Mr. Atkinson:** Yes, between different products produced in different areas, and between the same products produced in different areas. I think that is going to be difficult.

**Senator Phillips:** Mr. Atkinson, the fact that an area or a region can come under the agency, or even that, say, 7 out of 10 provinces can come under the council or agency and three remain outside, is this not going to irritate further the balkanization?

**Mr. Atkinson:** I am not certain. I do not know, in that respect. I am not certain.

**Senator Grosart:** Mr. Chairman, I think I heard Senator Buckwold say the agencies will require to hold public hearings. Is that your recollection? I do not find anything in the bill that says that this shall be so.

**The Acting Chairman:** Senator Buckwold said that this is an important distinction between the setting up of a board and the setting up of an agency. On the matter of collective bargaining raised by Senator Buckwold, I do not think there is any protection whatever with regard to the holding of public hearings on the setting up of an agency.

**Senator Goldenberg:** There is a protection for the setting up of an agency, because the council must approve the setting up of that agency, and the council must hold public hearings before it makes its recommendation.

**Senator Grosart:** But from then on the agency has powers, it could amend.

**Senator Goldenberg:** Subject to approval of the council—which holds public hearings.

**Senator Grosart:** But Mr. Atkinson's point is that it is not subject to approval by the members, and I think that is a very good point.

**Senator Goldenberg:** I have one final question. Mr. Atkinson, would you like the Senate to defeat this bill?

**Mr. Atkinson:** I would not like to take it on myself to make that judgment.

**The Acting Chairman:** Are there any further points?

**Mr. Atkinson:** Mr. Chairman, may I just add to that? It would be my hope that the Senate would see fit to improve the effectiveness of this bill, by taking into consideration some of the things I have said here today.

**Senator Goldenberg:** The most important thing you said—and I understand it very well, and I sympathize with you—is that there can not be integration; but, given the constitutional position, the decision of the Supreme Court re the National Farm Products Marketing Act, in the 1930s, that is not possible at this time. None of the provinces would agree. Therefore, I ask you whether, in the light of that, you would prefer that this legislation not be enacted, and leave the present system of balkanization, which you criticized?

**Mr. Atkinson:** My former answer still stands.

**Senator Goldenberg:** I beg your pardon?

**Mr. Atkinson:** I still go back to that former answer: it is a responsibility that Parliament will have to take.

**Senator Grosart:** Are you still beating your wife? That is the question.

**Senator Argue:** I wonder if Mr. Atkinson would comment on paragraph (g) on page 19 which deals with the establishment of consultative and/or advisory committees to the agencies. I am wondering if Mr. Atkinson is in favour of a change being made in this paragraph, that would require that a majority of the members of the advisory committee should be producers. According to the bill, the majority of

the members of the council must be producers; and the majority of the members of the agencies must be producers. It would seem to me to be important that a majority of the members of the advisory committee should also be producers.

**Mr. Atkinson:** I think that is important.

**Senator Argue:** You think the advisory committee is an important body, in the sense that it advises the agency?

**Mr. Atkinson:** Yes, and I think it is important, and I think they should be producers, because they are directly affected.

**Senator Argue:** Would you, as an organization, participate in the operation of this scheme, in the sense that if you were asked to suggest names of persons for an advisory committee, you would co-operate to that extent?

**Mr. Atkinson:** Because our people would be affected by any marketing agencies, and the effects of these activities, and so on, we would be prepared to do so.

**Senator Martin:** Mr. Atkinson has already got names in mind.

**Mr. Atkinson:** May I respond to Senator Martin in this way, that our policy is—and this would be the basis on which we would propose representation—that the representatives would be responsible to our organization and would report directly to that organization matters concerning what was going on in the advisory committee, and if the agencies in their wisdom accepted on that basis, we would make representation.

**Senator Grosart:** Would you suggest then, Mr. Atkinson, that in clause 26(g) there should be added "a majority of whom shall be producers"?

**Mr. Atkinson:** I would say so.

**Senator Grosart:** Mr. Atkinson, as I think you have almost finished your evidence, I might suggest to you, through the chairman—so that we can consider, as we go through the bill clause by clause, the suggestions you have made—that when you stand down, you indicate on a piece of paper the clauses and the specific amendments—not necessarily in legal terms—that you would propose, so that we could have them before us when we go through the bill clause by clause.

**Mr. Atkinson:** I am not a lawyer, but I would give you that information.

**Senator Grosart:** Could I suggest that, Mr. Chairman?

**The Acting Chairman:** Yes, certainly, that would be a good idea; and, Mr. Atkinson, I would ask you to do so.

**Senator Molgat:** In order to be crystal clear on one point, in regard to the jurisdiction question, is it the policy of the National Farmers' Union that where a national marketing board is established there be no provincial power?

**Mr. Atkinson:** That is our desire.

**Senator Molgat:** That is National Farmers' Union policy?

**Mr. Atkinson:** Yes.

**Senator Molgat:** Secondly, it is your view that the present bill will lead to more balkanization?

**Mr. Atkinson:** I will put it a little more delicately than that and say that our view is that it will not assist in debalkanizing the country.

**Senator Molgat:** Earlier, I thought that you felt it would increase balkanization.

**Mr. Atkinson:** I think the tendency will be there, yes.

**Senator Phillips:** Mr. Atkinson, you said the persons you would appoint to the advisory committee would be responsible to the National Farmers' Union. I would like clarification on two points: firstly, the time limit you would appoint them on; and, secondly, in what manner you expect them to be responsible to the National Farmers' Union.

**Mr. Atkinson:** In transmitting information. I would not make a judgment. It would depend on each particular situation, as to what kind of time limit there would be.

**Senator Phillips:** You would like freedom of movement in that respect, when they would be appointed?

**Mr. Atkinson:** Yes.

**The Acting Chairman:** Perhaps I might help on that point. You said in response to Senator Argue, in respect of clause 26(1)(g), that you would favour the establishment of a consultative or advisory committee, and that the majority of the members should be producers. There is nothing to prevent that happening at the present time, is there?

**Mr. Atkinson:** No. That is so.

**The Acting Chairman:** This can be done?

**Mr. Atkinson:** That is true. It is not explicitly stated.

**The Acting Chairman:** That is right. Is it likely in establishing an advisory committee that the candidates for membership would be more likely to be producers than otherwise?

**Mr. Atkinson:** Well, I would suppose so.

**The Acting Chairman:** Well, it seems to me that that is the inference.

**Senator Phillips:** Mr. Atkinson, what would be your attitude to having consumers on the advisory board?

**Mr. Atkinson:** I would have no real opposition to having a consumer on the advisory board as a matter of information.

**The Acting Chairman:** And that, too, is possible. Of course, a producer is also a consumer.

**Senator Grosart:** Would you also be in favour of consumer representation on the council and the agencies as well as the advisory board?

**Mr. Atkinson:** My answer to that would be no.

**Senator Grosart:** Why?



**Mr. Atkinson:** In the first place, I think that the agencies dealing with farm products should be responsible to that sector of the economy. You might ask me another question: Would we support the industrial representatives on the council or on the agencies? My answer to that would be no, unless they are prepared to open their boards of directors to farmers.

**The Acting Chairman:** Are there other questions for Mr. Atkinson? Thank you very much indeed for coming, sir. You will let me have whatever notes you have, will you? Thank you.

Honourable Senators, is it your pleasure at this time to hear from Mr. C. A. Gracey, the Manager of the Canadian Cattlemen's Association?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Mr. Gracey, would you identify yourself for the record?

**Mr. Charles A. Gracey, Manager, Canadian Cattlemen's Association:** My name is Charles Gracey. I am Manager of the Canadian Cattlemen's Association.

**Senator Argue:** Where is your head office?

**Mr. Gracey:** We have two offices, sir. We call either one the head office. We have one office in Calgary and one in Toronto. I am from the Toronto office.

Mr. Chairman and honourable senators, we are delighted to have the opportunity to appear before you. I am instructed by our president to do so and to point out to you at the outset that we are in your hands. Our purpose here is to clarify as clearly as we can our position with respect to Bill C-176 in order to justify to you, if we can, why we have taken the position we have and where we stand now in respect to the bill.

Like Mr. Atkinson, we also, necessarily, had short notice. Thus, I do not have a prepared brief to distribute to you. I am prepared, however, to put in your hands some documentation that we have available with respect to the bill.

**Senator Goldenberg:** Have you already made representations on this bill to the House of Commons?

**Mr. Gracey:** Yes. I was going to point out that I have in my briefcase copies of three separate briefs which we submitted to the Commons Committee on Agriculture in 1970 and 1971. I think I have sufficient copies to distribute to you.

In the interest of time I think I can be even briefer than I had originally thought by simply pointing out to you that our attitude with respect to this bill, when it first came out as Bill C-197 in the year 1969 or 1970, was that although the bill was interesting and might be useful to some commodities, it was totally alien and foreign to our philosophy, our objectives and our goals. At that time we read the bill and all its provisions very carefully and we found that the cattlemen and the people we represent in the great majority of cases, as evidenced by the fact that we are affiliated with provincial beef-producer organizations in aid of the ten provinces, supported our stand on the bill.

As you know from studying it, the bill contains within it the mechanism of coercive supply management—that is to

say, regional quotas and so on and so forth, and the mechanism of establishing marketing boards and so on. And this is counter to the philosophy of the Canadian Cattlemen's Association and all of its provincial organizations.

However, we had a problem. We realized that in a free country other commodities might want this bill. Therefore, I want to say very clearly that at no time in the history of this bill have we opposed the bill. We have never opposed or sought the defeat of this bill. I want, Mr. Chairman, to go on record as saying that any claims that we have been associated with any campaigns to defeat this bill are not true. We did recognize that we had a dilemma, however. We did not like the bill or its provisions. We recognized some commodities did. We thought the cleanest way out of the bill for cattle producers would be simply to say, which we did many times to the agricultural committee, "Please exempt us. Exempt cattle, calves, beef and veal from the provisions of this act. It might be a good bill for some commodities, but it sure is not, in our view, for the cattle industry."

We thought that this was a democratic approach. We thought that, where legislation is proposed that cannot be demonstrated to be necessary to the public interest and cannot be demonstrated to be essential to a particular industry, such as the beef industry, and where the beef producers themselves do not want it, that we should have the right to be exempted from the bill. I would like to point out, Mr. Chairman, that it may not be generally recognized that the beef industry is by far the largest agricultural industry in this country. Twenty-two per cent of all agriculture is the beef industry. So we rather felt, in view of the fact that we did not like the provisions of the bill, did not agree with the philosophy, thrust and direction of the bill, that we should be exempted.

I just want to say in passing that I heard and was interested in the discussion that preceded my appearance here. I would say to Senator Goldenberg that the idea that this legislation will move in the direction of reducing balkinization is not in our view correct. We think it will legitimize balkinization.

We have to be very clear about this. Our view is that the whole legislation is completely irrelevant to the beef industry, because we do not accept in any way any idea of provincial boundaries for the beef industry. We are determined that all that is needed as the enabling legislation is the British North America Act. We are persuaded that beef should move freely back and forth across this country without any restrictions whatsoever. Therefore, if you appreciate this, you will understand why we say that most of the provisions of the bill—all of the provisions of the bill so far as we are concerned—are completely irrelevant. There is no thought in our minds about dividing up this country so that Manitoba can have X per cent of the beef market, whereas Ontario can have Y per cent and Quebec Z per cent. That is not in our minds at all. We believe that beef should be produced in the areas of economic advantage. This is another irrelevant issue discussed in the committee about apportioning production to the areas of economic advantage. We believe production will flow to the areas of economic advantage, if we let it.



I wanted to make those points, and I think I have made the quite clearly in trying to state the philosophy of the association.

**The Acting Chairman:** You also made them before the Commons agricultural committee.

**Mr. Gracey:** Yes, I have paraphrased the three separate briefs, sir, that we presented to the agricultural committee.

**The Acting Chairman:** Thank you.

**Mr. Gracey:** Before turning to the bill itself, I should like to make the point now that before all else the Canadian Cattlemen's Association respects the laws of the country and will live with whatever legislation finally comes into being. We will do all we can to represent our views before legislation is passed, but we will live with it afterwards. So, turning to the bill itself, I should like to make a couple of points. In the amendment to clause 2(c)—and here I am addressing myself to the amended bill—the amendment is of major importance to us because we feel that this form is infinitely better than the unamended form. We feel that this is superior to the original form because it does provide almost unmistakable assurances that a plebiscite will be held before an agency is established. We are happy about this because it is much more democratic than it was. But I want to take issue with some of the phrasing in it. Clause 2.(c)(ii) says:

(ii) any other natural product of agriculture and any part of any such product in respect of which the Governor in Council is satisfied, as a result of declarations by provincial governments following plebiscites, or otherwise, that the majority of the producers thereof in Canada is in favour of the establishment of an agency under section with powers relating to that product;

The point I am raising is in connection with the two words "or otherwise". We are opposed to the inclusion of those two words and would seek to have them removed. To clarify my point, we have received the explanation that the term "or otherwise" is used because provincial plebiscites are only a requirement in provinces where the provincial marketing act requires one. It has also been argued that the federal Government may not require a province to hold a plebiscite, because that is a provincial matter. We quite agree. But we think the argument is wholly irrelevant. After all, Bill C-176 is, in our view, a piece of national legislation and surely it is within the sphere of authority of the federal Government to lay down a requirement that a plebiscite shall be held before the machinery of Bill C-176 is put into motion. Surely the federal Government can say to a provincial government that whether they hold a vote or not is the business of the provincial government, but that the business of the federal Government is to see that Bill C-176 is not put into motion in respect of any commodity until a plebiscite has been held.

There is a fine distinction here. We have argued it before. We believe it is fully within the authority of the federal Government to say that a plebiscite shall be held before implementing a federal act. This is not, in our view, tantamount to telling the province what it shall do, but it is in our view tantamount to saying that the federal Government will not do something until the province holds a

plebiscite. It seems to be a difficult point that we have argued about before. But might I suggest a simple parallel? I might be negotiating with one of you to buy your car for a certain sum of money, and I may say, "I will buy that car for that sum of money if you put new tires on." Now I have not dictated to you that you shall put new tires on, but I have said that when you put new tires on them I will buy it. This is the same principle here. We do not like the inclusion of the words, "or otherwise". You may wish to question me on that.

**Senator Grosart:** On that point, Mr. Gracey, have you considered the possibility that the phrase "or otherwise" may nullify the whole possible effect of subparagraph (ii)?

**Mr. Gracey:** Of course, we recognize this possibility, and we would be very much incensed if this were to develop. We tend to take the word of the people in the government who said that this is their intent. But I do agree with you that this is quite possible and that they could say, "or otherwise".

**Senator Grosart:** The point I am making, and we may come back to this later, is that it does not seem to be clear from any point of view of English syntax whether "or otherwise" qualifies the word "plebiscite" or the declaration. The concern in my mind is that a court might, if it took the interpretation which would be the normal syntactical one because of the place of the comma, that the "or otherwise" gave the Governor in Council the right to be satisfied without a provincial declaration, and that the whole thing would be nullified.

**Mr. Gracey:** That is our point.

**Senator Grosart:** It is a very serious matter from the point of view of draftsmanship. My suggestion later will be that we take out the comma after "plebiscite" which would bring the intent, I think, into line with normal English syntax.

**Senator Goldenberg:** Mr. Gracey, have you read clause 17(2)? That says that the Governor in Council may request that each province carry out a plebiscite of the said producers.

**Mr. Gracey:** Yes. If I might continue my remarks and I will come to the point you are now making. We therefore urge most strongly that the words "or otherwise" be deleted from clause 2(c)(ii). Further, in respect of this same point of principle we suggest that clause 17(2) does not provide a clear enough indication to Canadian farmers that the will of the majority will be sought. We suggest, again on the basis of our former argument, that the term "may request" that each province carry out a plebiscite of the said producers should be amended to read something like "shall require that each province".

**Senator Goldenberg:** Why are you satisfied, Mr. Gracey, that that would be acceptable in a court of law?

**Mr. Gracey:** You are referring now to "shall require"?

**Senator Goldenberg:** Yes, that is the federal Government imposing a condition on a province in a field in which the federal Government does not have jurisdiction.

**Mr. Gracey:** This is exactly my point. I do not believe that those words would impose anything on the province. You are simply saying this to the province: "We have a bill, a national bill, under national legislation, and we will impose it only if you have a plebiscite." I think you have complete and utter authority to do that.

**Senator Forsey:** It is a "no tickee, no washee" proposition.

**Mr. Gracey:** That is right.

**Senator Buckwold:** Does that mean they do not come under the bill or that there won't be any bill?

**Mr. Gracey:** It would mean in my mind that there would not be any agency.

**Senator Buckwold:** If one small province, and let us say it is Prince Edward Island, did not want to have a plebiscite, it could in fact stop a complete marketing proposal?

**Senator Phillips:** May I point out that Prince Edward Island, by its provincial law, requires a plebiscite before having any marketing agency?

**Senator Buckwold:** I was only using this as an example.

**Mr. Gracey:** I think it is an interesting point that the other side of the coin is just as sharp, and that is that the way it is now could frustrate democracy and that one could have the establishment of an agency without a plebiscite. And I suggest that that is the worse of the two evils.

**Senator Grosart:** But surely that is not implicit in the bill. It merely says that in order for the Governor in Council to satisfy himself that a majority, an overall majority of producers want to come under an agency, he may use the plebiscite as a basis for the provincial declaration.

If a sufficient number of provinces to constitute a majority of producers made the declaration, there would not be a situation in which, for instance, Prince Edward Island could frustrate the whole marketing plan.

**Senator Phillips:** I do not like the idea of using Prince Edward Island as an example.

**Mr. Gracey:** I will say province "X". The only method by which the Governor in Council in a democracy can ever be satisfied is following a plebiscite.

**The Acting Chairman:** Well, now, is that right? I suppose that would be true of almost everything, but a plebiscite is not necessarily the be-all and end-all. The democratic process does not require a counting of heads to that extent. There is such a thing as majority government, which is the basis of the democratic process. If he wished to be sure in the case of each individual producer, that would be another matter.

**Senator Grosart:** Or if he wished to be sure that there was a majority.

**Mr. Gracey:** In our view the only method is by plebiscite of producers.

**Senator Goldenberg:** How is this done in provinces which do not now have a plebiscite?

**Mr. Gracey:** I do have some information with regard to that. I must say before giving it, however, that I do not have supporting material with me. Marketing agencies now exist in some provinces which have never had a vote. This is what sticks in our craw. We do not like this type of thing.

**Senator Martin:** Mr. Gracey, I believe your president issued a statement?

**Mr. Gracey:** Yes, he did.

**Senator Martin:** It was not very long; have you a copy?

**Mr. Gracey:** Yes, I have.

**Senator Martin:** Would you read it into the record please?

**Mr. Gracey:** Yes, I will, sir. I described the essence of the statement earlier, but I will read it. It is a press release of January 4, 1972, entitled "Cattlemen President Fox Approves Amended Farm Marketing Bill". It reads as follows:

The controversial farm marketing bill, known as Bill C-176, is now "—in a form acceptable to Canadian beef producers". According to Jonathan Fox, of Lloydminster, Saskatchewan, the current president of the Canadian Cattlemen's Association.

For the past two years the Canadian Cattlemen's Association has vigorously opposed the principles of coercive supply management and legislative production and marketing controls in the draft bill. While not opposing passage of the bill itself cattlemen requested the specific exemption of cattle, calves, beef and veal from the bill.

Although the Government did not grant specific exemption for the beef industry the passage of two important amendments during the closing hours of debate really accomplishes the same purpose", said Fox.

An amendment to clause two  
—which we have been discussing—

—provides that an agency may only be established for any farm product, except poultry and poultry products, after a series of plebiscites in each province across Canada indicates that a majority of producers approves the establishment of an agency.

May I just interrupt, to say—

**Senator Martin:** Please finish the statement, for the record.

**Mr. Gracey:**

An important amendment to clause 18 also provides that a proclamation establishing an agency for any commodity, except poultry and poultry products, shall not grant an agency any power to introduce supply management. In order to establish supply management for the beef industry the bill would have to be amended and this would mean referral back to the agricultural industry and full debate in the House of Commons.



"We can live with this bill" commented Mr. Fox. While we would still prefer exemption for our products we have taken the motor out of this bill and it can only become operative again as a result of a majority vote of beef producers. "Thus beef producers have retained control of the direction of their industry in their own hands", continued Mr. Fox.

In commenting on this significant victory for cattlemen Mr. Fox expressed satisfaction that the Government and the House of Commons had agreed to amendments to the bill in accordance with the wishes of cattlemen and a great number of producers of other commodities. Mr. Fox noted particularly the tremendous efforts of a number of opposition members led by Jack Horner to make the bill more acceptable. "Without the strong and sustained efforts of Jack Horner and several other members the bill would have passed many months ago in its original form", said Mr. Fox. "In fighting for important amendments Mr. Horner has rendered Canadian agriculture an important service."

**Senator Grosart:** Mr. Gracey, you have asked for exemption from this bill. Is it not true that clause 18(3) exempts you completely?

**Mr. Gracey:** It exempts us from the supply marketing features of the bill.

**Senator Grosart:** Yes, you are quite correct; it exempts you completely from the supply management features of the bill.

**Mr. Gracey:** Yes.

**Senator Grosart:** It may come later in an amendment, but you now have the exemption which you requested.

**Mr. Gracey:** Yes, however the point to which I refer in no way differs from the press release which Senator Martin asked me to read. We take issue with one or two other aspects of the bill, which we do not consider to be quite proper. I have indicated throughout that we will live with whatever law is passed.

**Senator Martin:** Your president went further than that, which was the point of placing the release on the record.

**Senator Forsey:** Mr. Gracey, I have derived the impression from what I have heard that there are groups of beef producers in Ontario who do not take the same view as that of your organization. Am I correct in that impression?

**Mr. Gracey:** You certainly are, sir. The Canadian Cattlemen's Association is represented by organizations in every province. I doubt whether we will ever be in so healthy a state that we can say we represent the views of every beef producer. I can, however, say that we represent the views of the overwhelming majority.

**Senator Forsey:** Including those in Ontario?

**Mr. Gracey:** Definitely. There were allegations during the debate leading up to this that this is an east-west fight. It is ironic however, that at a recent meeting of the Ontario Beef Improvement Association Board of Directors, I was given instructions to do everything possible to make sure

that cattle was deleted from the bill. Of course, I could not carry out their instructions fully, because our board is prepared to accept the amendments which were presented.

**Senator Grosart:** What percentage of beef production does your association represent?

**Mr. Gracey:** The answer to that question involves discussion of the structure of the organization.

**Senator Grosart:** What is the approximate percentage?

**Mr. Gracey:** We strive for 100 per cent representation.

**Senator Grosart:** What percentage does your actual membership represent?

**Mr. Gracey:** The membership is at the provincial level. In the Province of Ontario a member of the Canadian Cattlemen's Association is so basically because he is a member of the Carleton County Beef Improvement Association, which is a member of the Ontario organization with which we are affiliated.

**Senator Grosart:** What percentage of beef producers are not members of the Canadian Cattlemen's Association? Please include all beef production.

**Mr. Gracey:** I have attempted to explain our structure. I could say 100 per cent are members. That is our goal. Every beef producer in this nation, and that includes the dairyman, has the absolute and unqualified right to attend at the local beef association, state his views, vote on issues and so on.

**Senator Grosart:** Do they pay membership fees?

**Mr. Gracey:** The county associations in Ontario have a membership fee of \$1. This varies between provinces.

**Senator Grosart:** But you must have in your mind an overall figure as to the percentage of beef production for which you, as an official of the association, are entitled to speak.

**Mr. Gracey:** I will give you a figure, which I will qualify by saying that we strive to represent 100 per cent of beef production. We are convinced that our views are supported by at least 75 per cent of beef producers in this country.

**Senator Grosart:** Is 75 per cent of beef production represented by your association, through affiliation, or otherwise?

**Mr. Gracey:** Yes. I would have to show you our constitution to explain the structure. It will illustrate how a beef producer in the Province of Saskatchewan, for instance, puts forward his views. That is the essence of it.

**Senator Martin:** I want to clearly understand that the president of the association supports the bill, and you yourself also support the bill.

**Mr. Gracey:** Yes, but I would turn the emphasis around. I would say that we will live with the bill. We find fault with a couple of things in it. That is why I am here.



**Senator Grosart:** In your objections, I take it that you are looking to the future rather than to the effect of the bill when it receives royal assent.

**Mr. Gracey:** We are quite happy with the fact that there is a plebiscite proposed.

**Senator Grosart:** That plebiscite is in the future. It does not concern you at the moment.

**Mr. Gracey:** We want the plebiscite to be properly structured when it comes.

**Senator Grosart:** that is right. You are thinking of the future, when an amendment to the bill may be made which might bring you within the terms of the bill.

**Mr. Gracey:** The other reason why I was sent here was to represent our strongest view, that any changes proposed in the bill not move further in the direction away from where we want to go. We would propose a withdrawal of the amendments which we have recently submitted.

**Senator Forsey:** Senator Grosart suggested that the changes Mr. Gracey has been suggesting referred only to something that might arise if there were an amending bill. That is not altogether correct. You would like to see this because, except for supply management, you could be brought under this legislation now. That is why you want to get the "or otherwise" struck out.

**Mr. Gracey:** Yes. It was suggested that some day we might have a vote to establish an agency even without supply management. We want to be sure, if such an event comes about, that it will be a proper vote.

**Senator Forsey:** It is not a question only of amending legislation. It is a question of what might arise under the legislation as it now stands.

**Senator Grosart:** Are you concerned with any other control aspects of an agency under the bill, other than supply management?

**Mr. Gracey:** I am not sure that I understand the question.

**Senator Grosart:** As Senator Forsey pointed out, you could come under this bill by provincial declaration and a proclamation by the council. Under 18(3), this would not bring you under supply management, but you could come under the bill. Are there any other control features, that would be set up as a result of the establishment of an agency, which you would object to, other than the supply management aspect?

**Mr. Gracey:** Once supply management is removed, about all one can do is establish an agency for promotion, research, and so on. The bill is completely irrelevant in this respect, because we already have a national organization, we already have a provincial organization, we are already working on product development, and we are already co-operating with the federal Department of Agriculture to change the grade standards.

**Senator Grosart:** There is no other control that you would object to.

**Senator Sparrow:** The bill does not define a producer. Can you define a beef producer, and how does your association define a beef producer?

**Mr. Gracey:** Obviously, that is a central question any time a vote is about to take place. I have personal views on it. The question has not been deeply discussed within the Canadian Cattlemen's Association. I think I can go so far as to say that the Canadian Cattlemen's Association would take the position that a beef producer is anyone who produces beef and derives a significant proportion of his income from a beef operation. There is a very real question as to whether or not a producer who markets 500 cattle should have one vote in the same sense as a producer who markets three cattle. That is a real question which has to be faced, on which we have not taken a position.

**Senator Sparrow:** Do you read into the bill that each province must define who a producer is in that province? There is no standard definition of "producer".

**Mr. Gracey:** There is not. It is a question that has to be honestly faced.

**Senator Sparrow:** With regard to beef producers, the bill refers to a majority of producers in Canada. Would you read into the bill that a region or area in Canada which might very well have a majority of producers, would not, in fact, represent the total production of the industry? I would like to quote some figures with which you might agree or disagree. In the four western provinces, there were, as of June 1, 1971, 4,804,000 head of beef cattle. You might want to record this figure. There were 35,703 producers. These figures are taken from the Dominion Bureau of Statistics. The cattle population in Ontario and Quebec was only 1,528,000, or 20 per cent or less than western production. However, they had 79,143 producers. They had double the producers and 20 per cent of the production. In the bill itself it would appear that they could come under the marketing legislation by a vote of Ontario and Quebec producers. Are my figures correct?

**Mr. Gracey:** Essentially, yes. I think that is a very good point. If you phrase the question as to how we would react on this, as I said before, the question is a very difficult one. The Canadian Cattlemen's Association has not expressed a view on this, but I have no hesitation in expressing my own view, which is that we have to give consideration to some kind of a balance between producers and production.

**Senator Sparrow:** Would you suggest that there is an area of change in the bill which would protect a region in Canada? Have you given that any consideration?

**Mr. Gracey:** As far as a region of Canada is concerned, that aspect is irrelevant. We do not care where the beef producer is. It does not matter whether all of the beef producers are in the Province of Prince Edward Island. This is one country, so that part is irrelevant.

I have already answered the first part, have I not?

**Senator Molgat:** Mr. Gracey, when we were discussing a vote by provinces, the objection was raised that if one

province refused to conduct a vote, that province could prevent a board. You reject the regional concept, do you?

**Mr. Gracey:** Yes.

**Senator Molgat:** Would you then consider a national vote?

**Mr. Gracey:** Would we, as an association, consider a national vote?

**Senator Molgat:** Yes, leaving aside any regional or provincial concept.

**Mr. Gracey:** I will answer that with the opening qualification that we do not support the idea of marketing boards and agencies to begin with, but if it appears that a significant number of producers want an agency, then we are on the side of democracy and if a vote is held we would definitely like to see a nationally conducted vote. If some provinces were being troublesome by not providing a plebiscite, then I feel there should be some means whereby a national vote could be conducted.

**Senator Phillips:** Mr. Gracey, I have two questions. You stated that the bill might be all right for certain products, but it was your view that beef should be free to move anywhere in Canada. Can you tell me the difference between hamburger moving freely anywhere in Canada and fried chicken moving freely anywhere in Canada? I cannot make that distinction.

**Mr. Gracey:** Nor can I. I see no reason why hamburger or fried chicken should be restricted in moving anywhere in Canada at all.

**Senator Phillips:** My second question is: Are you concerned that the bill does not provide any import quotas? I am assuming that beef production comes under the act.

**Mr. Gracey:** Yes and no. I want to explain that; it is important. I happen to be one who agrees that probably it would not be appropriate to have import controls vested in this bill. Perhaps this is not popular with the majority of beef producers, but I feel we need some import controls in some form under some legislation. The Canadian Cattle-men's Association has advocated a level of import controls. We have never supported imports completely, but we feel there must be a level of import controls.

The question you have asked identifies one of the main weaknesses in this bill. I believe it is the general philosophy that we are going to create an island of ourselves, to protect ourselves to an unlimited degree against imports. This is an impossible dream. We have to compete in the North American economy, and this is just another reason why we have absolutely no use for the principle of coercive supply management. I agree we must have some workable means of a sensible level of import controls in certain instances. For example, the oceanic beef imports can hurt us; they have hurt us. We have to have control at some level. We have never asked that imports be shut out completely, as is the case with respect to some dairy products.

**Senator Grosart:** Mr. Gracey, there seems to be a contradiction in what you just said. You object to Canada becoming an agricultural island in North America, but there is nothing in the bill to suggest that happening.

The question Senator Phillips asked, in effect, was: Would you like to see import controls written into the powers of the National Farm Products Marketing Council or a marketing agency?

**Mr. Gracey:** Let me answer that question again more clearly by saying that if this bill is going to work in the manner intended, it would have to have import controls.

**Senator Phillips:** That is specifically the point I wanted you to make.

**Senator Grosart:** On the question of a plebiscite or vote, the minister stated, and this appears at page L-3 in the "blues" of our last hearing:

Mr. Chairman, I am advised that all the provincial legislation calls for one man/one vote. What they do from there on is to set out what qualifications are necessary for a man to vote. Once he has that qualification to vote, there is no further distinguishing between the weight of that vote. It is one man one vote. In some provinces, the requirement is that they sell \$500 worth of the commodity in an area.

Would this indicate to you that it is at least the intent of the minister that any plebiscite should be on the basis of one man/one vote?

**Mr. Gracey:** I cannot say what the intent of the minister was. Again, I would say this is a tremendously difficult area. The only thing that I would be opposed to would be an arbitrary solution. In my opinion, the solution that says a man must sell \$500 or \$600 worth of a commodity is an arbitrary solution; the solution that a man must have a thousand hands is an arbitrary one. I think someone has to face the real question of principle as to whether it should be one man/one vote or one cow/one vote.

**Some Hon. Senators:** Never.

**Senator Sparrow:** One egg/one vote.

**Senator Grosart:** You might get a more intelligent vote.

**Mr. Gracey:** I heard some honourable senators say "Never," but it is my understanding that at a shareholders' meeting the shares owned vote.

**Senator Goldenberg:** If a man holds a thousand shares he has a thousand votes, and a man who owns one share has one vote.

**The Acting Chairman:** Are there any other questions for Mr. Gracey?

Thank you very much, Mr. Gracey.

It is now ten minutes to one. There is a possibility that Mr. Hudson will be here by 2.30. Would you prefer to adjourn at this stage for lunch, or do you wish the deputy minister to go over the points that have been covered? Policy matters, of course, would be reserved for the minister when he returns.

**Senator Grosart:** I wonder if I could make a suggestion, Mr. Chairman? Perhaps it would be better if the deputy minister gave his reply when we start to discuss the bill clause by clause. Most of the matters that have been raised refer to specific clauses.



**The Acting Chairman:** That might be a feasible way to deal with it. I see no objection to that.

**Senator Martin:** There have been some matters raised this morning on which we ought to have some reply.

**The Acting Chairman:** Well, let us deal with that as we come to the bridge.

Hopefully, then, we will have Mr. Hudson at 2.30.

**Senator Molgat:** Mr. Chairman, I understand there will also be a representative from the Consumers Association of Canada.

**The Acting Chairman:** They have been notified, but the Committees Branch has not heard from them.

**Senator Molgat:** I take it that if they appear this afternoon, or if others appear, they will be given an opportunity to speak.

**The Acting Chairman:** That is in the hands of the committee, and the usual practice is to give them an opportunity.

We will adjourn until 2.30.

The committee adjourned until 2.30 p.m.

Upon resuming at 2.30 p.m.

**The Acting Chairman:** Honourable senators, I reported to you this morning that Mr. Hudson wanted to make representations. I have also been informed that Mr. David Kirk, the Executive Secretary of the Canadian Federation of Agriculture, is here and would like to be heard. Is it the wish of the committee that both these gentlemen be heard?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Perhaps we should hear Mr. Hudson first, because he said this morning that he would like to be heard at about 2.30 p.m.

Mr. Hudson, for the benefit of the committee, would you give us your full name and address?

**Mr. J. Hudson:** Mr. Joe Hudson of Lyn, Ontario.

**Senator Martin:** What organization does Mr. Hudson represent?

**Mr. Hudson:** Really just a fairly extensive group of farmers in Ontario, I guess, who have views and opinions on this. Nobody formally, sir.

**Senator Martin:** You do not represent an organization?

**Mr. Hudson:** No, no organization, that is right.

**Senator Phillips:** That is not absolutely necessary.

**Senator Martin:** No, but it is possible for me to put a question.

**The Acting Chairman:** Are you a producer?

**Mr. Hudson:** Yes, I am an egg producer.

**The Acting Chairman:** Where is Lyn, Ontario?

**Mr. Hudson:** I knew I would be asked that. It is near Brockville. You know where Brockville is. We are about four miles from Brockville.

**Senator Goldenberg:** Is the *Globe and Mail* correct when it describes your farm as the largest egg-producing farm in the Province of Ontario?

**Mr. Hudson:** Well, that is correct. I will explain that to you in a minute or two.

First I would like to say how pleased I am to be here. I certainly did not expect the privilege of appearing. I will tell you who I am and describe our operation fully before any of my compatriots who follow might do so.

I am a farmer. I guess you would still call us farmers. At least we do for municipal tax purposes anyway. We farm at Lyn, Ontario, my brother, my father and myself, and we operate an egge farm of approximately 270,000 hens. There are three of us involved. We have farmed all our lives. We started with milk way back and converted to beef cattle, broilers, got out of that and moved into eggs back in the early 'fifties, and have developed this. We also run a grading station, where we began grading our own product in about 1957, shipping it mainly into Montreal, to Steinbergs Limited. We are fairly successful at it with our own product. In 1960 we started to buy from other people and developed it into a fairly good operation, and now supply eggs into Ottawa and the Montreal areas. That is our background.

The only formal thing I can say is that I am an elected director of the Ontario Egg Board, one of the two directors who dissent with this quota business, controls and so on. However, I think I can safely say I represent the views of a good many farmers in the Province of Ontario who do not go along with the thinking that supply management, as they have it laid out today, and controls and the control of our agriculture is the only way to go. We proved that to Minister Stewart back in 1969 when they held the G.F.O. vote. It was defeated about 57 per cent to 43 per cent, and we have not had a really major vote since of any kind, to my knowledge. Certainly we have not had an egg vote yet, and he has had no further vote to my knowledge.

**Senator Grosart:** What is G.F.O.?

**Mr. Hudson:** That is supposed to be a General Farm Organization. Many of us have called the system before us the national G.F.O., but it was a General Farm Organization. Perhaps Mr. Kirk could explain it much better than I can. It was a General Farm Organization that checked off on all farm products. It had a compulsory membership for all farmers in the Ontario General Farm Organization. Many of us look on it as simply a way of getting democratic control of our affairs.

I have no formal presentation, but I am giving these items point by point and if senators have questions, they might throw them in as I go along, as otherwise I would probably forget what I have said.

First of all, you may wonder why I am here. I personally have had contact with many of my friends on this matter, not just in the case of eggs. I am very concerned with the way in which the bill was passed, in the last week or ten days, and with the effect it is going to have on the true farmer, and the general happenings.

Certainly, Parliament has debated this bill. I left my coat in Mr. Pringle's office. I hope I do not spoil his reputation as a parliamentarian.



**Senator Phillips:** But you may spoil your credibility as a witness, by leaving it there!

**Mr. Hudson:** Parliament has debated this bill off and on for about eighteen months or two years. They held hearings, but many of us feel that, even though the hearings were held, they did not hear.

**Senator Martin:** Were you at the hearings?

**Mr. Hudson:** Yes, we appeared before the hearings two or three times.

**The Acting Chairman:** That is, the hearings of the Agriculture Committee?

**Mr. Hudson:** Yes, the hearings of the Agricultural Committee in Ottawa, in Toronto and so on.

**The Acting Chairman:** When you say "we"?

**Mr. Hudson:** I appeared in Ottawa with another man. Three or four of us made appearances in Toronto also, representing a different point of view. I do not know whether the Farmers' Union has been in or not—

**The Acting Chairman:** They were here this morning, so you need not repeat their evidence.

**Mr. Hudson:** I do not know if they got what they wanted, but they stated quite openly on television that they did not get what they wanted.

**Senator Martin:** May I ask you a question? I have before me a statement of Mr. Atkinson of September 29, 1970. I want to know if you agree with this. He said, at page 4915:

Bill C-197 should be further amended to provide a mechanism allowing annual production price reviews. Since the primary producer is accorded no policy role in the operations or marketing functions of the proposed marketing agencies, the only meaningful way in which farmer interests can be protected is through the assumption of a price and policy negotiation role, we should call it a bargaining role between the National Farmers' Union and the respective marketing agencies. We recommend that this provision be provided for in the bill.

You would not agree with that statement?

**Mr. Hudson:** I would not agree with it you say?

**Senator Martin:** I am asking you by way of question.

**Mr. Hudson:** Oh, this is what he would like. I am not so sure that that would be much better for the farmer than what he is being offered today.

**Senator Martin:** You do not think that his union should be the sole marketing union.

**Mr. Hudson:** The sole negotiating agency?

**Senator Martin:** Yes, the sole negotiating agency?

**Mr. Hudson:** I would have to debate that with Mr. Atkinson. I do not agree with everything put forward. I am not a member.

**Senator Martin:** I was just putting it to you now.

**Mr. Hudson:** I am not a member, and I am not prepared to comment on what he was saying. However, there were many things. For instance, beef and pork. Beef, in particular, wanted out. I think that was quite apparent at every hearing, and they did not really get out. Import controls were deemed necessary by almost all of our poultry groups, if this bill is to work in poultry, and we have no control over imports, under this bill.

A good many of us suggested that it would be democratic to have plebiscites on all products, and not just on some. We heard in Toronto that the consumers felt they should participate in the commission. Whether they should or not, is up to them to plead. There are many things that we feel that, even though there were hearings, were not heard.

Last spring the bill went again before parliament and a massive protest was launched. Mr. Olson accused some of the people participating in the program, of some possibly devious tactics. I would say they were, maybe, more like desperate tactics.

However, in a week's time we had some of the largest write-ins ever to Parliament, protesting the bill. I think I am right in saying that, not the bulk, but a good many of the farmers across Canada felt the issue was dead after that. It lay dormant until it came up as a Christmas package. It was rushed in at the Christmas recess; the M.P.s were literally dragged back at that time, when they did not want to be. We had compromises made. A good many amendments, of which only one or two, or two or three, were put through, I think, out of all the amendments. Probably, if you read and took to heart the *Globe and Mail* editorial last Monday—which I think probably most of you did—we would not have to say any more. I do not know whether the Chair can do this, but if you are making a transcript I think that it should be put in the transcript. I would hate to lose this copy, as I have only got one. I will not take time to read it now.

**Senator Forsey:** That was an editorial, not an article?

**Mr. Hudson:** That was an editorial. You could even put the picture in, because it is pretty good, where the turkey says to the farmer: "And, furthermore, where is your licence?" The lead editorial is the one I am talking about now.

**Senator Forsey:** That is the one that assumes that quotas would apply to all products, is it not?

**Mr. Hudson:** It assumes that quotas will apply, yes.

**Senator Forsey:** Which they do not.

**Mr. Hudson:** No, but they do apply to poultry products.

**Mr. Forsey:** Yes.

**Mr. Hudson:** That is what I am concerned about, mostly. The cattlemen would have to fight for themselves.

**The Acting Chairman:** They were here this morning.

**Mr. Hudson:** I figured that Mr. Gracey was here for something.

We feel that this was no way to pass this. I think you realize that this is the major piece of farm legislation that

will probably ever come before us in any of our time. No matter how young or how old you are, I do not think there ever will be a piece of farm legislation as major as this. We do not think this was the way to pass it. There was no possible time for farmer opposition to build, in the three days. Another thing that we feel was very bad is that, right from the hearings on, on this bill, we had hard party lines drawn and it ended up really not whether it was good or bad for Canada but simply that the bill was, we feel, pushed through and pushed through very drastically.

**Senator Goldenberg:** Mr. Hudson, are you suggesting that the house was rather taken by surprise and had only three days to consider this proposal?

**Mr. Hudson:** No, they had debated it a good deal before, there is no doubt, but it was brought back in—I do not know on which day it was—before the house, just before the house rose. I am not so familiar with Parliament, but I know that the major debate took place over three days.

**Senator Goldenberg:** I understand that the legislation was originally introduced in late 1969.

**Mr. Hudson:** Yes, I have mentioned before that it was introduced about two years ago, and there were hearings on it from one side of the country to another. But my feeling is that, when it reached the final stage, it was not thoroughly debated and the final amendments were not debated, and so on.

**Senator Phillips:** Mr. Chairman, in all fairness, following Mr. Goldenberg's remarks, you will recall that just before certain by-elections the bill was withdrawn. I think most of the parliamentarians assumed that a different bill would be introduced. I think this is a point that Senator Goldenberg has conveniently overlooked.

**Mr. Hudson:** I do not know about the parliamentarians, but I do know that a good many of the farmers assumed that a different type of bill would be brought forward.

**Senator Goldenberg:** My understanding is that that bill was not withdrawn. There was one piece of agricultural legislation that was withdrawn, but it was not this one.

**Senator Forsey:** It could not be withdrawn, unless the consent of the house was given to its withdrawal. The other side decided not to proceed with it, but it certainly was not withdrawn.

**The Acting Chairman:** These proceedings in the other place certainly should not unduly disturb us.

**Mr. Hudson:** They had it for fourteen months, without withdrawal.

**Senator McElman:** As a matter of record, the first reading in the other place was on October 26, 1970.

**Mr. Hudson:** Regardless of this, a tremendous number of farmers are dissatisfied with this bill. As I have said, the beef and a good deal of the pork wanted out. I do not know what Mr. Atkinson said. I am sure he spoke quite capably for himself. You have the dairy and the grains pretty well covered as it is. So, in effect, when you narrow it down, who really wants the bill?

**Senator Goldenberg:** Would you tell us, Mr. Hudson, why we understand that all the provincial governments want or are in favour of this measure? Are they so far removed from the electors that they all want to push this bill?

**Mr. Hudson:** I can only speak for one—and some of us think that he is.

**Senator Langlois:** Which one is this?

**An Hon. Senator:** Are you speaking for him?

**Senator Goldenberg:** You are speaking of the Minister of Agriculture in Ontario?

**Mr. Hudson:** We feel that about Mr. Stewart. The last vote he had was in 1969 and that vote was lost by 57 to 43. Many of us fought that campaign on quotas and supply management, because that is where we felt the General Farm Organization was going to lead, and it was soundly defeated. That is just two years ago.

**Senator Martin:** Much later than that, only last month, the Minister of Agriculture in Ontario along with other ministers of agriculture in the provinces said that they are in favour of this measure.

**Mr. Hudson:** Of course, you have to remember that it has been the policy of the agricultural department in Ontario for many years, rightly or wrongly. The quota marketing system has been promoted by the province of Ontario. Ontario had one of the first broiler boards, one of the first tobacco boards and so on. Rightly or wrongly they feel that this is good for the farmers.

**Senator Martin:** That is just your opinion.

**Mr. Hudson:** That is right, and I am talking only about the agricultural department.

**Senator Sparrow:** But the last vote that was actually held was not in favour of the marketing legislation.

**Mr. Hudson:** To the best of my knowledge no major farm product has been voted on since 1969. In 1968 we held an egg vote which was defeated. In 1969 we had a general farm organization vote which was also defeated.

Now, there seems to be a great urgency about this bill, that all kinds of terrible things are going to happen if it is not passed. Well, we know what the beef situation is. They have never had it so good. Pork is making a remarkable recovery. It is certainly getting better. A few years ago the Government actively promoted the idea that people should be in pork. I cannot put a year on that, but it was a few years ago. After that time there were considerable problems in the pork industry, but they are now coming back to the point where pork is a profitable item.

The chicken-and-egg war which apparently needs solving has already been solved. It was solved by the British North America Act at the end of June. Since then in Ontario and Quebec, and I can only speak for those provinces because they are the ones I am familiar with, there has been absolutely no interference with the movement of the product across the border either way. Mr. Stewart withdrew his controversial permits under Bill 10. Many of us called them illegal, not just controversial. Many of us



have seen fit to co-operate sufficiently with FEDCO that the system down there is working at this time to nobody's disadvantage.

So there does not seem to be any real problem in the chicken and egg industry. The egg industry is recovering from a period of extremely low prices which it brought about itself. The broiler industry is fairly healthy right now. The turkey industry is claiming that it is on the road to recovery via negotiations being made between Ontario and Quebec, the two major turkey producers.

So I would say that at the moment in eggs, for instance, regardless of what is done for the next six months or maybe more, we are going to be governed as we are today directly by the American product which sets our price. We have had to lower our prices on the loose markets, on the surplus markets, as much as eight and nine cents in the last week in order to stop American eggs from coming across the border, because they are available in large quantities at very low prices.

Those of us who are egg producers also feel, in spite of the fact that there are boards in these other products, that eggs will probably make the best recovery because there are not that many artificial conditions in the major egg-producing provinces. For example, in Ontario we have had, as some of the fellows have said, a real blood-letting. It has backed the feed companies off. I will explain in a minute where we feel the responsibilities were.

As some of you probably know, we are holding an inquiry into eggs in Ontario right now. I do not have the terms of reference here, but I am familiar with them, and the purpose of the inquiry is to look into the problems of the egg industry, to see whether quotas would be a necessity or would be of value at all, to look at the national plan in terms of what our participation in it would lead to, to look at the problems that have been had with Quebec, and to look at almost anything else that Judge Ross might bring out during the inquiry.

**Senator Grosart:** You say "we". Whom do you mean?

**Mr. Hudson:** I mean the egg industry. I will have to give you a bit of history on this. The egg industry was going to hold a vote last summer, and in respect of that there was a tremendous number of registrations. There was a large number of registrations of small producers. It became pretty apparent that that vote was going to be lost, that the smaller producers would not vote for it.

At that point in time the Government decided it wanted to review the whole subject, because there were all kinds of accusations of illegal registrations and that sort of thing. This happened in about July and the Government did not want too much fuss during that period so they put a judge on to it and put the inquiry into effect. We are now holding the inquiry.

**Senator Grosart:** What is the status of that inquiry? Under what act has Judge Ross been appointed?

**Mr. Hudson:** I have no idea. It is a judicial inquiry.

**The Acting Chairman:** It was probably under the Inquiries Act.

**Senator Phillips:** By way of a supplementary to Senator Grosart's question, was Judge Ross appointed by the provincial government?

**Mr. Hudson:** By the provincial government, yes.

**Senator Phillips:** I find that rather strange, in view of the fact that at our last committee meeting the minister told us that in the matter of urgency it was the desire of the Government of Ontario to have new legislation.

**Mr. Hudson:** Well, he does not even know yet whether Judge Ross is going to tell him whether we need the legislation or not.

**Senator Grosart:** That is the point.

**Mr. Hudson:** Maybe Judge Ross will say that this legislation will not work. He is getting some very enlightening information. I will give you a little bit of that information as I go along. If I gave it all to you we would be here for three days. It is becoming increasingly clear from these hearings, and I have been at most of them, that the problem has been caused by the producers themselves in the last three years. You must go back to 1968 and 1969 at which time we were in very high egg prices. A man could double his money very quickly. Two factors were involved: the producers were looking to make more money by raising more eggs and the feed companies were moving in.

There was an interesting article in the *Globe and Mail* yesterday. I might say the *Globe and Mail* seems to be promoting eggs these days. That article showed the degree of control the feed companies have in the egg business today, whether they like it or not, by the fact that the business has been over-promoted by the companies. It takes two people to make a deal. We cannot blame them. As one woman said in Ottawa the other day, "It takes the greedy feed company to put out the money and the greedy producer to take it." It takes two to close this deal.

It has been shown quite conclusively that many of these producers are non-farmers—men with a few acres of ground and a chicken house on it that they got by taking on a feed company mortgage. We are trying to find out how many are in that situation.

The proponents of the plan in Ontario, who also favour our national plan, are being shown to be a part of the problem. They themselves increased—or some of them—anywhere from 50 per cent to 500 per cent in the period in question. They are now saying that something is wrong with our industry and that we need to put quotas on and lock it up.

Rightly or wrongly, we feel that these quotas are not a lock-in of the farmer but are a lock-out of the farmer. That may sound ironic, coming from a producer as big as I am, but, as I told Senator Goldenberg on the telephone the other day, I am probably not the right man to come here and plead the case of the farmers. At this point I am probably the best the fellows have, which just shows what they lack.

However, in Ontario these low prices, as I have said, have solved the problem very quickly and decisively so that right now the feed people are starting to back off very



severely. I would suggest that you read that article in yesterday's *Globe and Mail*. You will see what I mean. I assure you that Maple Leaf mills who were one of the biggest promoters, who happen to be the people with whom we work for our feed, are no longer promoters of the egg business. They are demoters of the egg business. They are trying to get this business backed up to where it will make money. In many cases these people, who were very active, no longer want to be active.

If you want to define "farmer", and this is supposed to be farm legislation that we are getting, for our purposes a farmer is a man who has acres of ground and who farms that ground. We have had it shown to us that in many cases the farmer feeds his feed to his own livestock, especially in the east. What we are saying is that once you put these quotas on, especially on eggs, the bulk of the industry is already locked up financially with people such as the feed companies. These feed companies own mortgages and so on on the property and once you have locked this up there is no access for the farmer to get into this market. Besides this, it is coming up quite clearly at our hearings, and I have brought with me three or four samples which I can leave if you want to put them in the record, where farmer-feeders—that is a man who has his own farm, makes his own feed and feeds it—some of them have not lost money, and some of them claim they have made a little money, or if they have lost it has been very little. Whereas the people who are non-farmers or who are financed heavily by the feed companies are showing anywhere from \$1.50 to \$3 loss per bird in that 18-month period of bad pricing. The thing I think you have to remember is that in poultry, eggs and turkeys, poultry equals mill feed which equals feed company interest, and when you get a quota put on, if the feed people can get their hands on it, by contract, by financing or by direct ownership, they then own the right to feed the feed, and the feeder, the man who grows the feed, has no place to go. If he does not want to take the feed company's price, he now has to take that feed and sell it to them at the going rate, whatever it is.

It does not take very long to show that this legislation, especially in poultry—in milk it does not apply because what feed company wants to get their hands on a milk quota? They would not milk the cows morning and night even if they did have one. But this does not apply in poultry and what we say is that this quota in poultry—and this is what you will get nationally—protects only a favoured few and a good many of these people are non-farmers. It is being shown, as I said, that many of these people, particularly in Ontario, who expanded in these last three years are opting for this. We had a good example this morning of what it has done in turkeys in Ontario. I am reading now from a submission by Mr. Jack Walkie who is a turkey grower and I think he is a member of the Turkey Board, and this is what he put in the transcript this morning in Toronto in front of the judge at Judge Ross' inquiry. Remember this is farmer legislation that he is working under and that our provincial government is working under. He has this to say:

In looking, at the quotas for heavy turkeys, the total quotas for Ontario approximate 98,000,000 pounds. However, of this total quantity, we have the following companies with quotas—Maple Leaf Mills-6,500,000

lbs. Ernie Hadler-6,000,000 lbs. Ralston Purina—4,300,000 lbs. Harvey Beaty & Coldspring Farms—...

... our Egg Board Chairman ...

... 13,000,000 lbs. Canada Packers—4,000,000 lbs. Royce Packers—2,500,000 lbs. Wm. Knechtel & Parrish & Heimbecker Limited—3,500,000 lbs. Currah Mills—1,700,000 lbs. Cuddy Foods Limited—2,600,000 lbs. and Campbell Soup Limited—1,400,000 lbs. These figures are approximate and total 45,000,000 lbs., which means that the above companies hold over 45% of the heavy turkey production, ...

Under their quotas. That is to say nothing of other contracts and so on besides this. His comment is:

... so again I would have to ask the question "is this a turkey farmer producers board?"

Then there is a point made about broilers which I shall read to you. This is what he said about the directors of the former broiler industry and he says he is willing to back this up for the judge with hard facts.

**Senator Martin:** Do you think all this is relevant? We are considering a specific bill.

**Mr. Hudson:** I do.

**Senator Martin:** I am asking the chairman because we have a particular bill before us, and I think you should direct yourself to that.

**Mr. Hudson:** This bill advocates quotas on turkey products, on broilers and on eggs. We are telling you that half of Ontario's turkeys, which means 25 per cent of Canada's turkeys are tied up by ten companies. Now, that is just in Ontario, and you are about to pass farmer legislation to legalize this. We do not mind something going to the farmers, and we know that something needs to be done, but we do not consider that this is for the farmer. That is my whole point.

**Senator Martin:** I understand that, but I wonder if you should not address yourself particularly to the bill.

**Senator Phillips:** You want to apply closure, Senator Martin.

**Mr. Hudson:** Is not this what the bill is about, Senator Martin?

**The Acting Chairman:** Mr. Hudson, I think if you were to relate it to the bill as closely as you possibly can we should not take too long.

**Senator Buckwold:** How are the quotas established? By past performance?

**Mr. Hudson:** In a variety of ways. In the 30 quotas they took the biggest percentage of any one of three years, the biggest volume of three years, and that means they ended up with about 30 per cent more than they ever had in any one year. One thing that Mr. Walkie said in here was that the members of the original broiler board in Ontario in 1965 and 1966—very few of these men even exist today. The bulk have sold out and taken their dollar and a half per bird for their quota.

**Senator Buckwold:** Let us get back to the quota for a moment and you must excuse my ignorance. You are making an important point that the quota system is in fact freezing ten companies into half the market of Ontario. But so far as the balance is concerned, how would it be applied there?

**Mr. Hudson:** Well, it is applied to the other producers.

**Senator Buckwold:** Again on a sale basis?

**Mr. Hudson:** On what they had originally of what they bought. One man, Mr. Hadler—and I posed this question to the President of the Ontario Federation of Agriculture—this man Hadler has taken from three million to six million pounds out of a total of 90 million. I said to the President of the Federation, Mr. Hill, "What good is that to the Ontario farmer?" And he did not have too satisfactory an answer for me.

**Senator Buckwold:** But the fact is that this is based on performance or some established procedure or formula establishing a quota. I just do not know how it could be otherwise. Are not these people going to maintain their share of the market in any case whether you emphasize this or not?

**Mr. Hudson:** Well, the big do not always stay big. We stole most of the egg business we have from Canada Packers in Montreal. And I presume that if we get a little too big somebody will steal it from us.

**Senator Buckwold:** But this is an ongoing thing, and as you look at it now, I presume there will be changes even on the basis of quotas.

**Mr. Hudson:** The change that has become very evident is that when you have the quota and it is locked in, you can no longer get in there by ability.

**Senator Buckwold:** What is your quota?

**Mr. Hudson:** I do not have a quota and I do not want one. I am only saying this, that when you have the quota it does not matter how energetic the young farmer is and it does not matter how much ambition he has. We had 35 hens in 1942, and our egg board ruled that a man with less than 500 hens should not have a vote. It did not matter how much energy he had or how ambitious and ingenious he was. The only concern was whether he had sufficient money to purchase the quota.

**Senator Grosart:** What does a quota cost?

**Mr. Hudson:** About \$1.50 in broilers.

**Senator Grosart:** What does the \$1.50 purchase?

**Mr. Hudson:** Per bird. I have no idea what it is in turkeys.

**Senator Grosart:** What is the procedure for buying a quota?

**Mr. Hudson:** A deal is made with an existing quota-holder. For instance, in eastern Ontario there are no turkeys nor broilers, but plenty of farmers. How will we ever get turkeys and broilers in eastern Ontario under our present system? What God-given right have those in western

Ontario to the total production of turkeys and broilers in Ontario?

**Senator Martin:** You have touched me on a sore point there. I ask you, did the integrators with the largest percentage of quotas in turkeys enter the business before or after the Ontario Marketing Board was established?

**Mr. Hudson:** They were in business when the plan was born, there is no doubt. The plan, however, has done absolutely nothing to stop this. Hadler doubled his volume under the terms of the quota system. It does not matter if limitations are imposed. Ways will be found to get around them.

**The Acting Chairman:** Mr. Hudson, perhaps you will move along. We have already been 40 minutes.

**Senator Phillips:** May I ask a question?

**The Acting Chairman:** Yes, certainly.

**Senator Phillips:** Mr. Hudson, you mentioned that you had been in beef and moved to broilers and so on. Does a young man wishing to establish a farming operation in poultry have to buy a quota? If so, can he obtain one? Can a person operating in, for instance, the dairy industry change to poultry?

**Mr. Hudson:** It can be done in eggs at present. In the other products they must be able to buy a quota, and one would have to be available.

**Senator Phillips:** They have to buy a quota?

**Mr. Hudson:** In order to make the change they must buy a quota. Farming is one industry and if it is continually frozen off it will turn total quota, regardless of what happens. As it is frozen off one at a time all the operators are driven into the remaining products. "X" number of products have been frozen off in Ontario and the producers are driven into those remaining. It is impossible to enter the broiler field today without buying a quota.

One ironic aspect is the proposal put before the federal Minister of Agriculture by the provincial ministers in November. One side of it suggested the farms be consolidated. On the other side the proposal was to impose quotas on poultry. What is the farmer to do with his consolidated farm if every product is under quota? The farms can be consolidated but still nothing can be done with them.

I repeat that farming is a total industry. There are many concerns which I will not go into, as we have been discussing quotas for quite a period of time.

**Senator Grosart:** Before leaving the quota, would you say that under this bill, once quotas are set by an agency no one can get into that particular farm product?

**Mr. Hudson:** Oh, no.

**Senator Grosart:** Without buying a quota?

**Mr. Hudson:** Arrangements might be made to set up new procedures. I am not aware of that, but it has not been the case in most of the other products. In some cases it has been the opposite. The quotas in poultry have gravitated to



the feed manufacturers or bigger producers. For instance, APM in Alberta and Pinecrest Poultry Sales own almost 50 per cent of the poultry quotas in that province. Is that not correct, Mr. Pringle?

**Mr. M. Erwin Pringle, M.P., (Fraser Valley East), Chilliwack, B.C.:** Do you wish me to answer that, Mr. Chairman?

**The Acting Chairman:** If you wish to do so.

**Mr. Pringle:** The integrated production of broilers in Alberta has not increased since the Marketing Board was established. The original producers have pretty well held their ground. Some small producers have sold out. This is true, but the APM have a large control of the secondary industries, such as hatcheries and processing. Their increase as an integrator was caused mostly by buying out other integrators in the province. Alberta has a plan under which 35 per cent of all new quotas issued must be allowed to new, young people or those who wish to start. There is no price permitted for broiler quotas in the Province of Alberta.

**Mr. Hudson:** I wonder, though, how much new quota they are issuing?

**Mr. Pringle:** The production has doubled in 10 years.

**Mr. Hudson:** We have many concerns regarding the bill. One is with respect to provinces being allowed to opt out.

**Senator Grosart:** Before we move to that, to continue with the quota, I am sure you have read the new clause 24 of this bill?

**Mr. Hudson:** No, I have not.

**Senator Grosart:** This is one of the three amendments made in the House of Commons, which we discussed this morning. It provides as follows:

A marketing plan to the extent that it allocates any production or marketing quota to any area of Canada, shall allocate that quota on the basis of the production from that area in relation to the total production of Canada over a period of five years immediately preceding the effective date of the marketing plan. In allocating additional quotas for anticipated growth of market demand, the marketing agency shall consider the principle of comparative advantage of production.

In view of your comment regarding the apparent rigidity of the quota system, would it be your view that this clause would make the allocation even more rigid?

**Mr. Hudson:** It would lock it into the regions, regardless of the economics. For instance, western Ontario at one time produced half the demand of eggs in Ottawa. Now the producers in this part of the province have increased their production at a competitive price and satisfy all requirements here, plus shipping into Montreal. Over the last 15 years I would say eastern Ontario's egg volume has doubled.

**Senator Grosart:** Would a marketing plan established under the provisions of clause 24, to take specific example, make it impossible for a switch to take place in the total percentage of production, for instance, between western and eastern Ontario?

**Mr. Hudson:** It is very unlikely that it would switch between regions unless the quotas changed hands. No, under that, they could not, could they? It would have to remain as a quota base in the region.

**Senator Grosart:** So it would depend upon the dimensions of the region determined by the marketing plan?

**Mr. Hudson:** That is right.

**Senator Grosart:** But if western Ontario was designated as a region for turkeys, would they maintain under the provisions of clause 24 their quota percentage related to their five-year production?

**Mr. Hudson:** Legislation guarantees them the business for time to come.

**Senator Forsey:** Go on to the second sentence of clause 24.

**The Chairman:** I wish to ensure that Mr. Hudson has full opportunity to make his presentation. Perhaps we might allow him to finish, following which we can ask questions.

**Mr. Hudson:** There are many aspects of the bill. One is the concern over provinces opting out. The question was asked where does it say they can opt out, but where does it say they cannot?

**Senator Goldenberg:** Normally the legislation would provide that it can be done if that is so. It would not be said negatively. There is nothing in this legislation to say that a province can opt out.

**Mr. Hudson:** We are concerned by errors in judgment. For instance, British Columbia, with a very good marketing board, has over-produced eggs and shipped them to Ontario on a two-price system. That is really not very ethical in our estimation. What would happen if we were to do this nationally? I am sure that the Americans would not allow us to ship eggs in surplus on a two-price basis to them. Today we are worried with regard to the setting of quotas. What do you say with respect to the butter shortage in Canada today? Why should a country which has a vigorous dairy industry, as we have in Canada, have to import butter, as we are told we do? Nationally our boys were told by one government to grow wheat. We did so. We did not sell it, so we were told to grow hogs. But we grew to many hogs. We were told to grow beef last year. Some of us wonder what we will be told to grow next year. The most ironic part of the whole thing is that while all this is going on, we import American corn and turn it into products. Over the years we have imported a good deal of it, while our barley lies rotting out west. This does not make sense. We are also concerned over import controls. Will we artificially raise our prices? This will certainly add to bureaucratic costs. If it does and we have quotas, the quotas will add to costs. In Quebec, up until they put their quota system in, they bought their grain from the west or their corn from the States, or wherever they got it, turned it into broilers and shipped them clear back to British Columbia; and we heard great screams from British Columbia that they were being harassed with Quebec broilers. I do not know how they did that. They must have had some kind of magicians down there, turning these broilers over, because there is no way they should be able



to back-ship them to British Columbia and harass anybody.

We feel that imports will roll in and that the Americans will drive us into a corner in poultry products. We get an American price now plus a nice little premium. We will get American price plus the cost of this machine. The consumer will simply buy or import a substitute if we do not get a tariff increase. I told Mr. Olson in 1968—I went in to see him personally. I was concerned about this, and he was good enough to give me a hearing—that many of us would buy the deal if he would give us import control, if he would give us legislation against synthetics, and get consumers to stop their approval of the bill. I do not think he has done anything yet. We say that the better this bill works, the sooner the consumer will get angry and destroy it. She will not take artificial prices very long. She will want competition and she will buy the US product unless you are willing to put the tariffs on.

We talk about plebiscites. We feel there should be plebiscites. I read some of the things that happened in the Senate. Some of you talked about differences in plebiscites, differences in the definition of producers, and so on. To finalize this very quickly, why does Canada need a poultry bill? I will put into your transcript an article written by a Mr. Roytenberg who is the marketing man for Steinberg's Montreal. It was written up in one of the farm publications, *Country Guide*. This man flatly states the point that if we do not produce it at a price at which the consumer will buy it, the consumer will force them to import. I will give this to you.

**The Acting Chairman:** What is the date of that?

**Mr. Hudson:** It is on there, *Country Guide*, December 1971.

**The Acting Chairman:** This is a monthly publication?

**Mr. Hudson:** Right.

**The Acting Chairman:** It is entitled "A Marketing Strategy for Agriculture". The author is Don Baron.

**Mr. Hudson:** No; the editor is Don Baron. The author is Max Roytenberg.

**The Acting Chairman:** Is it the wish of the committee to have this appended as an exhibit?

**Senator Martin:** I have no objection to that. We have been very patient. Any witness can appear before the committee and put in any kind of supporting material, but...

**Mr. Hudson:** It is not necessary to be put in. Perhaps I can read just one paragraph. It says:

There's no room in the merchandising scheme, he says, for "supply management", the philosophy that better prices can be obtained by artificially limiting supply. "Supply management doesn't solve the agricultural problem because it is a flight away from the mass markets of the world. It dooms us to be content with a shrinking share of the market at prices that become increasingly vulnerable with time."

I think this is only too true. I will not put that in the record.

**The Acting Chairman:** In other words, the author objects to marketing schemes of this kind, and you agree with him.

**Mr. Hudson:** He does not object to marketing schemes. He objects to the supply management as being self-defeating. He says that it is self-defeating.

**The Acting Chairman:** And you agree.

**Mr. Hudson:** I agree with him; absolutely, yes. I feel that if you analyse your bill, you will find that there is a good deal of coercive legislation in there. We find, for instance, that the council or producers can be appointed. It does not have to be elected. They sit at the minister's pleasure, whatever that means. The agencies can be appointed or elected, you do not have plebiscites for all producers, and so on. There were a good deal of amendments. I will not take time to go through them. About four or five of those amendments were good ones. We suggest that there should at least be a careful review of this bill. In regard to poultry, it will assist the non-farmer more than it will assist the farmer. We feel that poultry should be excluded rather than included.

It is possible that if a farm bill is needed, it should be reviewed as a farm bill for farmers. I heard from one of the boys this morning that the premiers are pressing the Senate to get it through. Somebody said the agriculture ministers were, and I am sure the MPs are. But this is not their bill. It is a farm bill, and it is for farmers. If enough farmers want it, fine, but I question whether this is so.

Gentlemen, the whole system is withdrawing, it is regressive, it is a policy for the retired. It would make, in the words of one of our farm leaders, a giant public utility out of farming. I state this in closing: what is wrong with a vigorous, competitive Canada, and what is wrong with a vigorous, competitive, aggressive, prosperous system for Canada? We have to compete with the Americans, whether we like it or not. Some of us, believe it or not, still hope to sell to the Americans and not to sell out to them. We feel that too many Canadians are just trying to get big enough to sell out to the Americans, or we are withdrawing and letting the Americans come in the door, such as will happen to our poultry products under the bill.

If this bill has to be passed, then pass the bill for the farmer, but not this bill in the name of the farmer. Put up major amendments. Do what needs to be done. Make it a good bill and put it back to the Parliament. It had only one day of debate. If you read what the Honourable Mr. MacEachen said in the opening of the debate on the last day, you will find they had one day of debate and two days of wheeling and dealing. We feel that is not good enough.

I thank you very much for letting me appear. Do not get me wrong. I realize that you need legislation for the farmer, but we do not think it is this legislation.

**The Acting Chairman:** Thank you.

Honourable senators, Mr. David Kirk, the Executive Secretary of the Canadian Federation of Agriculture is here. Is it your pleasure to hear him?

**Senator Molgat:** May I ask Mr. Hudson a question before he leaves? You have dealt with the over-production that

occurs, for example, in the case of poultry, by letting the free market situation drive out those who cannot stay in.

**Mr. Hudson:** If you have not read yesterday's *Globe and Mail* I would urge you to read it. If you read that editorial you will see that the feed companies, looking to corner a share of the market, put into business far more people than they should have and they are now suffering because of that and they will continue to bear the brunt of it one way or the other.

We feel that if you allowed a young farmer the opportunity to produce he could produce cheaper than, for instance, Mr. Beatty, with his 13-million-pound quota. We are saying that the young farmer should have the opportunity to do so. What is needed is access to the market.

**Senator Phillips:** Your remark to the effect that you hoped to export to the United States rather interested me. Do we export eggs or poultry products to the United States at the present time?

**Mr. Hudson:** Eggs were going last year, but this year they are coming back. The pattern seems to be a process of exporting and importing. What we are saying is that if we had the grains at a competitive price many of us feel we could increase our production.

**Senator Phillips:** You also mentioned, Mr. Hudson, that we imported a substantial amount of American corn. I was rather surprised at that statement, and I am wondering why we do not use western feed corn as opposed to American corn.

**Mr. Hudson:** I have no idea how much American corn comes into Canada. I know some does, but we would like to use western feed corn if we could. I believe the United Grain Growers has more or less put their stamp of approval on this trend.

**Senator Phillips:** So you would use western corn if you had a reasonable transportation price and access?

**Mr. Hudson:** Well, we are now promoting more corn growing in Quebec and Ontario, so there is really no need to grow more corn.

**Senator Sparrow:** Would this legislation meet with your approval if the supply management features of the bill, as far as your industry is concerned, were deleted? In other words, just a marketing agency.

**Mr. Hudson:** If it was a marketing agency which would genuinely try to help us in exporting our products, and so forth, certainly. There is absolutely no reason why we would not want this. However, any time we have bowed down to this, they take our money and they get us one at a time. Do you follow me? In other words, we would have to be guaranteed that supply management would not come in.

**Senator Sparrow:** Under the supply management feature in the legislation, your feeling is that the bigger producer has the greatest opportunity to get bigger because he would have the financial resources to buy up the smaller quotas. You have mentioned ten of the largest producers and the possibility of them picking up all of the quotas. In

other words, the bigger producers could pick up the smaller quotas much easier than could a new farmer just starting in the business.

**Mr. Hudson:** Four of the biggest producers are feed companies and one is Campbell Soups, so they have unlimited financial resources. It is not a matter of whether they can produce cheaper, but whether or not they have access to the market, and they do not have this access if they do not have the quota system.

**Senator Grosart:** Mr. Hudson, you have made a strong plea for the average producer, but are you not satisfied with the requirement that the council cannot recommend a marketing plan or the formation of an agency unless it is satisfied that a majority of the producers of that farm product in the region to which the farm marketing plan would apply is in favour? Is this not a protection for the majority, particularly in view of your statement with respect to the domination by certain large producers, and the minister's statement that this will normally be a one man/one vote decision? Does this not protect the majority?

**Mr. Hudson:** It does to an extent, but if you arrive at a situation similar to what we have had in poultry where you have so many people who have been pushed into the industry and then the cookie is held out one or two years hence. This is what has happened in Ontario. The feed companies have a good deal of control of the industry by reason of the amount of financing they have put into it. They did this with reckless abandonment and now they are suffering because of it.

**Senator Grosart:** What percentage of individual producers would be under the control of feed companies?

**Mr. Hudson:** Individual producers of eggs?

**Senator Grosart:** Yes.

**Mr. Hudson:** In Ontario, I would say most of them are independent, but eggs have not been moving and as a result many individuals are heavily in debt to the feed companies.

**Senator Grosart:** What percentage would be under the control of the feed companies?

**Mr. Hudson:** Man for man?

**Senator Grosart:** Yes.

**Mr. Hudson:** Less than 30 per cent of the producers, but probably 75 per cent of the hens. This is why we are having this inquiry in Ontario. Any time they allow enough small producers to vote, it is voted down because the small farmer does not want it, and we contend it is small farmer legislation.

**Senator Grosart:** Would the small farmer who is under some financial obligation to the feed company vote for an agency, in your opinion?

**Mr. Hudson:** It depends on what you call a small farmer. If you are talking about a man with a couple of thousand hens, he probably is not under that heavy an obligation; if you are talking about a man with 20,000 hens who has a heavy financial obligation to a feed company, he would



probably view this as a solution and he could probably sell his quota for \$40,000.

**Senator Grosart:** What percentage of the total quota would the \$40,000 involve?

**Mr. Hudson:** Well, broilers trade at \$1.50 a bird, and they consume about 25 pounds of feed a year, so we are saying a hen is worth \$2.00; \$40,000 would be a 20,000-bird quota.

**Senator Grosart:** Yes, but I would like to know what the relation of \$40,000 is to the total quota. Is it one per cent, 1/10th of a per cent, or what?

**Mr. Hudson:** There are 10 million hens in Ontario, so you immediately create a quota of \$20 million to \$30 million if you put the quota system in.

**Senator Grosart:** So \$40,000 would be what?

**Mr. Hudson:** It would be one-fifth of one percent.

**Senator Grosart:** One-fifth of one per cent of the quota would be worth \$40,000?

**Mr. Hudson:** Yes.

**Senator Buckwold:** Mr. Hudson, to get back to the poultry industry in Ontario, you have spoken as a rugged individualist and I admire that, but is there such an organization as the Ontario Poultry Association?

**Mr. Hudson:** The Ontario Egg and Fowl Board.

**Senator Buckwold:** And are you a member?

**Mr. Hudson:** I am a director.

**Senator Buckwold:** And has that organization made any representations or raised any objections against this marketing bill?

**Mr. Hudson:** The organization is in favour of the bill. That is why we are having this inquiry. It is a battle between the producers of Ontario.

**Senator Buckwold:** And are the majority of the people in that association producers?

**Mr. Hudson:** The majority of the directors are, but the last time we had a vote which was in 1968, they lost.

**Senator Buckwold:** But nevertheless we are now talking of today. I am just trying to get your personal views as against the position of the industry as a whole. Your views and opinions do not in any way coincide with the opinions of that association?

**Mr. Hudson:** No, they disagree with me; not the industry as a whole, but the board itself disagrees with me. Two directors of the board have now indicated they are against it. When we held our last vote in 1968 I was all alone. There was one against it and eight for it.

**Senator Goldenberg:** You made some progress.

**Mr. Hudson:** We have got twice the strength.

**The Acting Chairman:** A 100 per cent increase.

**Mr. Hudson:** A 100 per cent increase.

**Senator Sparrow:** I am sorry to hold this up, but I should like to ask two further questions. Mr. Hudson, you did define what you thought a producer was who was a farmer. I am very interested in that. We have been trying to define what a producer is. You seem to define it in the broad sense of a producer in any agricultural product. Would you repeat that for us?

My second question is this. We have referred to the Ross inquiry. Do you know when they are expected to report, if there is any time they are expected to report, and if in fact that inquiry would have some relevance to this bill?

**Mr. Hudson:** There are two or three questions there. Let me answer the last one first and then go backwards. The Ross inquiry is over on Monday. I do not know how long it takes a judge to report; maybe a month, maybe two or three months, with the piles of stuff that Judge Ross has on his desk. If he reports, he is reporting to our Department of Agriculture. Of course, they do not have to listen to his report unless they want to. The Department of Agriculture will then decide what they will do relative to his report. If they decide quotas are not for Ontario, I presume this will make it difficult to have a national egg marketing bill. Ontario has over 40 per cent of the eggs in Canada.

Turning to your first question, I will give you three briefs that I have. If you think they are worth looking at, Senator Sparrow, you can pass them around to the other senators. By my definition I am not a farmer. Remember, my brother, my father and myself stand to pick up \$750,000 or a little better for a quota, so we should be on the other side of the fence really. If I were 60 years old I probably would be.

**The Acting Chairman:** Don't knock the sixty-year olds!

**Mr. Hudson:** No, no. There is nothing wrong with being 60, or more. A farmer is a man who has acres of ground, who grows crops on that ground. If he lives east of Manitoba, in many cases he feeds it into his animals and puts it into the marketplace. West of Manitoba, many of the fellows do not, as you know. In Eastern Ontario there are very few straight corn farmers; most of them grow the corn and put it through hogs. For instance, in the hog industry, they do not opt for quotas in Ontario, and there are over 20,000 farmers. Every time the integrators move in the industry to contract hogs, they run a low price cycle and drive them right back out again. The farmer feeder does this. I have good briefs here from at least one or two farmer feeders. I have one from George Morris, who is a very well known cattle man, and so on. I will give them to you, Senator Sparrow, and you can pass them around if you see any merit in them.

**Senator Molgat:** Do I understand you to say that the hog producers in Ontario do not want quotas?

**Mr. Hudson:** They have not got them. They do not have quotas, no. They have a marketing plan, but no quotas. They have a sales agency only.

**The Acting Chairman:** Thank you very much indeed, sir.

**Mr. Hudson:** Thank you again for hearing me.



**The Acting Chairman:** We will now hear from Mr. Kirk. Mr. Kirk, would you identify yourself, please?

**Mr. David Kirk, Executive Secretary, Canadian Federation of Agriculture:** My name is David Kirk. I am the Executive Secretary of the Canadian Federation of Agriculture, and recently acquired the responsibilities of Secretary to the Canadian Egg Producers Council.

**The Acting Chairman:** Where are your headquarters?

**Mr. Kirk:** In Ottawa.

**The Acting Chairman:** Have you some representations to make in respect of this legislation?

**Mr. Kirk:** Yes. I appreciate very much being here. The remarks I have to make will, I think, be brief, but perhaps there will be some questioning following my remarks that you would find useful.

The position of the Canadian Federation of Agriculture all through the debates on this legislation has been one of being in favour of the legislation, and continues to be so, as a piece of enabling legislation that provides the capability for in some cases the better management, and in others the better development of agriculture, of many commodities in this country.

The provisions that have been arrived at by the House of Commons are that supply management, the quotas, can only be introduced without further amendment to the bill in the poultry and egg field. That accommodation, to bring in quotas for commodities other than in the poultry industry, is one that I am quite sure the Canadian Federation of Agriculture would accept.

If you check through our submissions, we never did feel that it made much sense to exclude any commodities, because this is a piece of enabling legislation, and there are many things that can be done under it. We made it clear in our representations with respect to hogs and beef that we did not anticipate, and we did not see the producer support for, an early, or perhaps ever, introduction of a system of quotas. Therefore, we have no quarrel at all, although when the time comes for further commodities to be introduced, if it does—probably not hogs or beef, probably something else than poultry or hogs or beef—it is necessary that the organization has been done, the producer discussion has taken place, the examination of the needs of the industry has taken place, and we hope that, if and when the time comes for the introduction of amendments to introduce further commodities into the bill for supply management, the momentum and drive that will obviously have to go behind such a move will not be held up by the circumstances of the House and the work of the House, and all that kind of thing. That was really the only reason that we favoured, on the whole, leaving the supply management capability in the bill for all commodities. As I say, we are not quarrelling with that.

However, we do support the immediate introduction into the bill of supply management for poultry products, because our thorough understanding is that the great majority of poultry producers and egg producers in this country in fact want the provisions of federal legislation that enable an agency to conduct a supply management system; they want that power in there. That certainly is

true of the Canadian Egg Producers Council, and very strongly so.

That is the main proposition. Really what I am saying is that we would like to see this bill go through. Unquestionably in particular details, between my organization and, perhaps, others, and within my organization, there are many sometimes quite difficult questions of what is the very best way to word this bill. Our position is that we think it should be passed. We think that bills can be amended in the future if real difficulties arise with respect to the satisfactory nature of any particular clause. For instance, in a particular commodity that is to be introduced into supply management, it is possible that the mandatory five-year base provision might not statistically lend itself to the right answer. That might raise the question of amending the act. But our position is that we would like to see it passed.

Perhaps that is all I can say, as a start. When I say I would like to see it passed, I say that with all respect, of course, to this Senate, and I would point out that the Federation has always been aware of that and has not been anything less than frank about the fact that it is a legislative power that is being provided here. There is a public interest involved, and I would say for the future that the Senate as well as the House of Commons would have not only an interest but a responsibility to review and pay attention to how this whole thing works.

Times change, developments occur and problems arise, and it is a very legitimate public responsibility to pay attention to the operations of any such legislation.

Finally, on the general question that Mr. Hudson was discussing, I am not going to get into the in and outs of the integration question, except to say that there are at least a great many producers I know who would say that, on the whole, they think that the fundamental drift in the poultry industry is towards integration and non-producer control.

**Senator Grosart:** Is that a good thing?

**M. Kirk:** They would say it is a bad thing. They would say that this bill and the marketing plans have within them the capacity for precisely seeing that that does not happen. If in a particular plan the regulations are so formed that it does happen or start to happen, you can have an argument whether that is desirable or not, and so on. But the capacity is there to do much more what you want to do, than without the bill.

**Senator Grosart:** In view of the importance of the organization which you represent, I should like to ask you a few questions. Would you be in favour of the inclusion of consumer representatives on the Council or agency boards?

**Mr. Kirk:** I think my organization's position would be that they would not be in favour of that. They would be in favour, I am sure, of its inclusion in the advisory structure or structures that might be set up.

This relates, in part, back to the point I was making about the fact that this is public legislation and the responsibility of public bodies such as the Senate is to review this. This is a public interest question. We really question how meaningful it is, to introduce into these

bodies that you mention a consumer interest as such. We are not exactly sure what it might be, always. This is with all respect to the organizations that take the consumer name. We do not think that that would be a useful thing. What we do support is the very best continuing examination and the raising of issues that exist in the operation of marketing boards and we have no objection to the public interest being recognized thoroughly.

**Senator Grosart:** The bill requires agencies to consider the consumer interest. Would you agree that it might be a useful way of implementing that, to have at least one consumer representative on an agency board? If not, why not?

**Mr. Kirk:** I think the best way for the consumer interest to be represented is to have a very good examination of the industry and of the issues that are involved in marketing boards, and the right kind of work done to clarify those issues and to expose them. I do not think that a consumer representative per se ensures that that kind of examination is done, and without it the criteria for acting would be difficult. I do not see the situation as an adversary situation, and it should not be so.

**Senator Grosart:** I am not suggesting it should be an adversary situation, but that there should be some feed in of data of the dimensions of the consumer interest when this kind of legislation is proposed whose main effect, in terms of Canadian citizens, will be on consumers.

**Mr. Kirk:** I am not sure that that is right, that its main effect will be on consumers. It is not clear to me, and it is far from self-evident, that an egg marketing board would result in either higher or lower prices for consumers. You have now a cycle, and it is the cycle you are modifying with high or low prices. You would have to know in fact what the results were in relation to the price policy of the board, to know what the effect was on consumers, and it could well be beneficial.

**Senator Grosart:** Is not one of the main functions of the marketing board to prevent extremely low prices for a farm product?

**Mr. Kirk:** Yes, the main function of a marketing board is to prevent at a given time—

**Senator Grosart:** I said "one of them".

**Mr. Kirk:** At a given time, to prevent extremely low prices, but more properly looked at, it is to avoid extreme instability and the insecurity to the producer that is involved in that and the waste to the economy that is involved in the production cycle, because there is a very significant economic waste in large swings of production.

**Senator Grosart:** I will leave that point. Do you agree that members of the council and of the agencies should be appointed at the pleasure of the Governor in Council, or would you favour a specific term of office?

**Mr. Kirk:** I do not think that our people have very strong feelings about it. I am not sure that I could validly speak as a reflection of the views of our people on that particular point.

**Senator Grosart:** What has been the situation with respect to other marketing boards with which you may be familiar? Are the appointments largely at pleasure, or for a term of office?

**Mr. Kirk:** The marketing boards of the type that is largely conceived in here are essentially producer representative boards, of course, at the provincial level. That is a different situation, and those producer boards mostly have elected representatives.

**Senator Grosart:** That is why I asked the question.

**Mr. Kirk:** The boards we have had nationally have been federal boards. We have had the Wheat Board and the Canadian Dairy Commission. I do not think it is a parallel situation in either of those institutions.

**Senator Grosart:** Would not this be parallel, let us say, to the council, but not to the agencies, if as you say the majority of agency directors are now elected. Would you not be afraid that the introduction of this appointment of agencies at pleasure is a novel and perhaps dangerous innovation?

**Mr. Kirk:** I think our people would favour, on the whole, a term of office arrangement, probably with renewal; but I do not think they consider this an essential question.

**Senator Grosart:** It is not obligatory under the act. The other alternatives are open. But, from your experience, would you say that the CFA would, all circumstances being equal, in general favour elective agency boards?

**Mr. Kirk:** Well, if you are speaking of the national agencies—

**Senator Grosart:** I am speaking of the agencies, not the council. Leave that out for the moment.

**Mr. Kirk:** The national agencies under the legislation?

**Senator Grosart:** Well, at least intra-provincial, if not national.

**Mr. Kirk:** I know that a lot of our people see very severe difficulties in a meaningful elective procedure for a national board.

**Senator Grosart:** So do we all.

**Mr. Kirk:** The majority of them—the egg producers at the present time, for example—feel that the board should in fact be made up of the named provincial representatives of the provincial boards. That is what they feel.

**Senator Grosart:** Who feels this?

**Mr. Kirk:** The Canadian Egg Producers Council feels this. They feel that essentially a board should be that kind of a group. That is how they feel at the present time.

In our discussions in our organization we did not have consensus on this. I can tell you that quite frankly. This is quite a difficult question. We were in fact in favour of a provision that would require a procedure for orderly and mandatory examination of that particular question, with rules promulgated in each case, after having a thorough



hearing of producers' views, because we think that the situation can vary from product to product and from plan to plan.

**Senator Grosart:** Which is, in effect, provided for in the bill.

**Mr. Kirk:** Yes, which is, in effect, provided for in the bill.

**Senator Molgat:** Mr. Kirk, Mr. Hudson just indicated the situation vis-à-vis turkey production in Ontario. Did I understand correctly that you feel that under a marketing plan it would be easier to protect the farmer element than without a plan?

**Mr. Kirk:** What I am saying, and this is in respect of Ontario, of course, is that if, without a plan, the basic drift is to integration, then, of course, with a plan you can in fact stop it. You can in fact reverse it. My point is that you can do what you want to do. I do not say that this is a simple question. I am saying that you can do it.

**Senator Molgat:** But has there not, in effect, been a plan in Ontario?

**Mr. Kirk:** There has. I am not as familiar as I might like to be with the details. I do not know how much additional integration has been created during the period of the Ontario turkey plan. I just do not know. I do not have direct information about how that plan has gone.

**Senator Molgat:** But there is a plan and the result has been that almost half of the production is in the hands of ten producers.

**Mr. Kirk:** I am saying that I do not know whether that is the result of the plan.

**Senator Molgat:** But it exists.

**Mr. Kirk:** It exists, yes. That is what I heard this afternoon.

**Senator Molgat:** If I understood correctly, both Mr. Gracey and Mr. Hudson made the statement that import controls would be necessary if the plan were to work properly. Do you share that view?

**Mr. Kirk:** Well, if you have a plan that is designed to stabilize the price and if you set a price that is higher than the lows of the cycle in the country next door—in the United States, let us say—then it is perfectly clear that, if they do not have a plan, then the price will at the low points of the cycle dip below the stabilized price. I think that is fairly clear. Therefore, there will be a threat to the plan. We have always said that the question of import policy will have to be dealt with and the plan protected. But that is a matter for negotiation. It does not have to be in the act to be a governmental capability. It can be done. It is legal under the GATT agreement under Article 11, I believe. But we have not pressed for its inclusion as a power of the agencies. One of the reasons is precisely on this consumer question. That would be an exercise of public interest judgment, would it not? It is not built into the act. Many of our producers would, of course, like to see it in the act from their standpoint, but we have not pressed for this because our understanding was that the Government felt quite strongly that, first of all, public interest

was involved in that question in a special way, and, second of all, that so were their trading interests involved in terms of negotiation, you know, in particular types of arrangements. So we said, "Okay, but it has to be recognized," and I think it is recognized, and we hope that the import trade arrangements will certainly be involved in the operation.

**Senator Grosart:** But you can hardly give to a marketing agency the power to set up international tariffs.

**Mr. Kirk:** Well, we had not expected to.

**Senator Grosart:** Senator Martin might object to that.

**Senator Molgat:** For those of us who represent regions or provinces which are normally exporters of agricultural products, the whole question of free access to the whole Canadian market is very important. This morning Mr. Atkinson gave me the impression that he felt that a plan would, in fact, lead to greater balkanization. Has the federation looked at this question of access to the Canadian market?

**Mr. Kirk:** On this question I always go back to the Canadian Egg Producers conference that the Canadian Federation of Agriculture sponsored, which I think had a lot to do with a large part of the genesis of this whole thing. At that conference these problems were intensively discussed. The conclusion the conference reached then, and I believe the consensus of producers now, is that the overriding need is for stability, security and proper management of the industry. That is the overriding need, and the other problems will have to be worked out.

And therefore, in that sense, it would not be balkanization. In that sense it would, in fact, be management with a very large element of federal authority in that management.

I do not know whether you can properly call that balkanization. That there would be management under an egg-quota plan is clear. There would. It is not clear to me that that is the same thing as balkanization.

**Senator Michaud:** As a representative of the province of New Brunswick I would first like to say that I was pleased to hear that the Ministers of Agriculture from the Maritimes had, as a whole, approved this legislation. I do hope that it will eventually prove to be of some benefit, first of all, to the poultry and egg producers, then to the hog producers, and then particularly to the main crop producers in New Brunswick—the potato producers.

As far back as I can remember, the potato industry, when it came to marketing conditions, was always faced with a condition of morass, let us say.

I was just wondering if Mr. Kirk would care to comment in what respect or in what way this legislation might enable the potato industry to be put into a more stable situation.

**Mr. Kirk:** Well, if the industry moved towards some system of national or regional quotas, then that would require an amendment to the legislation, but it is very possible that many constructive things could be done short of that. There is the capability in this legislation, first of all, for studying through the Council the problems of the industry and examining them with care and reporting on



the problems in a context that has not existed to date. That might be extremely useful. There is a capability for setting up, if I am not wrong, not only regionally based agencies through which a particular sector of the industry, a group of provinces, could manage their affairs in many ways, with respect to quality, with respect to export market development, with respect to orderly movement of the product by agreement short of quota management; but I am not sufficiently expert on the potato industry, sir, to spell out an answer for the potato industry just offhand beyond that.

**Senator Phillips:** Mr. Chairman, I wonder if Mr. Kirk could tell us what percentage of Canadian farmers belong to the Federation of Agriculture.

**Mr. Kirk:** Well, sir, when we add up the membership of our member organizations, which is a duplicating membership, we get way more than 100 per cent, but I am quite sure that if it was in strict terms of affiliated membership through all organizations you would get a good 80 to 90 per cent of the farmers of Canada belonging to some organization affiliated through the federation.

**Senator Phillips:** All right. Let us put it on the one-man, one-vote principle. On that basis, what percentage do you have?

**Mr. Kirk:** That is my answer.

**Senator Phillips:** You rather surprise me, Mr. Kirk, in that you come out so strongly in favour of this legislation. Recently the Federation of Agriculture in my province held meetings, and when this bill came up, after four hours of debate, the directors voted on the question of supporting it, and the vote was 12-12. What is your relationship to various organizations such as that that are not as wholeheartedly in support of the bill as you are?

**Mr. Kirk:** Well, our relationship is that they are bona fide members of our organization. I do not know which specific organization you are referring to.

**Senator Phillips:** The Prince Edward Island Federation of Agriculture.

**Mr. Kirk:** The situation is, of course, that this bill has given rise to an enormous amount of debate, and a lot of that debate was really on the issue of supply management for each commodity. That is why I said I think our people would support it. But in fact I have not had a full-scale, general meeting on this accommodation which has been reached in the house, so I am just giving you my judgment and the judgment of my president with whom I have discussed this. My judgment is that now that the question of supply management has been dealt with in the way it has been, so that it is no longer possible to identify the whole of the bill with quotas for every commodity, our people would very much support this bill as it is.

**Senator Phillips:** I find it very interesting that you have not had any meetings either of your directors or with any organizations since the bill was amended in the House of Commons, and yet you come in and support it. Now I noticed in your remarks, if I interpret you correctly, you said that one of the possible ways to deal with farm legisla-

tion is to have a hearing and then have publication of regulations. What form of appeal would you suggest for an individual who is going to be harmed or hurt under the regulations?

**Mr. Kirk:** For an individual who is going to be harmed or hurt, as opposed to a legality question?

**Senator Grosart:** Somebody who objects to it.

**Mr. Kirk:** Well, the fundamental provision in the bill now, of course, is really the one dealing with the council, is it not?

**Senator Phillips:** But I am asking you, as a representative of the Federation, what form of appeal you would favour, and not what is in the bill.

**The Acting Chairman:** Does that matter? We are really talking about the bill and we are not examining the witness with respect to his own personal views.

**Senator Phillips:** Then I am asking for those of the Federation.

**Mr. Kirk:** The Federation is in favour of some procedure. I do not think they would favour a full judicial procedure but I think they would favour some review of individual complaints. I doubt if they would favour a straight ministerial or Governor in Council fiat on it. However, I am not sure about that. I must confess I have forgotten what exactly the bill says on this point precisely. But could I just refer back to the first point you made about your surprise that I would have the temerity to assess the views of my organization without having had a formal meeting on it. The reason I do that is, first of all, I know my organization rather well, and especially in view of the uniform support which I gather has been publicly expressed, of the accommodation that was reached, and I know the general British Columbia, Ontario, Quebec and other positions, and I am quite sure my board of directors, and I admit it is a matter of judgment, would support this accommodation.

**Senator Phillips:** I would have been much more impressed by your brief, Mr. Kirk, if you had had a board of directors' meeting.

**Senator Argue:** Might I ask a supplementary question on that point? I wonder if Mr. Kirk had any communication at all with the President of the Saskatchewan Federation of Agriculture or anyone out there? They were meeting this week, and I was pleased to be there myself. I learned that they were in support of the Senate's giving this further study.

I wonder if Mr. Boden expressed to Mr. Kirk the feeling he conveyed to me? It was that the Saskatchewan Federation of Agriculture, in general, was in favour of this bill as the Senate now has it.

**Mr. Kirk:** No, unfortunately I have not had that conversation with Mr. Boden. I have discussed it with a number of other officers of the group.

**Senator Argue:** That their support is quite clearly solidly in favour of the bill?

**Mr. Kirk:** That is right.

**Senator Forsey:** Relating to the question of Mr. Kirk's judgment in this matter, it would be worth while putting on record how long he has been connected with the Federation of Agriculture. To my personal knowledge it has been a very long time. I could not say offhand how many years. Therefore, it is a very good basis for his judgment.

**The Acting Chairman:** Without dating him, let us ask him how long he has been there.

**Mr. Kirk:** Eighteen years come May.

**Senator Martin:** Did you succeed Herb. Hannam?

**Mr. Kirk:** No, I held that position under Mr. Hannam.

**Senator Martin:** He became president after being director.

**Mr. Kirk:** He was president, and Mr. Munro has become president since his death.

**Senator Martin:** And Mr. Munro, the president, is a farmer from Embro, in Ontario?

**Mr. Kirk:** That is right, and I discussed this with him before coming here.

**The Acting Chairman:** Is Embro near Windsor, Ontario?

**Senator Sparrow:** Mr. Kirk, you mentioned that you represent probably 80 per cent of the farmers in Canada?

**Mr. Kirk:** That is right.

**Senator Sparrow:** Is the National Farmers' Union a member of your organization?

**Mr. Kirk:** No.

**Senator Sparrow:** Is the Canadian Cattlemen's Association a member?

**Mr. Kirk:** No, the Canadian Cattlemen's Association is not a member. Its constituent members are, for the most part, members of our provincial organizations.

**Senator Sparrow:** Is the Canadian Stockgrowers' Association a member?

**Mr. Kirk:** No.

**Senator Sparrow:** Do you have direct memberships in the Canadian Federation of Agriculture?

**Mr. Kirk:** No, we are a federation of organizations, some of which, of course, are very important direct membership institutions, if that is an issue. The Union Catholique des Cultivateurs in Quebec is a member organization. I would estimate that it is far and away the largest direct membership organization in Canada, whether all-Canada or provincial. We also have others.

**Senator Sparrow:** Approximately how many farm organizations would be affiliated with the CFA?

**Mr. Kirk:** We have 13 members, the membership lists of which fill approximately 14 pages. It is a very large group of organizations.

I should say that when I say I represent them, I mean that they hold and continue to hold membership in the

Canadian Federation of Agriculture. They do that in light of their knowledge of the procedures and processes of the federation and its activities. It does not mean that within the organization there is a total unanimity of views every time I, the president or the board of directors speak on a policy decision, nor could it mean that.

**Senator Sparrow:** So you are not saying that your views today represent 80 per cent of the producers, or farmers?

**The Acting Chairman:** It is sufficient for this committee to say that Mr. Kirk is the Executive Secretary of the Canadian Federation of Agriculture.

**Senator Sparrow:** Thank you; I will ask another question. Clause 2(c)(ii) of the bill provides:

... as a result of declarations by provincial governments following plebiscites, or otherwise ...

That means that a provincial government can opt in without a plebiscite. What is the view of your federation in that regard? Should plebiscites take place in each province or is the "otherwise" aspect in the bill sufficient?

**Mr. Kirk:** My view is that a great deal of reliance should be placed upon the action that has been taken at provincial levels with respect to the formation of boards. In the case of an existing board, for example, attempting to group together other boards, there could be circumstances where the board and government of that province would consider it simple nonsense to hold a plebiscite. There are other circumstances, in which the council could raise the question and ask for some processes up to and including a plebiscite in order to satisfy themselves of producers' views. There is provision for that, which I do not consider to be improper.

**Senator Sparrow:** In other words, you deem there to be sufficient safeguards in the bill?

**Mr. Kirk:** That is right.

**Senator Phillips:** Perhaps I am projecting into the future, Mr. Chairman. Mr. Kirk, what would be the attitude of the federation if in future an amendment were made to include other farm produce, such as beef?

**Mr. Kirk:** That is an exceedingly hypothetical question.

**The Acting Chairman:** It is purely hypothetical.

**Mr. Kirk:** It would depend primarily upon the wishes of the beef producers.

**The Acting Chairman:** Honourable senators, I think that is about as far as anyone could go. Shall we thank Mr. Kirk very much?

**Senator Grosart:** I would like to pursue the question of the right of appeal. I know you have read the bill very carefully, Mr. Kirk. It does not seem to include any provision for appeal. It has been stated, of course, that clause 7(1)(f), provides that the Council may inquire into any complaint and take action.

Under a marketing plan, clause 2(e)(v) provides the power to cancel or suspend any licence—that is, presumably, to deprive a person of the quota. My interpretation of



the bill is that the Marketing Council could inquire into this. They do not seem to be required to inquire into it. Do you think that a complainant who feels that he has been unjustly treated, for instance, by the cancellation of his licence, should have an appeal other than to the agency or to the Council? I am not asking the type of appeal, but should he be able to go beyond the Council and the agency in it?

**Mr. Kirk:** It would depend partly, I am sure, upon the definition of matters which could be appealed. Let us take integration as an example. The decision under a regulation that certain types of feed companies should no longer be licensed, would be a matter of policy.

**Senator Grosart:** Let us stay with my case of the cancellation of a person's licence. It is cancelled. He is notified by the agency that his licence is cancelled, that he is out of business. I do not care whether he is right or wrong. I am asking whether he should have some recourse, other than to the council or to the agency.

**The Acting Chairman:** I stand to be corrected on this, but perhaps the prerogative writs would be available to a man in such a position. I would defer in this matter to some of the other legal counsel here.

**Senator Goldenberg:** You are right, Mr. Chairman.

**Senator Grosart:** I would like a little explanation on this matter.

**Senator Phillips:** We have legal counsel. Could we have his opinion as to whether that would apply? Not that I distrust my friends in the committee. I have seen too many lawyers in court to know that there are always four sides to every question. Probably we could have a definition from our legal counsel.

**Mr. R. L. du Plessis, Legislation Section, Department of Justice:** I do not profess to be an expert on this matter. I think there is a possibility that an appeal could be made to the courts.

**Senator Grosart:** You say a possibility; but does a right exist?

**The Acting Chairman:** One could always issue a prerogative writ. I do not think there is any question about that.

**Senator Phillips:** What would be the effect of issuing it?

**The Acting Chairman:** That would be dependent upon the courts. It would depend upon the character of the issue that is presented to the court under the writ.

**Senator Grosart:** Could that issue go beyond the fact that the agency or Council might have exceeded its powers?

**The Acting Chairman:** It could certainly go that far.

**Senator Grosart:** Could it go beyond that?

**The Acting Chairman:** I do not know whether you could go beyond that. If the council had exceeded its powers, presumably the court would find that the exercise of its powers in excess of those conferred by the statute was not proper.

**Senator Grosart:** I refer the committee to clause 23(f) on page 16, which says:

(f) where it is empowered to implement a marketing plan, make such orders and regulations as it considers necessary

What is the use of a prerogative writ if the act says if the agency considers this necessary?

**The Acting Chairman:** The court, being seized of a question under a prerogative writ, would probably address itself to the adequacy of the reasons which moved the board to issue or make an order under (f). If it were an unreasonable exercise of power, the court would have authority to nullify the order.

**Senator Forsey:** There is no privative clause here, such as you find in the Labour Relations Act, which clause, in my experience, has been totally ineffective against the use of the prerogative writ.

**Senator Grosart:** The Senate must consider whether it should pass an act which does not specifically provide for the right of appeal. I suggest the committee look at subclause (n) on page 17, which says:

(n) do all such other things as are necessary

When we come to the clause I will suggest that we amend subclause (f) to read:

(f) where it is empowered to implement a marketing plan, make such orders and regulations as are necessary

The wording in subclause (n) is a very essential protection. There is a triple delegation to the agency. It has delegation of power from the federal Government, from the provincial government, and, in effect, a delegation from the marketing council. You have a triple delegation of parliamentary authority, and then you say that the agency may do whatever it thinks necessary. I think this is a fundamental abrogation of the essential right of any person to require that any such agency have the power to do only what is necessary to implement the act, and not to do what it thinks is necessary.

**The Acting Chairman:** I should think, Senator Grosart, that if the worst happened under the exercise of its delegated authority, the issue of a prerogative writ would correct it. Am I right on that?

**Senator Grosart:** It is a very expensive process. That means Federal Court, does it not?

**The Acting Chairman:** It may be done by the superior court of a province, certainly.

**Senator Grosart:** I do not want to make you a witness, Mr. Chairman, but you are an eminent lawyer. Can a prerogative writ be effective where an agency or board is acting within its powers under the act?

**Senator Goldenberg:** If it exercises its powers unfairly.

**The Acting Chairman:** Yes, and unreasonably. That is the purpose of the prerogative writ.

**Senator Forsey:** Surely, we have had that in labour relations cases, where the Supreme Court of Canada, in one



case, declared that the Nova Scotia Labour Relations Board had neglected the rule to hear both sides and sent the thing back. I should have thought the same would apply here. I think there was a privative clause saying the courts were not to review the decisions of a board.

**The Acting Chairman:** There is nothing in the act to that effect. If there are no further questions, we have finished with this witness.

Honourable senators, I have a letter from the Consumers Association of Canada signed by Maryon Brechin, saying:

Enclosed are copies of submissions presented by the Consumers Association of Canada on Bill C-197 and Bill C-176, the acts dealing with the establishment of a National Farm Products Marketing Council.

The letter is dated January 6:

The Consumers' Association of Canada wishes to present to the Senate our suggestions for amendments to Bill C-176 which we believe will assist in safeguarding the public interest under such legislation.

I take it that Mrs. Brechin is not in the room. Has the committee any directions for me? I understand that everyone has received a copy of this letter.

**Senator Martin:** I understand that she sent the brief, which she submitted earlier, to every senator. I received mine this morning.

**Senator Langlois:** Is it lengthy?

**The Acting Chairman:** It is fairly lengthy. It is dated October 1, 1970. There is a memo attached to it dated March 15, 1971 addressed to members of Parliament from Jean Jones, the National President. The brief is in English and in French.

**Senator Martin:** She also sent a memo dated today reiterating the submissions contained in the brief.

**The Acting Chairman:** Yes.

**Senator Langlois:** It should be printed as part of today's proceedings.

**The Acting Chairman:** Is it the committee's direction that the material submitted be printed as part of the committee's evidence?

**Hon. Senators:** Agreed.

*See Appendix "A"*

**Senator Grosart:** Is there a suggested amendment, Mr. Chairman?

**The Acting Chairman:** I have not read the brief because it has just reached me.

**Senator Grosart:** I would suggest, Mr. Chairman, that if there is a suggested amendment from the Consumers Association of Canada, it should be read into the record. We should have it before us when we come to the clause-by-clause examination of the bill.

**The Acting Chairman:** It has been suggested to me that the proposed amendment was contained in the telegram

which I read this morning, but I do not seem to be able to identify anything in there as an amendment. I do not see any specific reference to an amendment.

**Senator Goldenberg:** I suggest you start at paragraph 13, Mr. Chairman, page 5, of the brief.

**The Acting Chairman:** Thank you. Perhaps I should read page 5, paragraph 13, of the material submitted. It reads as follows:

Part I, Section 6 of Bill C-197 . . .

That is not the bill before us.

**Senator Goldenberg:** That is the original bill.

**The Acting Chairman:** Yes.

. . . should include as a duty the periodic assessment of the work of the council and its agencies, to be reported to parliament.

**Senator Grosart:** That is in the bill now.

**The Acting Chairman:** Yes. Paragraph 15 states:

In Part I, Section 8, paragraph 2, this paragraph should be changed to read: "A public hearing *must* (not *may*) be held."

**Senator Grosart:** I wonder if I might ask the deputy minister what section that comes under now?

**Senator Goldenberg:** It is clause 8, subclause (2) on page 9.

**Senator Grosart:** It now reads "shall be held . . .".

**Senator Goldenberg:** The suggestion is that it should read "must" instead of "may".

**Senator Grosart:** But it now reads "shall be . . .".

**Senator Goldenberg:** That is clause 8 subclause (1). Clause 8 subclause (2) reads "may . . .".

**The Acting Chairman:** There may be a technical point with respect to this which perhaps can be dealt with by the deputy minister.

Mr. Phillips points out the following portions of the telegram which came from Mrs. Brechin yesterday, and I quote from the telegram: . . . the legislation fails to provide for consumer representation upon or public scrutiny of the agencies which may be established under this act. It also fails to provide for the right of appeal from any actions taken by such agencies.

We have had discussion on both of those points. What is the view of the committee with regard to these representations? Does the committee feel we have dealt with the issues put forth by Mrs. Brechin?

**Senator Grosart:** Perhaps we can take them up when we deal with the bill clause by clause.

**The Acting Chairman:** Yes, certainly.

I referred this morning to the fact that I had received a telephone call from a Mr. John R. Stewart of R.R. 6, Strathroy, Middlesex County. He described himself as an independent dirt farmer and suggested he would like to make a five-minute presentation to the committee. What

are the views of the committee with respect to Mr. Stewart's representations?

**Senator Buckwold:** I would suggest, Mr. Chairman, that if he wishes to make representations to the committee he should do so in writing as soon as possible.

**The Acting Chairman:** I will have the Clerk of the Committee convey that message to Mr. Stewart.

**Senator Grosart:** It might be pointed out to Mr. Stewart, so that he will not think we are making it impossible for him to get his views before this committee before our decision is made, that if he has views which were found acceptable they could be discussed on third reading, in the event that this committee has reported in the meantime.

**The Acting Chairman:** That is on the record, and the clerk will convey that message to Mr. Stewart.

**Senator Buckwold:** I wonder if a telegram could be sent to him to that effect.

**The Acting Chairman:** Yes.

What is the committee's views as to further proceedings? The minister, the deputy minister and Mr. Phillips are now present. Shall we now proceed to clause-by-clause consideration?

**Some Hon. Senators:** Agreed.

**The Acting Chairman:** The copy of the bill that we will deal with is the copy as passed by the House of Commons on December 31, 1971, and I understand that all senators have a copy of that bill.

**Senator McElman:** For the record, Mr. Chairman, it was passed on December 30, not December 31.

**The Acting Chairman:** It should read December 31, not December 30. That was a typographical error and Senator Langlois corrected it.

**Senator Grosart:** Also corrected was another typographical error on page 2, the third line, where the number "17" was omitted.

**The Acting Chairman:** Yes.

**Senator Langlois:** That was corrected by amendment in the other place.

**The Acting Chairman:** Yes, and it was not reflected in the printing.

**Senator Langlois:** It was in the insert of the bill.

**The Acting Chairman:** Yes.

Mr. Olson, do you have any opening remarks you wish to make to the committee?

**The Honourable H. A. Olson, Minister of Agriculture:** Mr. Chairman, I do not think there are any other general observations that I wish to add to the comments that I made when I was here last.

**The Acting Chairman:** Shall we consider the bill clause by clause, then?

**Some Hon. Senators:** Agreed.

**The Acting Chairman:** Clause 2, paragraph (a), "agency"?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Paragraph (b), "Council"?

**Hon. Senators:** Agreed.

**The Acting Chairman:** Paragraph (c), "farm product"?

**Senator Grosart:** I should like to put the first question to the minister. First of all, our thanks to you for coming before us again, Mr. Olson. We appreciated your enlightenment on New Year's Eve, and I am sure we will be in a position to appreciate the enlightenment you will give us today. What is your interpretation of the word "natural" in "natural product" in clause 2(c)?

**Hon. Mr. Olson:** My interpretation is that it is an agricultural product in the form before it is processed.

**Senator Grosart:** But this would include beef and animal products as well as products of the soil.

**Hon. Mr. Olson:** Yes, of course.

**Senator Grosart:** I ask that because there seemed to be some confusion in the other place.

**Hon. Mr. Olson:** That is why we put in the words "and any part of any such product", because I suppose it is, in practical terms, far more usual for parts of animals to be cut up and sold rather than parts of most other agricultural products. Usually when grain, field crops or fruits and vegetables go to the stage where there are parts of them, there is other processing involved. Quite often, for a very large part of the trade it is done without further processing, except taking it apart.

**Senator Grosart:** I cannot quote the clause immediately, but the bill would seem to provide for control over processing.

**Hon. Mr. Olson:** Yes, it does. Further on that can be provided under what the marketing plan is capable of dealing with, in clause 2(e).

**Mr. S. B. Williams, Deputy Minister, Department of Agriculture:** It is in the definition of "marketing plan".

**Senator Grosart:** Would it be correct to say, Mr. Minister, that a natural farm product is what is normally meant by a farm product?

**Hon. Mr. Olson:** I would think so.

**Senator Grosart:** In its natural state?

**Hon. Mr. Olson:** Yes.

**Senator Grosart:** But the bill does provide that a plan can control the processing at some later stage.

**Hon. Mr. Olson:** Yes.

**Senator Grosart:** Mr. Minister, I am still very much concerned with this "or otherwise" phrase.

**Senator Phillips:** Before we come to that, might I ask the minister again to interpret for us what is meant by "the Governor in Council is satisfied"?



**Hon. Mr. Olson:** In this respect the words "Governor in Council" are put in there because before a marketing plan can be approved under the provisions of this bill, there would of necessity, under clauses, 17 and 18, I believe, need to be a proclamation by the Governor in Council to establish that marketing plan for the commodity involved. Therefore, the Governor in Council, under clause 2(c)(ii), must be satisfied prior to making that proclamation that the provisions contained in that clause have been complied with.

**Senator Phillips:** I am more concerned with the word "satisfied" than with the words "Governor in Council". If you will allow me to ask the question in a somewhat facetious manner: what would satisfy this Governor in Council?

**Hon. Mr. Olson:** The Governor in Council would have to be satisfied that, as a result of declarations by provincial governments, either by plebiscite or otherwise, a majority of the producers were in favour of the marketing plan for the commodity involved.

**Senator Grosart:** Mr. Minister, my concern about the phrase "or otherwise" is purely a matter of draftsmanship. I am not going into its implications at all. It seems to me the intent was that "or otherwise" should qualify "plebiscites". I think that was your evidence before.

**Hon. Mr. Olson:** Yes.

**Senator Grosart:** My concern is that this might be interpreted, and probably would be in the normal syntactical interpretation, as qualifying the whole phrase "as a result of declarations by provincial governments following plebiscites". If the comma was taken out after "plebiscites" I would have no problems. What concerns me is that the whole intent of clause 2(c)(ii) might be upset by a court if it said that this means any natural product of agriculture and any part of any such product in respect of which the Governor in Council is satisfied, as a result of declarations by provincial governments following plebiscites, or if satisfied otherwise, in another way. I hope honourable senators will look hard at this, because it is surely one of our functions as a Senate to make sure, to the extent that we can, that there should be no ambiguity in the wording. Would you object to that comma coming out?

**Hon. Mr. Olson:** I am not sure that I would object to it coming out if people learned in the law are having any difficulty with it. However, I should like to draw to your attention that all of the words "as a result of declarations by provincial governments following plebiscites" are contained within the two commas. Therefore, the "or otherwise" contained between the next two sets of commas would, in my view, and could modify that which is contained between the previous two commas. It seems to me that if the comma were to be moved so that the modifier was specifically for the word "plebiscites" and not what is contained now in total between those two commas, we would have to take it out and move it perhaps to between the words "governments" and "following".

However, I would like to draw this to your attention, because I think it is extremely important. When we are talking here about a majority of producers and relating

this to the supply management features that would be the imposition of quotas on production or access to markets within intra-provincial trade, and so on and so forth, all of that constitutional jurisdiction, in my view—and it is the view of the Government—lies within the provincial jurisdiction. Therefore, whether it modifies "declarations" or not, certainly there is no way that the federal Government can impose quota control or access to market control without a delegation of authority to the marketing agency set up coming from the provincial government.

It seems to me, therefore, to follow that it is somewhat less important whether the communication to the Governor in Council, to their satisfaction, comes as a result of a declaration or a plebiscite, or any modification of those. For example, instead of a declaration a provincial government may, if they choose, provide us with a complete detailed result of the vote they have taken, or a complete detailed result of such things as a series of public hearings and so forth. The essential point here is that there could be no action taken in any event unless the provincial government itself was prepared to delegate the authority that is required to make those clauses of this bill, or the provisions of any marketing plan with supply management features, operative.

My problem is this. This bill, as I have pointed out, was drawn very, very carefully, so we must first of all satisfy the Governor in Council that there is a majority of all of the producers, an overall majority of the producers in Canada, that there is majority support for a marketing plan, and, indeed, the terms and conditions of that marketing plan in so far as the provinces are concerned. Once we have established that there is an overall majority, then we have to go back again and examine the ambit of the provincial jurisdiction, which would require those provinces also to be satisfied, for the delegation of their own authority under their own statutes, that there was a majority of the producers of the product in their province in favour of it. That is why we believe, and I have been so advised by the Department of Justice, that we must not attempt to write into a federal statute terms and conditions under which provinces administer their own law. That is the problem that I have when attempting to modify this particular clause in that respect. I understand your problem. You are wondering whether the "otherwise" could modify only "plebiscites" or the determination by plebiscite.

**Senator Grosart:** That is right.

**Hon. Mr. Olson:** Or Whether it could modify the word "declarations".

**Senator Grosart:** That is right.

**Hon. Mr. Olson:** I really cannot see the importance of that, and I say that with all respect. However, they communicate it, their indication that there was a majority of the producers in favour of the plan. It would also have to follow that the province itself, through its own legislation, is obliged to delegate the authority for supply management to the national marketing agency. So I fail to see the significance of it.



**Senator Grosart:** Mr. Minister the significance that I see is in two parts. The first is that the House of Commons, in its wisdom, thought it was necessary to make this amendment. It does not seem reasonable to say that it does not matter whether it is ambiguous or not. The second reason is that, surely, we have a duty here.

**The Acting Chairman:** That is not what the minister said. He did not say it did not matter that it was ambiguous.

**Senator Grosart:** The minister said, as I understood him, that whether my point was valid—that it is ambiguous, or not—was not important because the act as a whole removed any problem. That is my understanding of what he said. Surely, this is not a principle of the drafting of legislation. I suggest that if there is any ambiguity—and I think the minister agrees that there may be ambiguity—it is our responsibility here to remove that ambiguity. The minister, as I understood him, said today, that he felt that “or otherwise” qualifies the whole phrase “as a result of declarations by provincial governments following plebiscites”. I understood him to say that—I may be wrong—and I also understood him to say the very opposite, when he was before us on New Year's Eve. I am only speaking to the point of unambiguity here.

Let me quote it. I said to the minister:

Yes, but what I am asking, Mr. Minister, is this. Is a declaration by a provincial government a requirement or condition before one of these products can be described as a farm product within the meaning of the act?

And the minister's reply, as reported, is:

For the purposes of this act, yes.

If that is so, surely “or otherwise” cannot qualify that whole phrase. If the minister agrees that a declaration by a provincial government is a requirement or condition, then surely we have an ambiguity. I will ask him again. In his view, is his answer to my question correct?

**Hon. Mr. Olson:** Well, Mr. Chairman, certainly it is correct, I would like to draw to Senator Grosart's attention that what is written in clause 2(c)—he referred to the House of Commons having felt it necessary to amend the bill—in this particular part of it, was not really an amendment to the substance of the bill. I made that very clear, I think, on New Year's Eve when I was here, that what was written there was really a repetition of what was already in clause 17.

**Senator Grosart:** This is what worries me. My suggestion is that it is not a repetition of what was in clause 17, because clause 17 would not, as I read it, provide that a declaration by a provincial government is a requirement before one of these products can be described as a farm product within the meaning of the act, and those are the minister's words.

**Hon. Mr. Olson:** Mr. Chairman, clause 17 says, firstly, that the Governor in Council may by proclamation—I will not read all the words, but the operative words get down to, after the word “act” in line 21—“where he is satisfied”—and referring to the Governor in Council—that the producers of the farm products, of each of the farm products

in Canada, is in favour of the establishment of an agency. You have to read that also with clause 17(2), where the Governor in Council, in order to determine whether a majority of producers of the farm product are in favour of establishing an agency, “may request”—and I was very careful to put “may” there, not “shall”, demand or impose on provinces ways and means by which they administer their legislation—that each province carry out a plebiscite. It seems to me that these words in clause 17(2) were words that are permissive, that they may request, that it is not mandatory that they demand of the province, that it is completely consistent with what is in clause 2(c).

Clause 2(c) is essentially the same in practical terms, except that it deals with it at a different stage, on the procedure for setting up a marketing agency, that is, the definition of a farm product. I am really not very concerned about whether or not we can define a farm product for the purposes of this act, if we have not already complied with the requirements of setting up a marketing plan which is contained in the provisions of clauses 17(1) and 17(2) which, in my view, are exactly the same.

It satisfied some members of the House of Commons and some other people that we wrote the same provisions in practical terms in two or three places. In my view, not only in practice but in law, what it means is a repetition of the same thing that was there before.

**Senator Martin:** That is the position taken by your lawyers?

**Hon. Mr. Olson:** Yes.

**Senator Grosart:** Mr. Minister, I am afraid I have to say that I do not agree with you that it is not a fundamental change, but I will not argue it at the moment. The observation that this was the position taken by your law officers does not impress me, either, because otherwise we would not have had the hundreds of cases before the Supreme Court trying to interpret statutes. Our job here is to try to make the statutes unambiguous.

May I ask you again, then, Mr. Minister, in your view does clause 2(c)(ii) make it mandatory that there be a declaration by a provincial government before a product, other than eggs and poultry, can be a product within the meaning of the act?

**Hon. Mr. Olson:** It does, and what is even more important, the provincial government under its own law, must be satisfied of that position, before they can delegate the authority to a national marketing board to operate a plan wherein a farm product is defined and acceptable under the provisions of this bill.

**Senator Grosart:** I am not concerned with that aspect of it. I am concerned only with whether a declaration by the province is now mandatory before any other farm product can be brought under this act.

**Hon. Mr. Olson:** In my view, it is, yes.

**Senator Grosart:** Which would seem to be—if I may finish—at variance with what I thought was your statement that “or otherwise” qualifies the whole phrase “as a result of declarations by provincial governments following plebiscites”.

My suggestion is that what you now say makes it very clear that it qualifies the word "plebiscites" only, and I will say no more.

**Senator Forsey:** Mr. Chairman, if I am not mistaken, in the absence of clause 2(c)(ii), clause 17(2) would not require any declaration by a provincial government at all. I understood the minister to say that clause 2(c)(ii) really just said again what clause 17 says, but it seems to me that in fact it says something rather different because it says in clause 17(1), "where he"—the Governor in Council—"is satisfied". There is nothing about declarations. In clause 17(2) there is provision for a request to the provincial government to hold a plebiscite. But there is not a word about declarations in that whole clause, as it seems to me. Therefore, it seems that clause 2(c)(ii) does contain something new in mentioning declarations.

**The Acting Chairman:** Would you hear Mr. duPlessis on that?

**Mr. duPlessis:** However, the words "farm product" are used in clause 17(1) and, therefore, the whole of the meaning of the words "farm product" is incorporated in subclause (1) of clause 17.

**Senator Forsey:** Quite, but my point is that I understood the minister to say that clause 2(c)(ii) did not add anything, did not change anything, but that it merely said over again what was in clause 17. It seems to me that it does not simply say over again what it says in clause 17.

**Hon. Mr. Olson:** There was one other qualification to my comment, Senator Forsey, and that was "in practical terms". I am not a lawyer; I am a dirt farmer.

**Senator Grosart:** Mr. Chairman, I move the deletion of the comma after the word "plebiscites". I hope the minister will accept that. I do not believe under our practice that it would be necessary for this to go back to the House of Commons. I think it could be regarded as a typographical change just to clarify the meaning.

**Senator Langlois:** That is a new concept to me.

**Senator Grosart:** No, we have had that before.

**Mr. duPlessis:** I have just one comment to make in that connection, Senator Grosart. It is my understanding that it is a generally accepted principle of the interpretation of statutes that punctuation does not form the basis of the interpretation of statutes.

**Senator Grosart:** That is a principle which has many qualifications in its application. It is a long time since I spent any time on the interpretation of statutes, but that is a rather bald statement that would require a great deal of qualification, because there are cases that I know of, although I cannot recall any specifically, where the whole case revolved around punctuation. Surely, punctuation is one of the ways in which we make our meaning unambiguous. That is one of the purposes of punctuation.

**The Acting Chairman:** It helps the structure of language, but I think the problem is the effect in law, and Mr. duPlessis, as a representative of the Department of Jus-

tice, has given his opinion, which the committee will have to assess in its approach to this.

**Senator Grosart:** What is his opinion?

**The Acting Chairman:** That the punctuation does not affect, in law, the interpretation of this clause.

**Senator Grosart:** I would ask Mr. duPlessis if he makes that statement without qualification as to the rules of the interpretation of statutes.

**Mr. duPlessis:** It was not a considered opinion, Senator Grosart. I would be glad to look into the matter and report back, just to confirm it.

**Senator Grosart:** Would the minister accept the amendment? If, as you say, punctuation does not affect the interpretation of statutes, can we have an opinion as to whether, if the minister accepted this amendment, it would be necessary for the bill to go back to the House of Commons? I am asking for a legal opinion.

**Senator Martin:** It changes the meaning. Obviously, it has to go back.

**Senator Grosart:** But our expert says that it does not change the meaning.

**The Acting Chairman:** Order, please. I would hate to see this Senate committee flounder on a question of whether a comma should or should not be in this clause, in view of the opinion given by the representative of the Department of Justice. I think I should point out that the minister is pretty well bound, as a member of a government, by the legal advice tendered by the Department of Justice, by the Attorney General of Canada and by the law officers of the Crown.

You may ask the minister if he would accept the opinion, Senator Grosart, but I think the minister, on a technical point like this, probably has to look to his advisers, and his advisers tell him that this is the way the thing should be written. This is the way it has been written. I think it is up to the committee to decide, then, whether the clause should be changed.

**Senator Grosart:** Well, there is a motion to that effect.

**The Acting Chairman:** All right. Let me put the motion. Senator Grosart moves that the comma after the word "plebiscites" on line 25 of the first page of the bill be deleted. What is the view of the committee? Those in favour of the amendment please raise their hands. There are three. Those against the amendment please raise their hands. There are ten. I declare the amendment lost.

**Senator Molgat:** Mr. Chairman, on the overall question of subclause (c) I have some questions to ask for the purpose of clarification. I had undertaken to speak to a number of people in Manitoba, and in the west generally, who were interested in the bill in order to get their points of view. A number of questions arose with respect to this clause, and I should now like to have some clarification from the minister on subclause (c).

A number of rapeseed growers were interested to know whether this clause 2(c) would include rapeseed.



**Hon. Mr. Olson:** Yes, under Part I, as has been pointed out to me, for the purposes of making inquiries and that sort of thing, it would, because rapeseed would be a natural product of agriculture. But, of course, rapeseed could not be included for the other clauses of the bill unless and until there was, first of all, as I pointed out, a majority support of the growers and then a further action by Parliament to name that commodity.

**Senator Molgat:** But rapeseed under clause 2(c)(ii) is a farm product.

**Hon. Mr. Olson:** I think so, yes.

**Senator Molgat:** Fair enough. The next question I was asked was what effect, if any, did this have in so far as the Wheat Board is concerned?

**Hon. Mr. Olson:** The Wheat Board is specifically excluded from this entire bill under clause 17(1).

**Senator Molgat:** My next question has to do with the definition of "producers." We had some discussion about this last week when we were in committee, but the association and groups to whom I spoke were concerned about this matter of definition of producers. They were concerned with the idea that various provinces, individually, would have the right to determine what a producer is, because that could lead to some very difficult problems when trying to ascertain what is in fact the national point of view of the producers.

**Hon. Mr. Olson:** Here we run into essentially the same problem that we were discussing a few moments ago, that is, that the producers for the purposes of voting, for example, and the qualifications of individuals, are determined under the provisional regulation. I am sure that the specific definition of each producer is not contained in the provincial legislation, but there are provisions so that they may set down the qualifications of who is a producer for the purposes of voting and that sort of thing. We are in the position where we do not believe that it would be proper for the federal Parliament or the federal Government to attempt to set the qualifications for a plebiscite, for example, that would be carried out under provincial law. But I want to say, too, that there is broad general agreement among the provinces that when we reach the stage where we write a marketing plan for a commodity they would move to have, if not complete uniformity, reasonable uniformity of the definition of the producer for those purposes.

**Senator Molgat:** Because of the objections and the expressions of concern which I had from most of the people with whom I spoke on this, I thought it necessary to point out the objections at this time. It will probably help later to refer back to the discussion which was held today.

**Hon. Mr. Olson:** We can do that, but I really very seriously question whether, if we did refer back to it and tried to write a law which would impose qualifications on the administration of provincial law, that would be constitutional. I am afraid it would not be.

**Senator Molgat:** I will come back to it again on 17(2) anyway. There was also considerable concern expressed

by a number of the associations about the expression "otherwise". I know what the minister's explanation is since he has made it, and I shall not ask him to repeat it. But I want to point out that the group for whom I spoke is concerned about that term and by and large would definitely prefer a clear-cut plebiscite.

**Hon. Mr. Olson:** Are they aware of the constitutional difficulties? I simply want to repeat that I do not believe it would have any effect, even if it was mandatory in this law, as an imposition on how the province should administer its laws.

**Senator Molgat:** Then there is a question of clarification of the term "majority of the producers". Would that mean a majority of the producers and not necessarily a majority of those voting?

**Hon. Mr. Olson:** Well, a majority, under ordinary democratic procedure, is of those voting, is it not?

**Senator Molgat:** There is a very great difference between a majority of producers and a majority of those voting. This is a very important point so far as this bill is concerned. We had exactly that problem in Manitoba when setting up our marketing board legislation there. Originally, we were operating on the basis that there had to be a 66 2/3 per cent majority of those voting. But here you say "a majority of the producers", and on that basis I assume you mean that we register in a province all of the producers and then when the votes are cast it must be a majority of the producers and not just a majority of those voting.

**Hon. Mr. Olson:** Of course, this would be contained in the communication we would receive from the provinces because they would be conducting whatever procedures they decided on making a communication to us that a majority of the producers in that province are in favour of it.

**Senator Molgat:** Well, I want to be sure we are talking about the majority of producers and not the majority of those voting.

**Hon. Mr. Olson:** I understand very clearly the point you are making, but here again, if a province advises us that a majority of the producers is in favour of a marketing plan for that commodity, I think that is about as far as the federal Government can go.

**Senator Molgat:** I presume that the provinces would have to adhere to this clause which says "the majority of the producers", and possibly legal counsel can address himself to this. It is my interpretation that the majority of producers would not necessarily be the majority of producers voting. This can be a very important distinction.

**The Acting Chairman:** It seems to me that the clause speaks for itself, and I think Senator Molgat's interpretation—and this is only an opinion—is the one that would govern because it does say "majority of producers".

**Senator Goldenberg:** It says the same thing in clause 17(1).

**The Acting Chairman:** Shall subclause (c) carry?

**Hon. Senators:** Carried.



**The Acting Chairman:** Then we come to subclause (d).

**Senator Phillips:** Mr. Chairman, this, to me, gives the council authority to establish packaging plants. Now, for the moment, I shall deal with eggs. Is it necessary to give the council authority to set up grading stations when producers such as our witness this afternoon and many others have their own grading stations, and these grading stations are constantly under inspection by the federal Government?

**Hon. Mr. Olson:** Well, Mr. Chairman, I would like to draw to your attention that what we are talking about in clause 2(d) is a definition of marketing, and in that particular context it is very clearly stated in line 6 that this definition is in relation to any farm product that is not a regulated product. Any regulated product, of course, and the terms and conditions and all the other parts that would be administered—that is, parts of the marketing system—would be provided for within the marketing plan which comes under the next clause. This does not deal with regulated products in so far as defining what marketing means for the purpose of interpretation under this bill.

**The Acting Chairman:** Shall subclause (d) carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Then we come to subclause (e).

**Senator Grosart:** I have a question, Mr. Chairman. I would like to ask the minister, in view of the very extensive powers granted under a marketing plan which can be proclaimed by the Governor in Council, if there is any recourse by a complainant—and I am aware of clause 7(f)—other than to the agency or to the Council? Where a complainant feels he has been unfairly treated in the matter, let us say, of the exemption of persons under subparagraph (i) or the cancellation of a licence under (v) or under (vi) or any other matter, has he any recourse other than to the agency or to hope that the council will make an inquiry under 7(f)? Has he any other recourse, in law, if he feels he is unfairly treated by an agency?

**Hon. Mr. Olson:** There are several here, Senator Grosart, and I am advised that in clause 8(1)(c) the minister may order them to hold a public hearing.

**Senator Grosart:** "May".

**Hon. Mr. Olson:** No, it says "shall" in clause 8(1), and that is in the first instance of making inquiries for the purpose of setting up, but I think you have to read that along with 8(1)(c)—

Read altogether, it provides:

A public hearing shall be held by the Council

(c) in connection with any other matter relating to its objects if the Governor in Council or the Minister directs the Council to hold a public hearing in connection with such matter.

Of course, that is broad enough to include appeals by individuals who may feel that they have been aggrieved. Of course, clause 7(1)(f) specifically spells out that within the powers of the Council the following is provided:

shall make such enquiries and take such action within its powers as it deems appropriate in relation to any complaints received by it—

The wording is "any complaints received by it from any person who is directly affected". If all those are read together, firstly, anyone who feels they have a complaint can appeal to the marketing board. If they are dissatisfied with the result they can appeal to the National Council, which has an obligation to supervise and keep under constant review all the orders. If a complainant still feels he has not received justice, he has an appeal to the minister, who has the power to order an inquiry on any other matter relating to the operation of the marketing agency.

**Senator Grosart:** I was aware of those provisions of the bill. My question, however, was: Has a complainant recourse, other than to the agency and the Council—in which I will include the minister because he has the power to order an inquiry, but the decision would still be made either by the Council or the agency—has he recourse other than to the agency or the marketing board?

**Hon. Mr. Olson:** I suppose you are referring to recourse to the courts?

**Senator Grosart:** Yes.

**Hon. Mr. Olson:** I do not think there is anything in the bill that bars recourse to the courts. Although I am not a lawyer, I think that anyone has recourse to the courts with regard to any statutory matters unless it is specifically prohibited or prevented in the act. Therefore, obviously, he would have recourse to the courts.

**Senator Grosart:** Very good.

**Senator Phillips:** We are overlooking the fact that the farmer could lose two crop seasons while the court case is being heard.

**Hon. Mr. Olson:** Well, I am sure you would not expect any comment from me with respect to the administration of the judiciary system.

**Senator Phillips:** No, I am pointing out the difficulty of the farmer under the present system.

**The Acting Chairman:** Is clause 2(e) carried?

**Senator Phillips:** No, I have a question. Clause 2(e)(iii) gives the Council authority to establish class, grade and price. On New Year's eve the minister stated that he hoped that potatoes would soon come under this bill. Traditionally, New Brunswick and Prince Edward Island potato producers have received a higher price for their products than those in central Canada. I wonder how the present system will work and if that differential can be maintained?

**Hon. Mr. Olson:** We must bear in mind that we are considering the definition of a marketing plan. The marketing plan itself, obviously, could take all those traditional differentials into account. It would, of course, have to be agreed to by the provinces in any event before it could become operative.

**Senator Phillips:** In other words, the provinces to which I referred would have to approve the price structure before the marketing plan could go into effect?

**Hon. Mr. Olson:** Yes, and also the other provisions, because they would have to delegate their authority under provincial law to be administered by the National Marketing Board or agency established for the purposes of administering the agreed upon marketing plan.

**The Acting Chairman:** Is clause 2(e) carried?

**Senator Grosart:** I have one question. This being the definitive section, I wonder if I could ask the minister if consideration was given to including a definition of producers?

**Hon. Mr. Olson:** Yes, there was some discussion regarding that, but we decided, or concluded that it would probably be duplication, involving the risk of it differing to some degree from the definitions set down by the provinces and we should leave the definition to them.

**Senator Grosart:** In your view, would that aspect of the dedication of authority be exclusively within the provincial jurisdiction?

**Hon. Mr. Olson:** In so far as the supply, management, control and all other items within provincial jurisdiction, the answer is yes.

**The Acting Chairman:** Is clause 2(e) carried?

**Hon. Senators:** Carried.

**The Acting Chairman:** Is clause 2(f) carried?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 2(g).

**Senator Forsey:** Is there a definition of the word "region"? We find elsewhere the word "area". Is there a definition in the bill, or is there a judicial definition?

**Hon. Mr. Olson:** I cannot answer as to whether there is a judicial definition. Our concern is that in the matter of setting out or delineating geographical regions, political boundaries do not always and, in fact, very seldom do delineate the production regions of a commodity which would be involved. It seemed that region would be broad enough that it could be an area that would transcend provincial boundaries in the event there is production on both sides of borders. It must always be borne in mind that provincial jurisdiction covers up to and only up to their borders.

**The Acting Chairman:** Is that clause carried?

**Senator Grosart:** Could I ask a supplementary question of the minister? Is there any significance in the fact that the word "area" is used rather than "region" in one of the amendments, which now appears as clause 24?

**Mr. Williams:** A different word was chosen for clause 24 in the event that you might not wish to have the geographical, and I am going to have to use one of those words, areas or regions coincide under these two separate parts.

In other words, you might wish to use a different area for the allocation of quotas to the region that was used in this portion of it.

**Senator Grosart:** Good, I am satisfied.

**The Acting Chairman:** Shall clause 2(g) carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Honourable senators, this morning Mr. Atkinson, who appeared before the committee, promised to leave a memorandum with regard to his views. I notice that the first clause to which he refers in the memorandum is clause 3(1), which we are now approaching. I have had his suggestions copied and will ask Mr. Coderre to have them circulated to the members of the committee.

**Part I.** Shall clause 3(1) carry?

**Senator Molgat:** Mr. Chairman, this morning a request was made of the deputy minister that he comment on certain points made. I wonder if he has anything further to say with regard to Mr. Atkinson's memorandum?

**Mr. Williams:** No, I do not have anything to add. In fact, Senator McNamara covered very well what I would have said; that is, that there are arguments on both sides of this question. The position in recent years, in most legislation at any rate, has been in favour of this particular wording.

One question was asked with respect to what is done in provincial legislation. We have researched that and the boards, that is the parent body within the province's equivalent to the Council, are always appointed by the Lieutenant Governor in Council. I do not have a complete text of the terms of office, but certainly some are during pleasure. I am talking about the parent board, not the agencies themselves. The body within the province that is equivalent to the council is invariably appointed by the Lieutenant Governor, and at least in some cases the wording says during pleasure. That was part of the other question.

**Senator Grosart:** May I draw to the attention of the minister the fact that we have had representations suggesting that there should be consumer representation on the council. What is the minister's view on whether there should be consumer representation?

**Hon. Mr. Olson:** I would think that every person in Canada is a consumer, to begin with. Therefore all the members would be consumers in the literal definition of the word. I think, perhaps, that what you are referring to more specifically—correct me if I am wrong—is a representative of an organization of consumers. If that is so, and that is what you are referring to, I would have some concern on why it would be necessary to give special consideration to this only in farm or agricultural legislation.

I say that because I do not believe that an organization or even the law with respect to other organizations in Canada specifically provide for representation of some other group setting up the legal status on which they organize themselves to sell their services to the rest of society. I do not know, for example, that labour unions, who will be doing essentially the same thing for their



members as this bill will be doing for agriculture, specifically require the consumers of their services to be represented on their councils. Nor do the other professional societies. I do not believe that doctors, lawyers or anyone else have delegated representation from the consumers of their product or their service administering their organizations.

**Senator Martin:** That is the point of view of Mr. Kirk.

**Hon. Mr. Olson:** Therefore I have a great deal of difficulty in seeing why you single out farmers to have people from the other side of the table represented on their side of the table. If we want to have something for the farmers that is consistent with all the other laws and practices that we have had in Canada for years, I do not think they have any more right to be on this council than anyone else. Furthermore, I believe that this bill has enough safeguards in it that the people who are elected to represent the public interest, such as the Governor in Council and Parliament, and so on, are adequately provided for in this bill.

**Senator Grosart:** My reason for raising the question is that we are dealing with a federal act which will set up control over a product which is most vital in terms of consumer interest, particularly low-income consumers. That is one reason why it seems to me to differ from labour unions, which are not set up under any statutory authority, as such, or provided with this kind of control over their product. Your argument might apply to some professional organization.

**Hon. Mr. Olson:** Almost all of them, I think.

**Senator Grosart:** We are dealing here, for the first time in history, with a mechanism for the control of food, which will affect prices, distribution and packaging. That is why I raise the question. This is a different situation. We have had representation by mail and wire from the Consumers' Association asking us to bring this matter to your attention. Those are the reasons why I raise this question.

**Senator Goldenberg:** Clause 3(1) says that at least 50 per cent shall be primary producers. Is it not likely that if you are going to appoint somebody who was not a primary producer, he would be a consumer?

**Hon. Mr. Olson:** It is almost mandatory that he shall be a consumer.

**Senator Molgat:** In respect of the other 50 per cent, they could all be from the Civil Service.

**Hon. Mr. Olson:** I suppose that legally and technically they could be, but I think it highly unlikely that they would be. This 50 per cent is written in so that a majority will be of the primary producers. If a National Farm Products Marketing Council is to operate effectively, we may also have to look to the people who have great knowledge and trade in the marketing of farm products, who may not necessarily qualify as primary producers but who could make a very valuable contribution to the effective functioning on the marketing side.

**Senator Molgat:** The intention is to have other people who are knowledgeable in the farm aspect, but not necessarily from the Public Service.

**Hon. Mr. Olson:** We want the most competent people we can obtain for these positions. Some of these people may not be in the Public Service and not primary producers, but they may have expertise in the marketing of farm products.

**Senator Phillips:** During my remarks on second reading I stressed some concern that the members would hold office during pleasure. These views have been discussed in committee today, and I do not need to elaborate on them. I still hold my original views in that regard. I therefore move that clause 3(1) be amended by striking out all the words after "office" and substituting therefor "for a period of ten years."

**The Acting Chairman:** Honourable senators, are you ready for the question?

**Senator Grosart:** This is one matter that appears in Mr. Atkinson's suggestions.

**The Acting Chairman:** Yes.

**Senator Forsey:** May I ask a question of Senator Phillips? Would he not think it advisable to have some provision for removing people who were demonstrably incompetent? It is customary to have something of the kind.

**Senator Phillips:** I agree with Senator Forsey. Perhaps he wishes to make an amendment to that effect.

**Senator Forsey:** I am not a member of the committee. I cannot make amendments. I can only ask questions.

**The Acting Chairman:** Those in favour of Senator Phillips' amendment, please raise their hands.

I declare the amendment lost. Subclause (1) is therefore carried.

Does subclause (2) carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Subclause (3) deals with regional representation.

**Senator Molgat:** I think this is one that was an amendment from the original act, which was a vast improvement so far as we are concerned in western Canada. We would prefer to have the words "try to" in line 23. I hope I can understand the intentions of the minister that the words "try to" will be considered as a clear indication of the wishes of both the House of Commons and the Senate.

**Senator Argue:** What is a third of a third?

**The Acting Chairman:** Shall subclause (3) carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall subclause (4) carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall subclause (5) carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 3 carry?

**Hon. Senators:** Carried.



**The Acting Chairman:** Shall clause 4 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 5 carry?

**Senator Molgat:** A question, Mr. Chairman. This is the individual who is to be the executive director or manager, or what-have-you, is it?

**Senator Grosart:** No, this is a member of the Council.

**Senator Molgat:** It is a member of the Council that shall be paid a salary. That means one only, I presume.

**Hon. Mr. Olson:** No. Any member of the council who is not an employee of the Public Service.

**Senator Molgat:** I was wondering about the use of "a" in that line and "each" in the next line.

**The Acting Chairman:** Shall clause 5 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 6 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 7 carry?

**Senator Grosart:** A question, Mr. Chairman.

**The Acting Chairman:** There is a question on clause 7.

**Senator Grosart:** Clause (7)(1)(a), the restriction to a written request from an association; Mr. Minister, has consideration been given to the fact that there might be an interest in requesting an agency by a group who are not members of an association? The written request to initiate proceedings to set up an agency seems to be limited to an association. Is there any reason for that?

**Hon. Mr. Olson:** Discussions as to whether or not an agency ought to be set up is, of course, a matter that is generally the subject of a great deal of public debate and discussion among members or producers over a long period of time. Inasmuch as there are associations respecting a great many farm products and certainly all major farm products, until and unless they persuade at least one association that they should make a request, it would not be particularly widespread. Line 17, Senator Grosart, states that the council may, on its own, initiate an inquiry into the merits, so it is covered in any event.

**Senator Grosart:** But such a group wishing to initiate proceedings would have to form themselves into an association, would they not?

The deputy minister is shaking his head, but would they not have to form themselves into an association to come under clause 7(1)(a)?

**Hon. Mr. Olson:** Yes, but my point is that those associations already exist. For example, swine producers have an association, poultry producers have an association, and so forth.

**The Acting Chairman:** Shall clause 7 carry?

**Senator Grosart:** Not all of clause 7, no.

**Senator Phillips:** Mr. Chairman, could I have an explanation on clause 7(1)(a)(ii)? I am concerned with the broadening of the authority, and whether any additional products can be taken in under the act in this regard?

**Senator Grosart:** Mr. Chairman, I have a question and an amendment before we get to subclause (2).

**Senator Phillips:** I yield.

**Senator Grosart:** Clause 7(1)(f) . . .

**Senator Phillips:** I am on paragraph (a)(ii) of clause 7(1), Senator Grosart.

**Senator Grosart:** I am sorry; I thought you were going on to subclause (2).

**Hon. Mr. Olson:** The explanation to Senator Phillips' question respecting subclause (1)(a)(ii) is that a marketing agency or plan can, of course, be set up with limited powers, limited to such things as promoting the sale of a product, taking fees for the financing of such an agency or commission, and so forth. There are a wide variety of limitations that would be much short of a complete supply management and quota controlled plan. Therefore, if an existing agency is to broaden its authority it must come back to the council for approval, if you will, and the rest of the procedures under clause 2.

**Senator Phillips:** Yes, but I have some concern, Mr. Minister, with this clause granting the agency authority to expand without coming back to Parliament, which, as I understand it, was the intention of the act.

**Hon. Mr. Olson:** If a plan was set up that did not include supply management control in all of its aspects without the expressed determination by Parliament that it should have those powers, then, of course, it would not be legal. If Parliament had granted those powers in the first instance and the plan was even more limited than the extent of those powers, then I do not suppose they would have to come back to Parliament to ask for reaffirmation of what it has already said. However, if you set up some type of commission or agency which fell short of the limitations that are provided for under clauses 2, 17 and 18, then, of course, you could not expand the powers to include supply management without an action by Parliament.

**Senator Grosart:** Just to clarify that: In the statement you just made, Mr. Minister, is your interpretation of this that if an existing agency wished to broaden its powers to take in a farm product not originally under the agency it would then require a declaration by the province?

**Hon. Mr. Olson:** It would depend, in most cases, on what the delegation of authority from the province was in the first instance. Certainly, they could not presume to administer authority that they had not been given by the provinces.

**Senator Grosart:** So that they would require a declaration if they were to bring a product . . .

**Hon. Mr. Olson:** Not only a declaration, but a delegation of authority.

**Senator Grosart:** Well, the declaration would assume the delegation.

**The Acting Chairman:** Shall clause 7 carry?

**Senator Sparrow:** Under clause 7(1)(a), Mr. Minister, the phrase "significant number of persons" is used. What does "significant number" mean?

**Hon. Mr. Olson:** This is a significant number of persons who are represented by an association. In other words, to give a hypothetical example, if you had 100,000 people who were growing a product and you had 50 members in the association that would probably not be significant, but if it was substantially more than 50, then it would qualify under a significant number of persons.

**Senator Forsey:** There would be some discretion in that regard, then? In other words, how many grains make a heap?

**Hon. Mr. Olson:** Yes, that is right.

**The Acting Chairman:** Senator Grosart, I believe you had an amendment you wanted to make?

**Senator Grosart:** No.

**The Acting Chairman:** Shall clause 7 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 8 carry?

**Senator Grosart:** We were asked to draw to the attention of the minister, by one of the witnesses, the word "may" in clause 8 (2). The Consumers Association of Canada, in a communication to us, asked that that should read "shall be held...". Personally, I would not argue that because the wording of the rest of the subclause puts the discretion with the council. The council must be satisfied, so even the word "shall" would not, in my view, really strengthen it. I just draw it to the attention of the minister.

**Hon. Mr. Olson:** I think, Mr. Chairman, if I may, I will say that I was present in the room when the submission was placed before the committee with respect to this "shall", and I think that was referring to Bill C-197 of the last session of Parliament. It occurred to me when that was going on that the words now contained there, "shall be held", in line 38 on page 8, satisfied that request completely.

**Senator Grosart:** But it was pointed out at that time that the "shall" in clause 8(1) refers to an entirely different situation. I am not pressing the point, but we were asked to bring it to the attention of the minister.

**Hon. Mr. Olson:** The essential point here, I think, is that in connection with an inquiry into the merits of establishing an agency, or even of broadening the authority of an existing agency, and so on, a public hearing shall be held.

**The Acting Chairman:** Shall clause 8 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 9, "Public Notice".

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 10, "Rules of Procedure".

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 11, under "Organization", "Head Office".

**Senator Sparrow:** I should like to ask the minister a question, which he may not be able to answer. Has he at this point given any consideration to where the head office may be located? Is he at liberty to state that?

**Hon. Mr. Olson:** I think in the initial stages it will probably be in the national capital region.

**Senator Martin:** You never thought of North Battleford?

**The Acting Chairman:** In the old days this would include Kingsmere, and perhaps at that time it might have been thought an appropriate place.

**Senator Sparrow:** When you say it will probably be in the national capital, it sounds from your statement that it will therefore be located in the national capital. I personally would like to see it located outside the national capital.

**Hon. Mr. Olson:** I think there are a number of reasons. We are not talking about the specific agencies here; we are talking about the national council. There is some significance to a national agency being in the national capital. That is one thing. Clause 13 also states that the council, wherever possible, shall utilize the services of employees within the Public Service of Canada. For keeping the costs down and that sort of thing that would be useful. Furthermore, I think even if you look at Canada, from Newfoundland to Vancouver Island, geographically it is about as convenient as anywhere.

**The Acting Chairman:** Shall clause 11 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 12, "By-laws".

**Senator Grosart:** May I ask the minister his understanding of the word "duties" in clause 12(b), in the fourth line. Is it his understanding that that does not authorize the delegation of powers, only of duties?

**Hon. Mr. Olson:** I think this is the standard, usual wording respecting the way in which the council must conduct itself while it is making by-laws. I do not think it does anything more than that.

**Senator Grosart:** I just want it for the record, that it refers only to duties; that it does not give them the right to delegate powers to a committee.

**Hon. Mr. Olson:** I think that is right.

**Senator Grosart:** There is one exception, where certain powers are given to two members but they are not designated as a committee.

**Hon. Mr. Olson:** That is right.

**The Acting Chairman:** Shall clause 12 carry?



**Hon. Senators:** Carried.

**The Acting Chairman:** Carried. Shall clause 13 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Carried. Shall clause 14 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Carried. Shall clause 15 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Carried. Shall clause 16 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:**

Part II, "Farm Products Marketing Agencies." Shall clause 17 carry?

**Senator Molgat:** On clause 17(2), I wonder if I might ask the minister a question. Was there any discussion with the provinces as to whether, in a case like this, where a decision is made to hold a national plebiscite, instead of doing it on a provincial basis that it be in fact a national plebiscite?

**Hon. Mr. Olson:** I would like to answer the question in this way, that the provinces have been over this bill, I am sure, with a fine-tooth comb, so they are apprised of all of it. To answer that question specifically. I go back to the answer I gave some time ago, that I do not think it came up that it was a desirable thing to do, because we should not try to write a law at the federal level that would fail in so far as the division of powers under the Constitution is concerned. Therefore, in the kind of organization that we have in our country, where we have this division of powers, it was desirable that the provinces should do this and we should be guided by their determination of results.

**Senator Molgat:** The term "may request," then, means that any or all provinces could turn it down and say they would not do it. They could defy the federal Government and say they would not carry out a plebiscite, and they issue a declaration. Then, what?

**Hon. Mr. Olson:** They issue a declaration that the majority of their producers are in favour?

**Senator Molgat:** Yes.

**Hon. Mr. Olson:** There are at least three provinces whose laws would prohibit them from doing so—Quebec, Alberta and Prince Edward Island. For the rest of them, it is a matter of policy, that they do in fact carry out plebiscites when they move to a marketing plan that includes all the supply management features. I think it is very unlikely that it would happen and indeed in most provinces it could not be operative anyway, because they could not delegate their power without having satisfied themselves that a majority supported it.

**Senator Molgat:** Is it still left here, even where a request comes from the federal Government that the producer be defined by the province, that it can vary from province to province?

**Hon. Mr. Olson:** I have to repeat what I said a few moments ago, that it could vary; but, as I said, there has been broad general agreement that there would be very little, if any, variation when it was being put to the producers that this would result in a national plan.

**Senator Molgat:** My last point comes back to the one I was making on clause 2(c)(ii), that if we are talking about a majority of producers, we are not talking about a majority of those voting?

**Hon. Mr. Olson:** I think the same discussion that we had a few minutes ago again is applicable.

**Senator Molgat:** I merely want it on record, because I suspect that this will arise at a later date, and I want it very, very clear at that time what it was that this committee agreed to.

**Senator Sparrow:** It states, "if the Governor in Council is satisfied that a majority of the producers". To have this satisfaction, you, or the Governor in Council, would be better off, and it would be easier for them to decide, if in fact a plebiscite were held in every province, and that would be a greater assurance for you than having a straight declaration? Is that true?

**Hon. Mr. Olson:** Mr. Chairman, we are getting back into the area of our trying to interpret how the provinces administer their legislation.

**Senator Sparrow:** No, I said that for the Governor in Council to be satisfied that, in fact, the request would come under this bill, it would be easier to be satisfied if the Governor in Council knew that a plebiscite had been held. Then, in fact, you would know it was representative of the majority of the producers. If that is the case, then, constitutionally, I would see nothing wrong with saying "shall request" instead of "may request" in clause 17(2), because, in turn, in the rest of the bill they do not have to conform with that. You are not insisting they do, but we are insisting in the bill that you ask them to and, if they say no, that is fine. They can still come under the bill, because they say, "No, we do not want to conform with that." But, at least, then we would be satisfied that the Governor in Council had asked them to have that plebiscite.

**Hon. Mr. Olson:** Mr. Chairman, all the provinces are familiar with the requirement of what is necessary here for the Governor in Council to be satisfied. If we get a declaration from a province that the majority of their producers are in favour of such a plan, I do not really see that we have any right to challenge it. How can we challenge a bare-faced statement passed to us by the government of a province? The requirement is here. They must advise us of that. We do not set down the terms and conditions of how they reach that determination, but, if a duly-elected government advises us that this is so in their province, I think we have some obligation to accept their word.

**Senator Phillips:** But, Mr. Minister, you told me earlier that the provinces had a right to agree to the plan. Surely it is not unreasonable for the federal Government to ask them to do certain things before you enter into an agreement with them? If you were buying a house you would



ask that the title be clear. That is not an unreasonable attitude. I do not think it is unreasonable to ask the provinces to have a plebiscite.

**Hon. Mr. Olson:** Mr. Chairman, that is provided for. It says that the Governor in Council may request such a plebiscite.

**Senator Grosart:** Mr. Minister, are you not really saying that the declaration that a majority of producers are in favour can be made by a declaration by the province which you will accept, whether it is made by plebiscite or otherwise?

**Hon. Mr. Olson:** That is right. Exactly.

**The Acting Chairman:** Shall clause 17 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 18 deals with the contents of proclamation, alteration and limitation.

**Senator Phillips:** Mr. Chairman, as I interpret clause 18(1)(a)(ii), it allows the council to designate the amount of the product that can be shipped from one region to another. Again referring to the statement of the Minister that he hoped that potatoes would soon come under this bill, I would point out to the members of the committee that Prince Edward Island and New Brunswick depend to a very, very great extent on potato production, and their largest market is in central Canada. We have an export market for seed, but our largest table stock market is in central Canada. I very much fear that our sale of table stock potatoes in central Canada could be reduced if put on a quota basis under this section. I draw this to the attention of my two colleagues from the Maritimes; and with this in mind, Mr. Chairman, I move that clause 18(1)(a)(ii) be deleted.

**Hon. Mr. Olson:** Mr. Chairman, I think the conclusion that the proclamation could contain this is, of course, hypothetical and indeed not only is it hypothetical, but it is completely prohibited under subclause (3) of clause 18 except for eggs and poultry products until there is a further amendment by the Parliament of Canada to name any other product including potatoes. Therefore until and unless there was a marketing plan that was agreed to, and under the spirit of this whole act, agreed to by the provinces producing the major part of that product, then of course it could not be done. And Parliament would have to pass an amendment including that commodity.

**Senator Phillips:** But the amendment could be simply one to define the product it will apply to. The amendment could be made under subclause 2(c) and nothing else changed in the act.

**Hon. Mr. Olson:** You would have to change clause 18(3) and you would also have to have a provincial agreement to the terms and conditions within the marketing plan which is provided for in clause 2(c) as well as clause 2(e). All of those provisions would have to be met by the provinces involved. Neither the marketing council nor the Governor in Council could of course achieve the situation you describe without the endorsement of the provinces involved and without an act of Parliament.

**Senator McElman:** Mr. Chairman, is it not a fact that the share of the central Canadian market held by the Maritime provinces has in fact been eroded in very recent years by production from other provinces? And do the provisions of the act not in fact provide some protection for that share as it now exists?

**Hon. Mr. Olson:** Yes, Mr. Chairman, that is correct. There is, of course, some variation from year to year, but in percentage terms your contention is correct. This bill provides that written into the statutory provisions now, of course, is what would have been done in any event. That is that the traditional marketing patterns would be taken into account over a five-year period in determining the allocation of quotas if a marketing plan arrives at that point.

**The Acting Chairman:** Senator Phillips, do you propose to press your amendment?

**Senator Phillips:** No, Mr. Chairman. I will be quite content to have it on the record indicating my concern. I know the amendment would be lost anyway.

**The Acting Chairman:** Shall clause 18 carry?

**Senator Molgat:** Mr. Chairman, clause 18(3) is of primary concern to the cattle and hog producers. It ultimately gives them the protection that they will not end up under a quota system. The question was asked of me as to what else could be done to them, apart entirely from the quota consideration? Could they be forced to market to a single agency? Could the whole system of handling be changed by the plan?

**Hon. Mr. Olson:** Clause 18(3) must be read in conjunction with clause 2(c). That provides that, until and unless we have a majority, farm products could not even be defined for the purposes of this act except for the inquiries section contained in Part I. I would rather doubt that anything beyond that could be done without action by Parliament under clause 2 to arrive at the definition of a farm product with respect to any other product than the exceptions contained therein. Clause 18, which refers to the supply management features, would also require amendment. My interpretation is that very little more than making inquiries would be allowed without amending either one or both of those provisions.

**Senator Molgat:** So the cattle and hog producers who are concerned by this can be assured that nothing can happen to them under these two clauses until such time as a vote or action under clause 2(c) takes place? Even if that were to occur, they could not be brought under a quota system without a further amendment?

**Hon. Mr. Olson:** A further amendment to clause 18(3).

**Senator Molgat:** They would have a double action.

**The Acting Chairman:** Shall clause 18 carry?

Carried.

**The Acting Chairman:** Shall clause 19, "Membership of Agencies," carry?

**Senator Grosart:** Because Mr. Atkinson put down his suggested objections, I want to call to the attention of the

minister that he objects again to the appointment of members of agencies. I am referring to clause 19, subclause (1), the appointment of members of agencies during pleasure. I think we have disposed of that.

**Hon. Mr. Olson:** This is a little different, because we are talking about the membership of agencies that would be related very directly to the marketing plan and the provisions of the marketing plan. The marketing plan could easily call for appointment for a specific period of five years or any other period, or indeed during pleasure; but when we get to the appointment of membership of agencies, it is slightly different than the council. When we are talking about agencies there is even a far greater input of provincial jurisdiction than on the council itself.

**Senator Grosart:** There are other options here.

**The Acting Chairman:** Shall clause 19 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 20 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 21 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 22 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 23, "Powers."

**Senator Grosart:** This concerns the objection I made earlier to clause 23(1)(f), where the agency is empowered to make such orders as it considers necessary. I made the point earlier that it was giving far too much power and was, in effect, removing a legitimate complaint from recourse to the courts, because the answer that could be given is that the agency considered the powers necessary. However, I will not press it.

**Hon. Mr. Olson:** The answer to this is that the agency does get some discretion here of what it considers necessary, but quite obviously the agency could not exceed, firstly, all the statutory provisions of both provincial and federal law, and, secondly, it could not exceed the delegation of authority granted to them under the terms and conditions of the marketing plan that was agreed to by both levels of government. So they could not really consider it necessary to do anything that would exceed this delegation of authority.

**Senator Grosart:** This would apply to the delegation in (n) on page 17, where the wording is much better, namely, all such other things as are necessary. Why the two different phrases?

**Hon. Mr. Olson:** I do not know what to say about that, except that there is a little more redundancy in this bill than in only those two places.

**The Acting Chairman:** From an abundance of caution, they may have put in more than is required. You find it in the Corporations Act, where we talk about the powers that

companies shall have, and we often wonder why. They are basket clauses.

**Senator Grosart:** I object, on principle, to all such clauses that give any organization or institution which exercises delegated powers the power to decide what they consider necessary.

**The Acting Chairman:** Shall the clause carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** We now come to clause 24.

**Senator Molgat:** In checking with consumer groups, I find considerable concern about the five-year period, particularly when it entitles the board to set commodities. The feeling expressed to me was that this might turn out to be of some serious disadvantage in certain commodity areas. Even a group which we have been told is quite anxious to have this bill passed, the broiler chicken group, to whom I spoke yesterday, expressed some concern about this five-year period. They indicated, for example, that if you went on a five-year average with regard to broiler chickens you might put Newfoundland, Prince Edward Island and Saskatchewan in a bad position, because they did not really get into the broiler chicken business in any significant way until the past three years. This could also affect other provinces. Some provinces such as Quebec cut their production substantially as a result of overproduction, and they might end up in a bad position as a result of that.

I spoke to the national president as well as the Manitoba president, and they gave me some figures which I thought were interesting. For example, Newfoundland's production has gone up by 75 per cent; Saskatchewan's production has gone down by 18.3 per cent; Ontario's production went down 2.7 per cent; Quebec went down 14.2 per cent, and so forth. They were concerned that a straight five-year average might put certain provinces at a disadvantage, and, in any case, they felt it was not fair to put a five-year average on all commodities.

**Hon. Mr. Olson:** I accept all of your arguments, senator, but I reach a different conclusion than you do or do the people from whom you received those representations. If you were to shorten the period, I suggest, it would be even more disruptive. For example, if you took only a one-year average and in the preceding year there was a large increase or decrease, that would not be fair to the traditional marketing patterns. You could also take a longer period. The five-year period is more or less an arbitrary figure, but it seems to me that it is more appropriate than any other. It is the space of time that people who are experts in the business look at, and my conclusion, to avoid even greater disruption in those provinces which may have had a significant decrease or increase in any particular year, was that it would be better for everyone if you took the five-year span.

The next question that comes up—and I certainly do not wish to take too much time on this—is that if you do not use the traditional marketing patterns which, of course, reflect also the traditional producing patterns in various areas of Canada, then what else can you use? There is nothing else to base it on. Frankly, I do not believe you can



take any single year and do justice to the people involved. You may argue that five years is not the right period, but I think it is probably the most appropriate period under the circumstances.

**Senator Molgat:** It was their feeling that it would be better to leave it to be determined for each commodity, depending on what happened in that commodity and its development in the various provinces.

**Hon. Mr. Olson:** I do not believe that I can add anything more to what I have already said. You have to try to be fair to people who would be on either side of that argument.

**Senator Grosart:** That could be dealt with in the amending legislation, bringing in other farm products under the bill.

**Hon. Mr. Olson:** That is right.

**Senator Grosart:** It is interesting that the minister used the phrase "marketing patterns", because in his submission to us Mr. Atkinson suggested that that should be the phrase. I think he said "historical marketing patterns" rather than "production". Is there a substantial difference here, in the practical working out of the bill, between basing this five-year average on production and on marketing patterns?

**Hon. Mr. Olson:** It seems to me that the two are so closely related that obviously if there is a traditional production pattern, if you like, production has found its way into a marketing pattern throughout this traditional period, and they are very closely related. The other problem, of course, is that we do not have data on marketing patterns, if you like, between provinces, but we do have rather carefully compiled data on the production patterns.

**Senator Grosart:** I just say that Mr. Atkinson seemed to think there was an essential difference. I do not know enough about it to pursue it.

**The Acting Chairman:** Shall clause 24 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 25, "Employment of staff".

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 26, "Agency may make by-laws".

**Senator Argue:** On clause 26, I would like to move an amendment. My amendment would be consistent with the other parts of the bill, namely, that as the bill now stands a majority of the members of the council must be producers, a majority of the members of the agencies must be producers. My proposal is that a majority of the members of the advisory committee should be producers.

I move that paragraph (g) of clause 26 be deleted, and that the following new paragraph (g) be substituted therefor:

(g) for the establishment of consultative or advisory committees consisting of members of the agency, primary producers, or persons other than members or

primary producers, provided that a majority shall be primary producers.

**Hon. Mr. Olson:** Mr. Chairman, may I speak to that?

**The Acting Chairman:** Yes.

**Hon. Mr. Olson:** I would think that inasmuch as these consultative committees or advisory committees will be appointed by the council and agencies that are set up, where there is a requirement that a majority there be producers it is somewhat redundant to require them, who are already producers, to do this.

The other problem, which is more important, is that these agencies or the council may wish to set up, for example, technical committees on research and that sort of thing. This is not limited to one committee for each agency; it says "consultative or advisory committees". They may be set up for very specific purposes, to do some examination of a highly technical nature. Therefore, I do not think it would be appropriate that they be required to comply with whatever the interpretation of "producer" is in the event that they were doing a technical study that required people with expertise in that area. Secondly, I think there is ample protection of the producer interest, when in fact a majority of the body appointing them are producers.

**The Acting Chairman:** Senator Argue, do you press your amendment?

**Senator Argue:** Yes, I press the motion. All I would say is that if it is a technical committee, a highly technical committee, a sales committee, you name it, I would think there are people in Canada who are producers who are expert in this field. We have had members of the Canadian Wheat Board who are producers, and I think experts, so I still press the amendment.

**The Acting Chairman:** Is the committee ready for the question?

**Hon. Senators:** Question!

**The Acting Chairman:** Those in favour of Senator Argue's motion please raise their hands—Five.

Those against Senator Argue's motion please raise their hands—Eight.

I declare the amendment last.

Shall clause 26 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 27 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** The financial clauses. Shall clause 28 carry, "Conduct of financial operations"?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 29 carry, "Payment by the Minister of Finance"?

**Senator Grosart:** I wonder if I might ask the minister a question, through you, Mr. Chairman. In clause 29(1), line



3, where the Minister of Finance may make, on requisition of the Minister, grants to an agency, would that include loans?

**Hon. Mr. Olson:** It could. I suppose it does not say loans, but we have provided here for a payment out of the public treasury for a non-recurring grant for the purposes of meeting the initial operating cost of establishing the agency. In fact, we have another act under which we can guarantee loans to these agencies, which could be for far greater amounts, under a loan basis, than the limit of \$100,000 here for the initiation costs of setting up an agency.

**Senator Grosart:** The limitation, then, is as to grants on initiation of an agency?

**Hon. Mr. Olson:** Yes.

**The Acting Chairman:** Shall clause 29 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 30, "Audit", carry?

**Senator Phillips:** Is there any particular reason why this audit should not be carried out under the Auditor General?

**Hon. Mr. Olson:** It is not normal for an agency—and we are talking about the agencies now, not the council. They will be set up to spend their own funds, not public funds, after the initiation costs. It is not normal that it be mandatory that they do so under the Auditor General of Canada, because they will not be dealing with public funds.

**Senator Phillips:** For instance, Polymer did not involve a great deal of public funds but it also was under the Auditor General.

**Hon. Mr. Olson:** But Polymer was a crown corporation. This would not be a crown corporation.

**Senator Grosart:** It was a crown corporation and it was then subject to the Auditor General. I do not think it is now so subject, since it ceased to be a crown corporation.

**The Acting Chairman:** Shall clause 30 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 31, "Report to Parliament". Shall clause 31 carry?

**Hon. Senators:** Carried.

**Senator Buckwold:** Mr. Chairman, on Part III, I wonder whether I could move approval of the general clauses, unless any member wishes to deal with a particular question. I think these are basically technical clauses.

**Senator Grosart:** Mr. Chairman, we have a clause-by-clause motion. Let us stick with it.

**Senator Phillips:** And I have a couple of amendments.

**The Acting Chairman:** Shall clause 32 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 33 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** It is carried. Shall clause 34, "Inspectors", carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 35, "Powers of inspectors", carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 36, "Obstruction of inspector. False Statements", carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 37, "Licence fees, levies and charges". Shall clause 37 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Clause 38, "Offences and penalties. Punishment". Shall clause 38 carry?

**Senator Phillips:** Mr. Chairman, in my remarks on second reading I indicated concern that there is no limitation on the type of question that can be asked under clause 7, and that there is no protection provided for the people being asked those questions. After consultation with the legal advisers I have been advised that this would be the most appropriate place in which to move an amendment. The amendment I intend to move is rather lengthy. I have made copies, which I will distribute, if I may, Mr. Chairman.

I now wish to move the following amendment to Bill C-176:

That the following be added as a new subsection (2) to clause 38 of Bill C-176, the remaining subsections being renumbered accordingly:

"38 (2) Every person who

(a) wilfully discloses or makes known directly or indirectly to any person not entitled to receive the same, any information submitted to the Council or an agency or required to be submitted to the Council or an agency pursuant to a requirement under subparagraph (iii) of paragraph (h) of subsection (1) of section 7 that might exert an influence upon or affect the market value of any regulated product, or

(b) uses any such information for the purpose of speculating in any regulated product,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding three thousand dollars."

**The Acting Chairman:** You wish that amendment to be added as a new subclause to clause 38?

**Senator Phillips:** Yes.

**The Acting Chairman:** So there is no amendment to subclause (1) of clause 38. Shall subclause (1) of clause 38 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** It is now proposed in amendment by Senator Phillips that clause 38 have added as a new subclause (2) the amendment which Senator Phillips has just read. We will then come to the renumbering of the present subclause (2) as subclause (3). Is that your proposal, Senator Phillips?

**Senator Phillips:** Yes.

**The Acting Chairman:** Senator Phillips, do you care to speak on this amendment?

**Senator Phillips:** I do not think there is very much I can add, Mr. Chairman, other than that I did express concern that various members, particularly of an agency or an advisory board, may come into possession of certain information and that, as the bill now stands, they are under no obligation to keep that information secret. This amendment is, in effect, an application of the Statistics Act or the principle of secrecy of the Statistics Act to this clause.

**Senator Grosart:** Mr. Chairman, may I point out that Senator Phillips' amendment refers specifically to the requirement in clause 7 that any person may be required to give this information. This would mean that any farmer would be required to give certain information, and it would appear that the purpose of Senator Phillips' amendment is to protect the security of that information that is now required under the bill. That is a fairly drastic requirement. I am not saying that it is not necessary, but it is a fairly drastic requirement that any farmer should be required to give any information at all that an agency asks for.

**Senator Phillips:** And that information could in fact be his net income for the year, which most people would not care to have fall into other people's hands.

**Hon. Mr. Olson:** Mr. Chairman, clause 7, of course, deals with the power of the council. And there it is specifically stated in paragraph (h), subparagraph (iii), at the top of page 8, that anyone is required to submit information only "relating to the production or marketing of the farm product by them as it may reasonably require". It does not say anything else, and there remains the interpretation of those words "as it may reasonably require" for the purpose of this act. So there is a very severe limitation.

In addition to that, the members of the council would be appointed by the Governor in Council, and I am not quite sure of this, but I think it is a fact that all appointees of the Governor in Council come under the official secrets requirements on appointment, and that being the case they are already prohibited from doing some of the things under the law that Senator Phillips has referred to.

**The Acting Chairman:** Surely, there must be some general provision in law with respect to the disclosure of official information? Can you help the committee in that respect, Senator Phillips?

**Senator Phillips:** Mr. Chairman, I have been trying to help the committee all afternoon, very unsuccessfully, and I wish I could be successful in this case but, unfortunately, I do not think I can.

**The Acting Chairman:** Would any of the learned counsel members of the committee have any views on this point?

**Senator Martin:** It would come under Official Secrets Act.

**Senator Phillips:** Not every employee is governed by that.

**Hon. Mr. Olson:** Appointees of the Governor in Council are.

**Senator Grosart:** I would suggest on that, Mr. Chairman, that this is to be found in clause 7(1)(h)(iii) which refers to the powers that may be given under a marketing plan. So these powers could then be given to an agency, and I very much doubt if any existing statute would extend any security regulations to employees of an organization which was so far down the line of delegation as this one is. This does not just refer to the members of the council. If I read the clause correctly, it refers to the powers conferred under a marketing plan. It says in (h): "may, for the purpose of implementing any marketing plan, require persons..." and so on to submit to the Council for the purposes of the marketing plan. So if the council requires it for the purposes of the plan, the plan is the operative instrument of the agency. Certainly I would suggest that this power would, through the marketing plan, be granted to the members of the agency.

**Senator Phillips:** And the clause specifically states that they will keep books, records, and so on, containing such information as the council requires. It all depends on the type of question required by the questionnaire as to whether or not the information is revealed. We do not know that at present. Therefore I feel it is essential to protect the information given by the individual.

**The Acting Chairman:** To protect the secrecy of the information.

**Senator Phillips:** That is right.

**The Acting Chairman:** Those in favour of Senator Phillips' amendment to clause 38 please raise their hands?

**The Clerk of the Committee:** Three.

**The Acting Chairman:** Those against Senator Phillips' amendment please raise their hands?

**The Clerk of the Committee:** Nine.

**The Acting Chairman:** I declare the amendment lost. Is clause 38(2) carried?

**Hon. Senators:** Carried.

**The Acting Chairman:** Is clause 38(3), "Time limit" carried?

**Hon. Senators:** Carried.

**The Acting Chairman:** Is clause 38(4), "Evidence as to geographical origin", carried?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 38 carry?

**Hon. Senators:** Carried.



**The Acting Chairman:** Shall clause 39, "Winding up of an agency", carry?

**Senator Phillips:** Mr. Chairman, I again have an amendment. This will be the last one. I am concerned by the wording of clause 39, wherein is provided:

The Governor in Council may order any agency established pursuant to this Act to wind up its affairs and may by proclamation dissolve any agency ...

et cetera.

My objection is that there is no provision, firstly, for the provinces to be consulted. It is a strictly one-sided privilege of the Governor in Council. Parliament does not even have to be consulted. Secondly, I object to the 90-day period. I point out to the members of the committee, Mr. Chairman, that in many cases in which a quota has been established an individual may have, limiting it for the time being to poultry, reduced his flock considerably, and the 90-day period would not afford him time to rebuild it and return to a competitive, free market. On the other hand, if another product, such as potatoes, did come under the act, 90 days would certainly not allow the individual time to resume the position he formerly held before a quota system was established.

Therefore, I move that lines 40 to 43 in clause 39 of Bill C-176 be deleted and replaced with the following:

but an order or proclamation under this section becomes effective only on the expiration of nine months from the date of publication thereof in the *Canada Gazette*,

**The Acting Chairman:** That is the gestation period.

**Senator Phillips:** Yes:

or such other periods of time from the date of publication thereof in the *Canada Gazette* as is recommended by the Council.

I might add, Mr. Chairman, that the council, if consulted, may be agreeable in certain cases to have periods less than nine months, or it may wish to have a longer period.

**Hon. Mr. Olson:** I should like to make three points with respect to the proposed amendment. Firstly, the marketing council is obliged under its duties ties and powers in the section 6(2), on page 5:

(2) In carrying out its duties the Council shall consult, on a continuing basis, with the governments of all provinces having an interest in the establishment or the exercise of the powers of any one or more agencies ...

Secondly, the period of 90 days is not a mandatory minimum or maximum. It could be more than 90 days. It shall become effective only on the expiration of 90 days. Obviously, it could be much longer than that, even up to what the amendment calls for.

What is more important is that after this obligation to consult with the provinces, the power ultimately rests with the same agency that made the proclamation, which is the Governor in Council. It follows therefore that only the agency or the body, which in this case is the Governor in Council, may undo what it has the power to do; and

therefore the power has to be back to the same agency to undo a proclamation it has made.

**Senator Grosart:** A declaration by the province implies only that the majority of producers are in favour of it.

**Hon. Mr. Olson:** I think that is right. In putting in this amendment, it would set down terms and conditions that a province could direct what the Governor in Council may do, which is, in fact, to withdraw a proclamation which was set out by the Governor in Council. I am sure you recognize that would not be a suitable wording in a statute.

**The Acting Chairman:** Those in favour of Senator Phillips' amendment please signify in the usual way ... I declare the amendment lost.

Shall clause 39 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** We now come to clause 40. Shall clause 40 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall clause 41 carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall the title carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall the preamble carry?

**Hon. Senators:** Carried.

**The Acting Chairman:** Shall the bill carry?

**Some Hon. Senators:** Carried.

**Senator Grosart:** On division.

**Senator Molgat:** I have one further question for the minister, Mr. Chairman.

Mr. Minister, I believe you were to check with the provincial Ministers of Agriculture regarding their acceptance of the wording of the amendments.

**Hon. Mr. Olson:** The deputy minister has his notes in that respect, and I will ask him to answer the question.

**Mr. Williams:** Mr. Chairman, I contacted all deputy ministers, with one exception where there was an acting deputy minister. I asked them the question that was put to the minister, and I asked them to check with their ministers in that regard. All whose ministers were available checked with their ministers; there was one who did not have an active minister, and there were two who were unable to reach their ministers. We have positive replies from seven ministers via the deputy ministers, and in the other three cases the deputy ministers gave me their assurance that in so far as their understanding was concerned, and they all attended the meeting, the amendments implemented were in accordance with the commitments that were made and the understanding that was given at the meeting in Ottawa on November 23.

**The Acting Chairman:** Shall I report the bill without amendment?



**Hon. Senators:** Agreed.

**Senator Langlois:** Mr. Chairman, before we adjourn I would like to inform honourable senators that arrangements have been made with the Speakers of both chambers to reassemble the chambers on Tuesday next at 2 p.m. How long we are going to sit next week will not be known until we know how the Senate is going to handle this piece of legislation.

**Senator Grosart:** A long debate!

**Senator Langlois:** We will have to play it by ear. We will have royal assent next week, if at all possible.

**The Acting Chairman:** Thank you, Senator Langlois. The committee is adjourned.

The committee adjourned.

**\*APPENDIX "A"**

CONSUMERS ASSOCIATION OF CANADA  
 ASSOCIATION DES CONSOMMATEURS DU CANADA  
 NATIONAL OFFICE—SIÈGE SOCIAL  
 100 RUE GLOUCESTER STREET, OTTAWA, ONTARIO,  
 K2P 0A4  
 TELEPHONE (613) 236-2383

January 6th, 1972

Honourable J. J. Connolly,  
 The Senate,  
 Parliament Buildings,  
 Ottawa,  
 Ontario

Dear Senator Connolly,

Enclosed are copies of submissions presented by the Consumers' Association of Canada on Bill C-197 and Bill C-176, the acts dealing with the establishment of a National Farm Products Marketing Council.

The Consumers' Association of Canada wishes to present to the Senate our suggestions for amendments to Bill C-176 which we believe will assist in safeguarding the public interest under such legislation.

Sincerely,

Maryon Brechin,  
 (Mrs. W. A.)  
 National President.

MEMO TO: Members of Parliament  
 FROM: Jean Jones, National President  
 DATE: March 15th, 1971

The Consumers' Association of Canada, the voluntary organization representing the interest of consumers in Canada is deeply disturbed that Bill C-197 regarding the establishment of a National Farm Products Marketing Council was unchanged when re-introduced as Bill C-176 and that, despite extended committee hearings, no substantial amendments have been approved.

Bill C-176 is phrased in broad, all-encompassing terms which would allow complete control of all sources of a commodity, at any or all stages of its production or distribution to any Agency set up under the Act.

These terms allow for monopoly control which would affect the entire Canadian food industry. This represents a danger to consumers since the Bill contains no provision for representation of consumers or other segments of the

food industry nor is a means of appeal from decisions of an Agency easily available.

You will have noted the many other responsible organizations which have voiced opposition to Bill C-176. These voices must not be ignored! Since so many commodity groups and a number of provinces are so strongly opposed, the Bill could prove to be a deeply divisive force, with serious results to our future as a Nation as well as to our food supply. Surely this is too high a price to pay for controlled production of agricultural commodities!

CAC considers the cost to our economy of setting up such a complex food monopoly will be too great. Bill C-176 is completely unacceptable to consumers, especially since there already exists, in provincial legislation, the means for voluntary co-operation between provinces to rationalize production.

We include a copy of CAC's submission to the Standing Committee on Agriculture regarding Bill C-197, which applies equally to its unchanged version Bill C-176. We would urge you to give your serious consideration to the possible effects of the implementation of this Bill, not only on our domestic food supply, but on Canada's position in our export markets.

## SUBMISSION

by the

CONSUMERS' ASSOCIATION OF CANADA

to the

STANDING COMMITTEE ON AGRICULTURE

of the

HOUSE OF COMMONS

Consumers' Association of Canada,  
 100 Gloucester Street,  
 Ottawa 4, Ontario.

October 1st, 1970

*Preamble*

The Consumers' Association of Canada is the national organization representing and serving the interests of Canadian consumers. It is a non-government, non-sectarian, non-profit association of volunteers.

CAC's four main objectives are:

- 1) To unite the strength of consumers to improve the standards of living in Canadian homes.
- 2) To study consumer problems and make recommendations for their solution.
- 3) To bring the views of consumers to the attention of governments, trade and industry, and to provide a channel from these to the consumer.

4) To obtain and provide for consumers, information and counsel on consumer goods and services.

II. *Statement of CAC position on NATIONAL Marketing Boards* to the Honourable Mr. H. A. Olson read as follows:

For the past year, the Consumers' Association of Canada has been most concerned about marketing boards, their structure and their operation. The association presented its views to the Canadian Agricultural Congress and we would now like to present these views to you for your consideration. The points following represent specific concerns of the consumer in regard to marketing boards.

1. There is a danger that regions will become protectionist and in so doing may prevent areas where production is highly efficient from getting the greater share of the market. Consumers feel that goods should be produced wherever it is most economical, provided there is still a fair profit to the original producer.

2. Marketing boards tend to protect the smallest and most inefficient producers and prices can be set too high - this may discourage the adoption of new advances in technology which would tend to put Canada at a disadvantage in world markets.

3. Marketing boards must *not* be allowed to short supply the market in order to increase prices. This fact was mentioned in discussion at the Canadian Agricultural Congress and could certainly work to the disadvantage of consumers. Consumer consultation on any decision of a marketing board relating to the consumer interest is therefore essential.

The Consumers' Association of Canada feels that national marketing boards are not in the consumer's interest.

### III. *Discussion on Bill C-197*

1. The purpose of this submission is to place before the committee some of the deeply felt concerns of consumers on the subject of national farm products marketing agencies in general, and to comment on the provisions for their establishment as set out in Bill C-197.

2. That those responsible for developing farm policies are concerned has been often demonstrated. The Ontario Farm Income Committee and the Federal Task Force on Agriculture are but two of the most recent groups to study the problem.

3. Consumers too, are deeply concerned, for all Canadians are dependent on our agricultural industry for the provision of a stable supply of high quality food products.

4. The development of marketing is, we realize, a means of presenting a united post and developing a countervailing power in the market in an effort to halt this erosion of the producers income. Unfortunately price control has been the major tool to be used. This is made possible by the provision in marketing acts which exempt such boards from the requirements of anti-combines legislation. We find the same provision for national marketing agencies in

Part III, Section 2. This removes a basic protection from the consumer and is prejudicial to his interest.

5. The term marketing boards has proven to be a misnomer. Although much activity in the areas of market and product improvement is allowed, in their myopic concentration on price many boards have been completely production-oriented and have overlooked the marketing responsibilities they should bear. Market planning should begin with the consumer and work back to production needs. Consumer research in all agricultural commodities is almost non-existent and boards have done little or nothing in this respect.

6. Where the operations of plans were effective only on products produced within provincial boundaries, safeguards for consumers could exist. When, however, a provincial board feels itself able to interfere with interprovincial trade to the extent that all sources of a commodity are controlled by it, as has happened recently in the case of FEDCO (Federation des Producteurs des Oeufs pour Consommation) in Quebec and in the retaliatory action taken by the B.C., Ontario and New Brunswick Broiler Boards against imports of broiler chickens from Quebec and Alberta, the helpless consumer, lacking representation, alternative sources of supply or a court of appeal can only voice his opinion through the political process - a time-consuming and unsatisfactory way of solving consumer problems yet frequently the only one available.

7. Consumers know that farmers cannot remain in business without an adequate return. They are anxious to be assured of a supply of high quality products, clearly and adequately graded and labelled. Some are willing and able to pay higher prices for the addition of optional convenience features but many consumers must buy on the basis of price alone. Any action taken by government to increase returns to growers *must also ensure that adequate competition* exists either from imported supplies of the regulated commodity or available alternate products.

8. The consumer is no longer willing to tolerate a situation in which his needs are ignored. Efforts by any group, even producers, to establish a monopoly over which the consumer has no control will meet with determined opposition.

9. The concentration of control of a given commodity in the hands of a single agency when no representation of consumer viewpoint is allowed, nor any effective safeguards inserted in legislation to protect the consumer interest, is intolerable.

10. Consumers are opposed to the establishment of any system which increases costs without adding to the value of the goods they purchase. The provisions of Bill C-197 which set out the structure of a National Farm Products Marketing Council and the agencies it is empowered to establish, appear to us to detail a system which will be redundant, costly and totally unnecessary to the orderly marketing of farm products. It completely ignores the contribution made by other participants in the marketing chain.

11. CAC contends that one of the most effective ways of protecting the consumer interest is through competition.



Yet in spite of the statement in Part I, Section 6 of the Bill, that the duties of Council shall be to "advise the Minister—with a view to maintaining and promoting an efficient and *competitive* agricultural industry", the provisions of the bill tend to negate any form of competition and to create a monopolistic situation. Our feeling that this will be the effect is reinforced when we read in Part II, Section 23 (a) that an Agency may, when established:

"Purchase any farm product *wherever grown or produced* that is of the same kind as the regulated product". We are concerned that the phrase "wherever grown or produced" is intended to control foreign imports.

12. The extent to which control over imports is given to a national marketing agency can determine much of its strength. As sole supplier of a product its ability to raise prices will be uncontrollable.

13. Part I, Section 6 of Bill C-197 should include as a duty the periodic assessment of the work of the council and its agencies, to be reported to parliament.

14. A periodical assessment of the work of the Council and its agencies by an independent agency such as the Economic Council of Canada or the Canadian Consumer Council to provide an overall view of objectives and performance in order to protect the public interest, should be included.

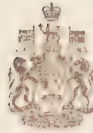
15. In Part I, Section 8, paragraph 2, this paragraph should be changed to read "A public hearing *must* (not may) be held."

16. If the committee decides that yet another regulatory agency is necessary, CAC is convinced that the regulating bodies must be properly representative of all segments of the industry. Bill C-197 states in Section 6(2) "In carrying out its duties the Council shall—(b) "have regard to the interest of consumers of farm products and of those engaged in the marketing thereof, as well as to the interests of producers of farm products." In order to ensure adherence to that general principle then Section 3 (1) "There shall be a Council to be known—etc." *must* be more explicit and specify that at least two representatives of the ultimate consumers of the National Products Marketing Council be appointed by the Governor-General in Council and in Part III, Section 19, paragraph 1, specify at least two representatives of the ultimate consumer be included and that the term of office for all appointees be for specified time periods.

17. CAC feels the provisions of Bill C-197 to be unnecessary to the orderly marketing of agricultural commodities, that the Bill itself is much too vague and general in outline and that insufficient time has been given for consideration of its effect on agriculture and its partners, the food industry and consumers.

18. As it stands, CAC believes Bill C-197 is contrary to the consumer interest.





Fourth Session—Twenty-eighth Parliament

1972

# THE SENATE OF CANADA

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STANDING SENATE COMMITTEE

ON

# BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

# BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 1

LIBRARY

THURSDAY, MARCH 23, 1972

Complete Proceedings on Bill C-8,  
intituled:

“An Act to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act”

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Grosart
Beaubien	Haig
Benidickson	Hayden
Blois	Hays
Burchill	Isnor
Carter	Lang
Choquette	Macnaughton
Connolly ( <i>Ottawa West</i> )	*Martin
Cook	Molgat
Croll	Molson
Desruisseaux	Smith
Everett	Sullivan
*Flynn	Walker
Gélinas	Welch
	White—(27)

\**Ex officio* members

(Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate,  
March 22, 1971:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Langlois, for the second reading of the Bill C-8, intituled: “An act to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act”.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

With leave of the Senate,

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—  
Resolved in the affirmative.”

Robert Fortier,  
*Clerk of the Senate.*



# Minutes of Proceedings

Thursday, March 23, 1972.

(1)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to examine:

Bill C-8 "An Act to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act"

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Bourget, Carter, Cook, Croll, Desruisseaux, Flynn, Hays, Isnor, Martin, Smith and Welch—(15).

*In attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

*WITNESSES:*

*Department of Finance:*

The Honourable John N. Turner, P.C., Minister;

Mr. E. S. Rubinoff, Director, Federal-Provincial Relations.

Mr. Turner submitted to the Committee several charts and tables which will be appended to these Proceedings as Appendices "A", "B" and "C".

Following a lengthy discussion and upon motion duly put it was *Resolved* to report the said Bill without amendment.

At 11:00 a.m. the Committee then proceeded to the next order of business.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*

# Report of the Committee

Thursday, March 23, 1972.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-8, intituled: "An Act to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act", has in obedience to the order of reference of March 22, 1972, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Thursday, March 23, 1972

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-8, to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have before us this morning Bill C-8. The Minister of Finance is here and has an opening statement to make. Then we can decide what further information, if any, we require.

**The Honourable John N. Turner, Minister of Finance:** Thank you, Mr. Chairman. Honourable senators, I am back here, as Senator Croll has reminded me, in a new capacity. I want to say how much I enjoyed my appearances from time to time before the Senate as Minister of Justice and Attorney General. I enjoyed the searching questions and I enjoyed the courteous treatment I have always received here. I want to say to this committee that I look forward to close dealings for ever allowing the people of Canada and the Prime Minister to tolerate my being in this present position.

**The Chairman:** You mean, playing a return engagement. We expect you to be back again.

**Hon. Mr. Turner:** Thank you very much, Mr. Chairman.

Senator Martin made an opening statement in your house about the bill. I should just like to touch on a few points. I think all honourable senators know that what the bill does is set up a general fiscal arrangement in a federal state, for Canada, for five years, between Canada and the provinces. That period, hopefully, begins on April 1, 1972, subject to what the Senate decides to do with the bill, and it will last for five years from that date.

It succeeds the fiscal arrangements of 1967 and the previous five-year arrangements during the post war period.

The bill is really divided into seven parts. Part I deals with equalization. Part II deals with stabilization. Part III is the umbrella for the tax collection agreements with the provinces. Part IV is the income tax revenue guarantee given by my predecessor to the provinces, that they would not suffer any loss in revenue as a result of the tax reform bill. Part V relates to a sharing of the tax on the pay-out of undistributed income of corporations under the new tax reform act. Part VI deals with post secondary education. Part VII deals with those established programs or contracting out arrange-

ments whereby certain tax points are given in exchange for the contracting out of some shared cost arrangements. At the moment, only the Province of Quebec is taking advantage of those arrangements.

Dealing briefly with equalization, this bill provides for an extension of the 1967 arrangement whereby provincial revenues of all kinds, as defined in the bill, are equalized to a national average per capita standard. The process of equalization, Mr. Chairman and gentlemen, is to make it possible for all provinces to provide adequate levels of public services, without having to impose unduly high taxes on their citizens. I believe, on the basis of the figures I have been given by the Department of Finance, that this has been reasonably achieved. Certainly, those seven provinces that receive money by way of equalization under the existing act do not show any evidence of using those sums to impose less of a tax burden on their own citizens.

I have often heard it said in some quarters that equalization really makes it easier for those provinces who receive equalization to avoid some of those legitimate tax burdens on their own citizens. That is not borne out by the facts. The seven provinces receiving equalization payments have, in general, a higher tax burden on their own people, still, than the three provinces who are not beneficiaries under equalization.

**Senator Isnor:** Would you repeat that, please?

**Hon. Mr. Turner:** The seven provinces receiving equalization payments, despite the equalization payments, still impose an equal or heavier tax burden on their citizens than the others.

**Senator Croll:** At this stage, may I ask if you do not mind—I do not think you will mind: If you give it to them because they are poor and they still have to impose a greater burden, are you giving them enough?

**Hon. Mr. Turner:** We are giving them up to a national average.

**Senator Croll:** When you say they are poor, we have to give them so much, and then we find that they have to impose an additional burden on their own people?

**Hon. Mr. Turner:** The rest is taken care of, I suppose, by shared cost arrangements and so on. We are only on equalization here and equalization really means payments unconditionally made, with no strings attached, based on the national per capita average.

**Senator Bourget:** You have a formula for that?



**Hon. Mr. Turner:** We have a formula for that. Please do not ask me to go into that formula.

**Senator Bourget:** I am not asking you to.

**Hon. Mr. Turner:** It is in the bill, but it is a matter that involves abstract equations and I would have to get Mr. Rubinoff to describe it to you. However, I do have some tables and charts, showing the revenues and expenditures by level of government on a national accounts basis, from 1926 to 1970, that will set out the picture very clearly there, I think, for this house.

**Senator Croll:** Will it be put on record?

**Hon. Mr. Turner:** I will distribute it and put it on the record. I also have the tables relating to equalization, the program of the federal government, to be extended by Part I of the bill now before you, so that you will see just what it means in dollars and cents.

**The Chairman:** The tables will be appended to the record.

*See Appendices A, B and C, pp. 1:17-1:42*

**Hon. Mr. Turner:** The current cost per year of equalization to the consolidated revenue fund in Ottawa is \$1 billion. It is anticipated, that at the end of the five-year period it will be about \$1.5 billion.

**The Chairman:** Have the provinces approved of the formula?

**Hon. Mr. Turner:** This is a federal statute, Mr. Chairman, and it is the responsibility of the Parliament of Canada to decide how the tax payments of the Canadian citizens are distributed. There were seven meetings of my predecessor with his counterparts—my counterparts now—the provincial treasurers and ministers of finance of the provinces. There were fourteen meetings at the official level, working out, by the process of consultation, the basis of the extension of the Fiscal Arrangements Act. The matter was discussed by first ministers, by the Prime Minister and the premiers, at the meeting of first ministers last November.

In answer to Senator Croll, has there been consultation, the answer is Yes; but the final responsibility for the statute rests with the federal government and the federal Parliament.

**Senator Croll:** You said that the amount you are likely to pay out is a billion dollars. The last year has been about \$900 million, approximately.

**Hon. Mr. Turner:** It is about a billion dollars this year also, I am advised.

**Senator Croll:** And will it be a billion dollars in the future?

**Hon. Mr. Turner:** It will be going up to a billion and a half dollars by the end of this five-year period.

**Senator Croll:** But the billion dollars did not start five years ago, did it? Can you break this down?

**Hon. Mr. Turner:** There is a table here, table 1 of Appendix A.

**Senator Croll:** I just want a couple of years.

**Hon. Mr. Turner:** The total figures are in the last column. There is \$943 million on the next fiscal year beginning April 1. There is \$870 million this year, \$854 million last year, \$853 million the year before that and so on.

**Senator Croll:** Well, you have stayed in the \$800 million limit for those three years. Is that right?

**Hon. Mr. Turner:** That is right.

**Senator Croll:** But during the year 1969-70 your Gross National Product has jumped almost ten points.

**Hon. Mr. Turner:** I am advised, senator, and I think this makes sense, that there were very large adjustment payments made that year. These figures are on an accrual basis and differ from what would be shown on a cash basis.

**Senator Croll:** Well, the jump is all right, but you did not jump far enough. What I am saying is that you are a kind of skin-flint in here. For instance, the Gross National Product in Britain last year went up one point. Now, in our country, if it goes up one point it is a catastrophe. It has to go up five or six each year as it has. We have done very well in the last couple of years. I do not know where it all came from. But, suddenly, it is not reflected in what you are giving away.

**Hon. Mr. Turner:** Well, what obviously happened, Senator Croll, is that, certainly, the Gross National Product went up, but also, fortunately, in the so-called "have-not" provinces the provincial revenues went up. After all, it is only bringing those provincial revenues up to the national standard that prompted payments under equalization. So the payments are not going to go up on any proportion of gross national product. The payments only go up as the differential between provincial per capita revenue and national average per capita revenue changes. Fortunately, we can say that the provinces receiving it did pretty well in sharing that increase to the Gross National Product as reflected in the fact that they really did not get that much more out of the equalization.

**Senator Croll:** What you say is generally true, Mr. Minister, but there are four or five provinces who really did not contribute a great deal to the Gross National Product and did not benefit. Who got the benefit? The three big provinces and perhaps a few small ones. Really, it did not pass around in that fashion, you know.

**Hon. Mr. Turner:** So long as we use the standards, Mr. Chairman, per capita national income, that is the way it is worked out. It is the national average. If you are suggesting something more, you may have something, but it is not before the committee at the moment.

I will now go on to the aspect of stabilization, Part II of the bill. Stabilization provides a guarantee to every province. Not just the so-called "have-not" provinces, but every province, including

Alberta, British Columbia and Ontario, the provinces that do not receive currently under equalization. It provides a guarantee to every province against a drop in the provincial revenues other than a drop caused by a province reducing its own rate of taxation. In other words, there is a floor placed under provincial revenues by this bill, and the level of guarantee is raised from 95 per cent of the previous year under the statute currently in force until the end of this month. That floor is raised from 95 per cent to 100 per cent. In other words, what the federal government is now doing for the provinces is guaranteeing them a floor based on the previous year's total provincial revenues—unless, as I say, that decrease is caused by a reduction in the rate of taxation imposed by the province.

**The Chairman:** You mean we are guaranteeing or ensuring in this way that province will not lower its taxes.

**Hon. Mr. Turner:** No, sir. What we are guaranteeing is that, given the same tax structure, given the same rate of tax, a province can be guaranteed "X" number of dollars at least in a year or subsequent year. This means, of course, that, for borrowing purposes, when a province goes to the market, that market will know that the provincial revenues are guaranteed at least to the level of the current year.

**Senator Benidickson:** Unless they themselves lower the taxes.

**Hon. Mr. Turner:** Yes.

**Senator Benidickson:** And the effective date for determining action is January 1, 1972.

**Hon. Mr. Turner:** It will be each particular year. It is a floor from year to year.

**Senator Benidickson:** Each calendar year?

**Hon. Mr. Turner:** Each fiscal year.

**Senator Croll:** How is that done?

**Hon. Mr. Turner:** Just by calculation here.

**Senator Croll:** And it is passed out?

**Senator Benidickson:** There is a formula in the bill.

**Hon. Mr. Turner:** Yes. I am sure there is a bilateral accounting system. I am advised that it is a Statistics Canada system.

**Senator Croll:** When you are talking about paying out to the province, originally at the time of Confederation there was an agreement to pay to certain provinces a certain amount of money.

**Hon. Mr. Turner:** Right.

**Senator Croll:** In perpetuity?

**Hon. Mr. Turner:** I think the British North America Act spells that out. No, those were not payments in perpetuity. There may have been one to Prince Edward Island in perpetuity. I am advised that some of those statutory grants originally set forth under the British North America Act are still paid out and amount to about \$30 million. British Columbia got one of those in the early days. That was part of the deal for getting British Columbia in.

**Senator Croll:** I know.

**Senator Benidickson:** I want to raise a most important point this morning before I leave for the Finance Committee which is meeting simultaneously with this committee. The point deals with tax collections. Clause 9 says that while we have indicated in the last budget that, federally, we are eliminating estate taxes and taxes on gifts, we have agreed—somebody has agreed, and it is in the bill—that we will collect for the provinces for three years such succession duty taxes as they decide to impose. It has been made evident that most of the provinces, when they present a budget this spring, will be filling that vacuum to some extent and will be making their legislation retroactive to January 1, 1972.

My point is that I hate to see us in the position any longer than necessary of having the taxpayer sending his account to Ottawa or to an Ottawa agency and then Ottawa getting any ill will or blame related to such imposed tax. Many people, when they know it is a federal agency they pay to, do not understand that it is for the purposes of the province.

I realize that in this bridge period the provinces probably need some help from the federal administration who are familiar with the collection of estate taxes and can easily represent them in this field in this difficult bridge period. In my opinion they could take over their own responsibilities and any blame connected therewith earlier than a three-year period. I wonder if your people are absolutely satisfied that they could not do this in, say, two years. I would like to see an amendment to the bill to say that it could be no longer than two years.

**Hon. Mr. Turner:** Part III of the bill relates to all tax collection agreements for all taxes.

**Senator Benidickson:** I am referring to section 9.

**Hon. Mr. Turner:** That is right, and it provides for continuation of the collection agreements for personal and corporation taxes and for new agreements respecting succession duties and gift taxes.

**Senator Benidickson:** I am referring to section 9, subsection (3).

**Hon. Mr. Turner:** On succession duties, which we are talking about here, my predecessor was asked by the provinces who wanted to impose succession duties—that is to say, all provinces except Quebec, Ontario, Alberta and British Columbia, which administer their own tax or are now out of this area.

**Senator Benidickson:** Yes, of course Alberta is unique in that their proposals are for a nil collection.

**Hon. Mr. Turner:** But the other six provinces asked the federal government to collect those provincial succession duties for them because they did not have the machinery or the administrative paraphernalia to do it. The federal government said, "Fine, work out some kind of common statute and we will collect it for you, but we are not going to do it forever"—that is providing it is a worthwhile administrative arrangement—"But we are only going to do it for three years." The Canadian tax payer has to know who is collecting the money.



**Senator Benidickson:** That is the point I am making, but I think they could do it in two years.

**Hon. Mr. Turner:** Well, the provinces originally wanted it for five years, but we chopped it down to three. But it is going to be clearly identified on the form that this is a federal collection for purposes of convenience to the province in collecting the tax, and I want to say that particularly to the senators from Nova Scotia and New Brunswick whose governments are trying to suggest that this was foisted on them by the federal government. That was not the case; this was provincial initiative and we responded to it.

**Senator Benidickson:** I raise this point for the very reason you have just mentioned. In my opinion, in the collection of income taxes in provinces other than the Province of Quebec, I do not think the forms do sufficiently prominently make it clear to the person filling out the form that you are simply an agent acting as a collector for the provincial government and that the taxes actually have been imposed and are being passed on to the provinces. I hope that in the new forms with respect to succession duties this will be a little more recognizable—that the funds are not going to the federal office that receives the cheque.

**Hon. Mr. Turner:** I think that is a valid point, and I will pass it on to my colleague, the Minister of National Revenue.

**Senator Benidickson:** The other point I want to raise is that it will terminate in 1974, and I think it should terminate earlier, say, in 1973. But what is the position with respect to the collection of gift taxes? I do not think you have a terminating date with respect to gift taxes. Are you going to do that forever on behalf of the provinces?

**Hon. Mr. Turner:** There is no termination date on that, senator, because that is tied in with the income tax.

**Senator Benidickson:** The same principle is there that you get the blame for the tax by a lot of unsophisticated people while the money goes entirely to the provinces.

**Senator Carter:** Will that new form show that you are collecting the money for the provinces, and will that apply only to succession duties or will it apply to income tax as well?

**Senator Benidickson:** It applies now.

**Hon. Mr. Turner:** Senator Benidickson is suggesting that the print is too fine, and he wants it up in capital letters that this is in fact a provincial tax.

**Senator Cook:** On that point of succession duties, Mr. Minister, if the poorer provinces did not impose succession duties and gift taxes, would that not be in breach of the requirement that they must raise taxes equivalent to the "have" provinces?

**Hon. Mr. Turner:** There is no requirement under any of this legislation that the provinces have to levy any particular type of tax or any rate of tax.

**Senator Cook:** No, but will it not be in breach of the principle that they must levy taxes on their citizens at least equivalent to the taxes levied in provinces like Ontario and British Columbia?

**Hon. Mr. Turner:** That is not implicit in the bill. Alberta, for example, does not have sales tax at the moment.

**Senator Cook:** I was thinking that when you consider the yield that Newfoundland would gain if it had to collect it on its own, it would be rather stupid for them to do so.

**Hon. Mr. Turner:** Well, as I say, there is nothing implicit in this bill to affect that situation.

**Senator Benidickson:** I should like to emphasize the point that the federal people should consider putting a time limit on the collection of gift taxes. The other thing is that when the government leader explained the bill in the house on March 21, and this is to be found in *Hansard* on page 172, he indicated there was some saving to the taxpayers and some efficiency in having a central collection agency for taxes. He stated that this would save the taxpayers \$100 annually, but I think he should have said it would save them \$100 million annually.

**Hon. Mr. Turner:** Yes, it should be \$100 million.

**Senator Benidickson:** I find that the same mistake has been carried through into *Hansard*.

**Hon. Mr. Turner:** We are not sure about this, but the estimate given by my officials is \$100 million. At any rate, it is a great deal of money, and it is not only the question of a saving in cost to the taxpayer by having one collection agency, there is also a saving involved in the convenience of having only one form to fill for personal income tax in nine of the ten provinces and for corporate tax in eight of the ten provinces. Now that causes a blurring of the fiscal responsibilities suggested by Senator Benidickson, and the taxpayer of the country should know when paying his taxes what is being collected for the federal government and what is being collected for the provincial government.

**Senator Croll:** Can you not arrange to flag it somehow on the income tax form?

**Hon. Mr. Turner:** I will suggest to my colleague, the Minister of National Revenue, that he put it in red.

**Senator Hays:** What is the estimated cost of collection in the next few years?

**Hon. Mr. Turner:** That is really a question for the Minister of National Revenue. Mr. Rubinoff advises me that the cost of collecting the tax amounts to about \$90 million a year.

**Senator Hays:** That is the cost of collecting the tax, but what is the estimated cost of this service rendered to the provinces; and is this the federal cost, it is not billed back to the provinces for collection?

**Hon. Mr. Turner:** No, no. It is not billed back to the provinces. The cost is estimated by my people here to be \$90 million a year, for the collection of the taxes. They estimate that by having a uniform system, subject to the exceptions I have given the committee, we are saving \$100 million a year in collection costs. There is only one charge. Senator Benidickson, I believe you will be glad to know that we are charging the provinces 3 per cent on the succession duty collection.



**Senator Croll:** That is the normal charge.

**Senator Blois:** What is the estimated amount that the provinces are going to get out of this tax? How much are they going to get?

**Hon. Mr. Turner:** There are figures here. They are going to get a billion dollars a year.

**The Chairman:** That \$100 million?

**Hon. Mr. Turner:** Oh, how much will the provinces get out of the tax collection agreement?

**Senator Blois:** How much will the seven provinces get? If it is here in the tables, you need not look it up.

**Hon. Mr. Turner:** It is in the tables here, relating to tax collection agreements, Appendix C. You will see in Table 1 that in 1972 we estimate that the total take for the provinces for personal income tax under these agreements will be \$2,067 million.

**Senator Croll:** That is \$2,067 million from income tax or whatever you call it. The \$90 million is the cost of that, with the corporation tax on top of that.

**Hon. Mr. Turner:** The corporation tax you will find on the next page, Table 2, and that adds up to \$236 million.

**Senator Croll:** The total cost is \$90 million. I think you will find that is right.

**Hon. Mr. Turner:** That is right. It costs \$90 million to collect—Well, we will have to add them all up.

**Senator Hays:** That is what the 3 per cent relates to?

**Senator Croll:** No, no.

**Hon. Mr. Turner:** That is right, the figures I have given you are correct, they are the provincial revenues, so you have to throw the federal income taxes on top of that. It costs \$90 million to collect the \$15 billion.

**Senator Croll:** For \$15 billion, that is not bad. I would be prepared to pay you that if you collected it for me.

**Hon. Mr. Turner:** Would you like the account?

**Senator Croll:** I will take your word.

**Senator Bourget:** You would get 3 per cent out of it.

**Senator Desruisseaux:** The 3 per cent is on the total receipts?

**Hon. Mr. Turner:** The 3 per cent charge would be on the total receipts of the succession duties collected from the provinces.

**Senator Desruisseaux:** We collect it from the provinces?

**Hon. Mr. Turner:** We anticipate that the collection of succession duties from those six provinces that will sign agreements under section 9(3) of this bill will be \$65 million, and 3 per cent of that is \$1,800,000.

**Senator Bourget:** About \$2 million.

**Hon. Mr. Turner:** Yes, about \$2 million. Mr. Chairman, if you want to correct that—with apologies—we were including Ontario and Quebec in there. The six provinces anticipate the collection of succession duties this year, 1971-72, we are now in that financial year, at \$15 million. The six provinces, \$15 million, and 3 per cent of that of course would be about \$500,000.

**Senator Desruisseaux:** You have a good deal with the provinces.

**Hon. Mr. Turner:** Well, that is the figure.

**Senator Carter:** I have one other question on this guaranteed floor for the provinces. How long will it last? Three years?

**Hon. Mr. Turner:** No, for the term of the agreement, five years.

**Senator Carter:** It is a five-year agreement. You, or someone said just now that, the provinces blame the federal government in connection with this collection of succession taxes. If there is more money collected now from any source, the greater their floor and the greater the guarantee, is it not an inducement for them to collect as much money as they can, from whatever source they can?

**Hon. Mr. Turner:** Yes, that is true, senator, but they cannot create the floor in that way and then withdraw succession duties next year, because that would lower the floor. The floor is based on the source and the rate remaining the same.

**Senator Carter:** There is an incentive brought into collecting this tax. There is no incentive after that, once they have done it. There is no incentive to take it off.

**Hon. Mr. Turner:** There is no incentive at all. All the stabilization has to do with it is to ensure a minimum of fluctuation in provincial revenues. That is the only reason for stabilization. There is no incentive to raise taxes or to lower taxes. The only purpose of stabilization is to ensure the regular progression of provincial revenue, so that a province will not, because of economic reasons, suffer wide fluctuations in its total revenue. That is all it means. There is no incentive to impose a tax, to change a tax base or change a tax rate.

**Senator Carter:** If they have a guarantee, that is an incentive to get as big a guarantee as possible.

**Hon. Mr. Turner:** No, because nothing is paid under the guarantee, if this year's revenues from all sources of a province is the same as last year. The guarantee is there, but there would be no payment under the guarantee. There would be only a payment under the guarantee if next year is less than this year. So there is no incentive at all. As a matter of fact, payments under stabilization appear unlikely this year. There is no province in a position where its revenues this year are going to be less than last year, so we anticipate that no payments will be made under Part II of this bill.

**Senator Beaubien:** Mr. Minister, I think that what Senator Carter is trying to say is that if the provinces collect a lot of money this year through death duties and then take the death duties off next year, would that floor remain?

**Hon. Mr. Turner:** No.

**Senator Beaubien:** If they changed the tax rate, it would go down. Is that not your point, senator?

**Senator Carter:** Yes, that is what I wanted to say.

**Hon. Mr. Turner:** That is right. The stabilization is on the assumption that the structure and the rates stay the same.

**Senator Croll:** But the base and the rates are not the same for all provinces. It is different for the "have" provinces as against the "have-nots."

**Hon. Mr. Turner:** That is true.

**Senator Croll:** How will the "have-nots" catch up?

**Hon. Mr. Turner:** They do not catch up under stabilization, they catch up under equalization. Equalization is the redistribution of federal tax money to the provinces to bring those provincial revenues up to a per capita national average. Seven of the provinces have revenues below that per capita national average. Three—Alberta, British Columbia and Ontario—have revenues above. That is equalization. Stabilization is a different matter. Stabilization is available to all ten provinces, have or have-not; and it is a guarantee by the federal government that the level of provincial revenue will not decrease from the preceding year, the preceding twelve months, no matter what the province does, provided that that decrease is not caused by a change in rate or by a narrowing of the tax base.

**Senator Flynn:** There was no payment last year and no payment is expected this year?

**Hon. Mr. Turner:** No payment has ever been made under stabilization.

**Senator Flynn:** Then, does it mean anything at all?

**Hon. Mr. Turner:** Yes, it does. If you are representing a provincial government, Senator Flynn, and you are going to the market and trying to get an interest rate on your provincial bonds, this bill means a good deal because it is a federal guarantee on provincial revenues.

**Senator Flynn:** But the only way provincial revenues can decrease substantially is if the same thing happens at the federal level.

**Hon. Mr. Turner:** If there is an economic down-turn.

**Senator Flynn:** Yes. Mr. Chairman, may I come back to the question of equalization? The principle has been well established that these equalization payments were made to enable a province to maintain the same standard of provincial services. What services were in the mind of the legislature when this principle was first enacted?

**Senator Beaubien:** Education.

**Senator Flynn:** Don't answer for him.

**Hon. Mr. Turner:** Mr. Chairman, these are unconditional payments. They are based on public services on a per capita national average. Once the money is paid to the province there is no con-

dition attached as to how that money ought to be spent. So we are not determining the priorities.

**Senator Flynn:** You are not determining them, but do you not think that you had in mind social services, education or anything coming within the jurisdiction of the provinces?

**Hon. Mr. Turner:** No, sir. That is a completely unconditional payment. The province can do what it wants to, subject to its accountability to its own legislature.

**Senator Flynn:** In other words, the federal government does not consider that it has solved all the problems of the maintenance of the provincial services when it has paid certain equalization payments.

**Hon. Mr. Turner:** No, sir. We do not. These payments account for \$1 billion a year at the moment at the present rate of transfer from the federal government to the provincial governments. The shared cost programs, health, medicare, hospitalization, et cetera, account for another \$4 billion. Those are the specific programs. Those are directed for specific purposes under national norms and so on.

**Senator Flynn:** With respect to the payments made directly to the individual in the social and welfare fields, what would be the amounts—that is, the payments made by the federal government?

**Hon. Mr. Turner:** That would be hard to calculate.

**Senator Croll:** You can get that amount out of the Canada Assistance Act.

**Senator Flynn:** I mean just rough figures.

**Hon. Mr. Turner:** I will have that looked into and get back to it in a moment.

**Senator Hays:** Do the documents you have given us this morning contain the amounts the "have" provinces are paying into the equalization fund?

**Hon. Mr. Turner:** I would not want you to put it that way. The "have" provinces are not paying money to the "have-not" provinces.

**Senator Isnor:** Why can you not cut out that term "have-not"?

**Hon. Mr. Turner:** I will cut the term out. The equalization payments are made out of the federal Consolidated Revenue Fund, based on taxes from all of the citizens of Canada. These are not payments from three provinces to seven provinces.

**Senator Hays:** But they are not getting it back, so what are they losing by it?

**Hon. Mr. Turner:** I do not think you can calculate that, senator.

**Senator Hays:** Where did the billion dollars come from?

**Hon. Mr. Turner:** From the general revenues of the country.

**Senator Hays:** You collect it, as I understand, from the three provinces—

**The Chairman:** From all of the provinces.

**Senator Hays:** Well, from all of them, but one receives less than the other.

**The Chairman:** There are fewer people.

**Senator Hays:** There is no way of calculating what British Columbia, say, loses by equalization?

**Senator Cook:** It does not lose anything. It is the citizens of British Columbia who pay.

**Senator Hays:** Well, the citizens of British Columbia—

**Hon. Mr. Turner:** You cannot put it that way, senator. You cannot use that type of vocabulary.

**Senator Hays:** Well, you know what it is on the receiving end. Mr. Manning mentioned that Quebec gets \$400 million in addition to the equalization payments. Who pays that \$400 million?

**Hon. Mr. Turner:** We can analyze that for you. There are figures indicating how much each province gets under equalization. Above equalization, of course, are the shares each province gets under the various shared-cost programs. That can be calculated. But it is not a transfer from one province to another. It is the federal Parliament deciding how the money is going to be spent.

Let me just tell you what the equalization transfers represent for each province for the seven which receive equalization payments. For Manitoba, Saskatchewan and Quebec, they represent from about 13 per cent to 16 per cent of the gross provincial revenue. For New Brunswick and Nova Scotia they represent from 33 per cent to 35 per cent of the gross provincial revenue. For Prince Edward Island they represent 55 per cent of the gross provincial revenue. For Newfoundland they represent 66 per cent of the gross provincial revenue of Newfoundland. In other words, we have to be careful here in per capita terms. Quebec is not receiving the major share of equalization per capita.

**Senator Flynn:** Would it not be 10 per cent, Mr. Minister? If I heard the Minister of Finance for Quebec correctly, the projected budget for the present year is over \$4 billion. If you give them \$400 million, that is 10 per cent.

**Hon. Mr. Turner:** I was not going on the basis of his budget. I was going on the basis of the current fiscal year.

**Senator Flynn:** Well, 3 per cent on that is really quite important.

**Hon. Mr. Turner:** That is right. Of course, the more a receiving province adds to its own provincial revenues by its own imposition of tax, the less important will equalization be for it.

**Senator Hays:** My point is this: In the headlines in newspapers in Alberta this morning there will be a statement which was made in the Upper House yesterday that Quebec will receive \$400 million through equalization, and some reporter will figure out exactly how much that is going to cost every Albertan. How do you answer that, Mr. Minister?

**Hon. Mr. Turner:** I answer that in the sense that it is not a transfer. You just could not possibly segregate those amounts. The Consolidated Revenue Fund is made up of taxes received from everywhere in the country. We have decided in the federal Parliament that in the interests of equality, in the interests of holding this country together, in the interests of ensuring that the accident of geography is not going to determine minimum standards of public services in Canada, the federal government will reallocate some of the money to the provinces to ensure that provincial revenues can remain at a national average.

**Senator Croll:** On a per capita basis.

**Hon. Mr. Turner:** On a per capita basis, yes.

**Senator Croll:** That is the important point.

**Hon. Mr. Turner:** I think I can demonstrate conclusively, given the time, that the seven receiving provinces do tax their own citizens heavily. In terms of the weight on the individual taxpayer in Canada, whether you live in Alberta or in Newfoundland, equalization does not result in an increase of taxes for any particular citizen of any particular province, because the taxes in Alberta are lower than the taxes in Newfoundland.

**Senator Cook:** And the federal taxes are the same.

**Hon. Mr. Turner:** The federal taxes are the same, yes. Without equalization, for instance, Newfoundland would have to boost its own tax rates by 75 per cent. I can break that down, what they would have to do.

**Senator Croll:** I think what Senator Hays said is so true, that it will be presented in that form. It is really taking it out of context when you present it in that form.

**Hon. Mr. Turner:** That is the way it will be done.

**Senator Croll:** That is the way it will be done. It is unfortunate. Perhaps it would not be a bad idea, after you leave here, to take a few minutes and give an interview on that particular point so that the wrong impression does not get out. Just state the truth, that is all. That is not hard is it, Mr. Minister?

**Hon. Mr. Turner:** I find that a very congenial task, senator, because I do not have a good enough memory to be a liar.

**Senator Beaubien:** If you had no provinces and had a federal state, would that not wipe out this problem by having everybody's taxes the same?

**Hon. Mr. Turner:** It would not wipe out the problem at all. Look what Ontario has to do to equalize opportunity between southern and northern Ontario. Look what Quebec has to do to equalize opportunity between Montreal and Gaspé. This is the problem that is with us no matter what type of structural position we chose for our country.

**Senator Croll:** Talking about the truth, if you do not mind—

**Hon. Mr. Turner:** I do not mind at all.



**Senator Croll:** When sitting in caucus one day with Prime Minister King, somebody was dealing with a very difficult problem that had to be answered, and Prime Minister King said, "Well, if you are really in trouble fall back on the truth".

**Senator Flynn:** That is typical of the prime minister of the day!

**Hon. Mr. Turner:** May I move on to the tax collection agreement—

**Senator Hays:** Just before you leave that point, Mr. Minister, I hope that there is some better explanation of this. I appreciate what you say and I realize that is correct, but to get the true story over, if, as Senator Bourget says, there was no tax, if there were no equalization payments, the poor would get poorer and the rich would get richer.

**The Chairman:** Or taxes might be lowered.

**Senator Bourget:** The people of Canada would be taxed the same way. The people in Alberta are not going to be taxed higher because of those equalization payments; it will be spread all over Canada.

**Hon. Mr. Turner:** If we try to reduce our country to a balance sheet as between regions and provinces, as to who was paying what and who was receiving what, first it would fracture the country. It is to way to run a country, no way to run a family and no way to run a partnership. It would be impossible to do that. How much revenue are the people of Ontario, British Columbia and Alberta receiving from the market created by these other provinces? Look at the oil under the arrangement we have in the national oil policy; the oil purchased in other parts of Canada that is produced by the people of Alberta, the royalties on which go to the coffers of the people of Alberta; the sewing machine that is bought down in Nova Scotia may be manufactured in Quebec or Ontario. You cannot get out of this type of accounting system. The reason I would resist breaking it down into that sort of accounting is because the figures would tend to be false unless you had the total picture, and that total picture would be almost impossible to put together unless you analyze not only the public sector but the private sector, and the way the revenues and expenses of this country are flowing.

**Senator Bourget:** That is why it is called an equalization payment.

**Hon. Mr. Turner:** There has to be mobility in this country. When I represented a Montreal constituency a lot of people came, as I did, from British Columbia, and from Alberta, were working in Montreal.

**Senator Bourget:** That is equalization.

**Hon. Mr. Turner:** That is equalization, and mobility, and ensuring that Canadians have a reasonably equal standard.

I think I dealt with the tax collection agreements, unless there are further questions. I can go back to it later.

Then there is the income tax revenue guarantee, Part IV of the bill. This is a new program that was not in the earlier statutes. It arises out of the federal income tax reform bill that is now law. The purpose of Part IV, starting at clause 11, is to provide a five-year guarantee to any province—any province, all ten provinces—which harmonizes its personal income tax with the new federal tax. It is a

guarantee that its equalized revenues from personal and corporation income taxes will not be less than the estimated revenue under the old system. In other words, it is a guarantee that the personal and corporate revenues for provincial purposes under the new law will not be less than under the old law. I think senators know where that problem came from.

The administration of this concept requires estimating break even rates for each province on personal income tax. The rates which the new taxes would yield is the same amount as under the old tax. These rates are set out in the bill. The method of estimating the yield on the old system, had it continued in effect, is very complicated indeed; it is not set out in the bill and will have to be set out in the regulations.

**Senator Flynn:** This is a very generous offer.

**Hon. Mr. Turner:** Well, it is a guarantee; it is as generous as any other guarantee.

**Senator Flynn:** What fear have you that the yield would be less in revenue from the new system than you had from the former? I think everybody has forecast that the government would collect more under the new system.

[Translation]

**Hon. Mr. Turner:** We do not worry, as far as we are concerned. For some provinces, revenues would be less under the new system. We believe that this would guarantee the income.

**Senator Flynn:** That is what I wanted you to tell us.

**Hon. Mr. Turner:** We do not worry, the others should worry, rather; whether it is justified or not, I could not say, but the guarantee is there anyway.

**Senator Flynn:** Agreed.

[English]

**The Chairman:** When Mr. Benson was here he was asked what additional revenues would be produced under the new tax bill as against the revenues that would be produced under the existing tax bill. His answer was, in effect: If the machinery in the new bill works right there will not be the opportunity for increases, because there are abatements provided for in the new bill, and as more income comes in there are certain abatements that reduce the level of taxation.

**Hon. Mr. Turner:** I guess Mr. Rubinoff was here. It is too early for me to disagree with Mr. Benson. You know that, Mr. Chairman. I think what Mr. Benson was referring to was the abatement over a period of four years.

**The Chairman:** That is right.

**Hon. Mr. Turner:** From the 49, 48, 47, 46 corporate tax, the reduction of personal income tax for taxpayers in the first bracket. I see no reason to disagree with that at the moment. The personal income tax is a very elastic tax, and it will be very hard to predict under this bill.

**The Chairman:** This abatement will not interfere with your ability to maintain the guarantees?

**Hon. Mr. Turner:** No.

**The Chairman:** If you have to go searching for more revenue in order to maintain your guarantees, you will have to provide other taxes or abandon the abatement principle.

**Hon. Mr. Turner:** The guarantee is there, and we feel at the moment, and I am so advised, that that guarantee will not involve any federal payments.

**Senator Croll:** What is our history of increased revenue? Take five years, in percentage.

**Hon. Mr. Turner:** What type of revenues?

**Senator Croll:** The total revenue, when we talk about guarantees and where we are going to get the money. What have we been getting totally in the last five years, the dollar and percentage increase? I always thought they were pretty good.

**Hon. Mr. Turner:** We will try to get that for you, senator.

**Senator Flynn:** Expenditure has doubled in the last five years.

**Hon. Mr. Turner:** Senator Croll is talking about revenues.

**Senator Flynn:** I know it is not exactly the same, but usually it is very close.

**Hon. Mr. Turner:** I can give the gross. You have it in your own tables here. I know there is a lot of paper, for which we apologize. When you are back in the quiet of your celibate cells here you can look at it. It is in the tables on revenues and expenditures, Appendix B, table 1. This shows the allocation of revenues by level of government on a national accounts basis, 1926 to 1970. We start in 1926, with federal revenues from all sources at \$370 million, and we are up in 1970 to \$15 billion. You have provincial-municipal revenues next to it, which in 1926 were \$437 million, and in 1970 they are up to \$13.7 billion.

The federal share of the total has gone from 46 per cent in 1926 to 52 per cent in 1970. The provincial-municipal share from 1926 to 1970 has gone from 54 per cent to 48 per cent. That is a bit misleading. When you get to the post-war years, starting at 1944, say, which is the first post-war reconstruction year, the federal share of the total was 78.1 per cent; the provincial-municipal share of the total was 21.9 per cent. Since 1944 that federal share of the Canadian tax dollar has gone down from 78 per cent to 52 per cent. The provincial-municipal share of our tax dollar has gone up from 21.9 per cent to 47.7 per cent. Those are the real figures. I do not know whether Mr. Nelson and the other members of the gallery have those figures, but we will be very glad to distribute them.

**Senator Flynn:** That is despite the fact that the budget of the federal government serves more and more to help the provinces, either indirectly or directly, in the field of social services.

**Hon. Mr. Turner:** That is so. Of the \$13.7 billion in 1970, two years ago, I would say that we are talking about \$4 billion to \$4½ billion being transferred from the federal taxpayer.

**Senator Flynn:** About 30 per cent of the federal budget.

**Senator Cook:** Is there any table to show how the debts have gone up?

**Hon. Mr. Turner:** We do not have the federal-provincial debts here. We could supply those tables if you are interested. Well, senator, I have to be careful here. The \$13 billion would have to have added to it another \$4½ billion, so you get \$17½ billion. If you take the share after equalization those figures are even more disturbing.

**Senator Flynn:** You have to take the \$4 billion off.

**Hon. Mr. Turner:** You take the four off the 17 and add the four to the 13. In table 2, the next table, you have that. In 1970 the share of final expenditures, after equalization, is 40.4 per cent for the federal government and 59.6 per cent provincial-municipal governments. That equalization is a \$4½ billion or \$5 billion transfer from federal to provincial.

**Senator Flynn:** The way this table is drafted provides quite an admission, however, that the federal government is more and more involved in provincial responsibilities.

**Hon. Mr. Turner:** Oh no, sir. That equalization is a completely unconditional payment. Those shared cost programs, although they have certain federal norms, are recognizing more and more—witness the recent offer of the federal government on family allowances—within a general umbrella agreement provincial priorities, as to how that money is to be spent.

**Senator Flynn:** The way the table is prepared you have provincial revenues and then expenses in the provincial-federal jurisdiction and expenses in the municipal and provincial fields. You see that you have to take about \$4 billion out of the money collected by the federal authorities to add to the provincial and municipal sectors. This is the way the table is prepared.

**Senator Cook:** I think in some cases it is a pity that these payments are unconditional. An awful lot has been wasted.

**Senator Flynn:** Are you speaking of any special provinces?

**Senator Cook:** No.

**Senator Croll:** These are interesting tables and we do not often get a chance to get at you. If you take a look at table no. 2 you will see that for the year 1941 it was at 31.3, the next one is at 15.5, and then there is the share of the final expenditure over to the right-hand side of the table.

**Hon. Mr. Turner:** You will remember that the Rowell-Sirois Report came out in 1938 or 1939 and Mitchell Hepburn scuttled that.

**Senator Croll:** Yes, 1935.

**Hon. Mr. Turner:** Then when the war started, there were the tax rental agreements based on the Rowell-Sirois decisions. That is why the figures ought to be compared from 1941 on.

**Senator Croll:** Then why is there underlining at 1961? Was there a change there again?



**Hon. Mr. Turner:** Yes, there was a change again from the tax rental arrangement that had operated during the war and during the post-war years to the fiscal arrangements as they now are.

**Senator Flynn:** Would that be due to the fact that if any province was collecting its own income tax, the taxpayer was entitled to deduct from his federal income tax the tax which he paid to the province?

**Hon. Mr. Turner:** I am advised that the reason for the change from the rental situation to a sharing situation is that the provinces about that time started to impose their own taxes.

**Senator Carter:** Do you have any figures on the Gross National Product? That figure of \$28.79 billion, is that roughly 30 per cent of the Gross National Product?

**Hon. Mr. Turner:** I do not know if we have those figures or not. I know I do not have the exact figures, but I am advised it would be about 35 per cent.

**Senator Carter:** And you do not have a trend to take more of the Gross National Product than we have been doing?

**Hon. Mr. Turner:** Slightly, in terms of total tax, but much less in terms of the federal share of the tax. In other words, the federal share of taxation based against the Gross National Product has been going down.

**Senator Carter:** After the payments?

**Hon. Mr. Turner:** Before or after. I think we can show you those figures.

**Senator Carter:** But is there not a limit in terms of what we have whereby you get into the situation of diminishing returns?

**Hon. Mr. Turner:** I suppose that limit is economic, political—

**Senator Bourget:** And better administration.

**Hon. Mr. Turner:** And Senator Bourget suggests better administration. I would point out that in this area of expenditure levels we are well below European standards.

**The Chairman:** Shall we move to the next item?

**Hon. Mr. Turner:** The next item is Part V of the bill—the shared tax on pay-out of corporate surplus—that begins on page 16 of the bill with clause 18. This refers to the new federal tax imposed under Part IX of the Income Tax Act on pay-out of undistributed corporate surplus on hand at the end of the corporation's 1971 taxation year. The provinces were concerned that they were not going to get a fair share of that, and this provides that they will get a fair share of the proceeds because it provides that 20 per cent of the proceeds of tax on undistributed surplus as of 1971 will be shared with the provinces.

**Senator Flynn:** The same percentage as before?

**Hon. Mr. Turner:** I am advised that is approximately the same as they would receive were they impose a corporate tax on that same amount of money.

**Senator Flynn:** That is the surplus on the books as at December 31, 1971?

**Hon. Mr. Turner:** Yes, as at that date.

**Senator Flynn:** And from now on, what will the situation be?

**Hon. Mr. Turner:** From now on it will be part of the new Income Tax Act. The amount of revenue here is likely to be small but it was an acceptance of the principle that special taxes imposed under the new federal Income Tax Act would be shared with the provinces.

**The Chairman:** And, translating that, it would amount to 20 per cent of 15 per cent?

**Hon. Mr. Turner:** It has been 15 per cent since 1949.

**The Chairman:** Yes, so if you are going to pay out that surplus you are going to give them 20 per cent of 15 per cent.

**Hon. Mr. Turner:** That is right.

Part VI of the bill deals with post-secondary education, and it begins on page 18 of the bill at clause 22. The purpose of this Part is to provide a two-year extension only of the 1967 arrangements whereby the federal government shares one-half of the operating costs of post-secondary education in Canada.

**Senator Hays:** Is that capital cost or operating costs?

**Hon. Mr. Turner:** Just operating costs.

**Senator Hays:** What is the ratio? Is it about 75 per cent for operating cost and 25 per cent for capital cost?

**Hon. Mr. Turner:** It varies from year to year. It is very hard to pinpoint. But we can get you that figure.

**Senator Flynn:** I have seen a figure given by the leader of the government.

**Hon. Mr. Turner:** Yes, and the Secretary of State is holding discussions now with all provinces to work out future arrangements between the federal and provincial governments on post-secondary education. You will notice that there is a 15 per cent maximum increase per year placed on it so that there is some effort to try to contain the escalation.

**Senator Croll:** What has been the rate of increase before?

**Hon. Mr. Turner:** About 20 per cent.

**Senator Croll:** Is that 20 per cent above normal?

**Hon. Mr. Turner:** During the sixties, when we had the big boom going into post-secondary education, it was about 20 per cent per annum.

**Senator Croll:** And now we are cutting down to 15 per cent?

**Hon. Mr. Turner:** Now we are cutting down to 15 and we think in view of the demographic tables and so on that is a reasonable figure.



**Senator Croll:** I merely want to indicate to you that the province of Ontario recently followed your lead and made a decision very much like the decision you are making and said, "This is the cloth; fit in there." Well, the roof nearly went off the top and they just had to back down realizing that it meant, in this time of unemployment, that hundreds of teachers would be out of jobs. So they cut back a little, but to nothing like that extent. You must remember that 5 per cent, when you are talking your kind of money, is a lot of money.

**Hon. Mr. Turner:** I am advised that the provinces think they can live within this level.

**Senator Hays:** Do we pay 50 per cent of the operational costs of hospitals?

**Hon. Mr. Turner:** Pretty well.

**Senator Hays:** It works out to 50 per cent?

**Hon. Mr. Turner:** Yes, over the nation as a whole.

**Senator Hays:** And not capital?

**Hon. Mr. Turner:** And not capital.

**Senator Croll:** We make contributions to the capital—on hospitals and so on.

**Hon. Mr. Turner:** Under health resources, when they arise; but we are talking about general capital.

**Senator Croll:** Very well.

**Senator Flynn:** Is Quebec included in the scheme?

**Hon. Mr. Turner:** Post-secondary education?

**Senator Flynn:** There is no opting out here?

**Hon. Mr. Turner:** No.

**Senator Flynn:** Or by way of compensation?

**Hon. Mr. Turner:** No. The next Part is just a continuation of the Established Programs (Interim Arrangements) Act, Part VII. This will be found on page 30.

**Senator Croll:** Mr. Chairman, I move the adoption of the bill.

**Hon. Mr. Turner:** The purpose is to extend this, to provide authority for a continuation of the special financial arrangements with Quebec at the moment, respecting hospital insurance and welfare assistance programs. Quebec has opted out. Under these arrangements, Quebec receives part of its compensation for these programs through a transfer of income tax points.

**The Chairman:** It does not mean any more money that way?

**Hon. Mr. Turner:** There is no financial advantage to the province whatsoever.

**Senator Croll:** I move the adoption of the report.

**The Chairman:** Are there any general questions? Are you ready to report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** Mr. Minister, I thank you very much for your courtesy and for the full explanations you have given.

**Hon. Mr. Turner:** Thank you, Mr. Chairman. It was my pleasure to be here.

The committee then proceeded to the next order of business.

APPENDIX "A"

TABLES RELATING TO EQUALIZATION  
PROGRAM OF FEDERAL GOVERNMENT  
(TO BE EXTENDED BY PART I OF BILL C-8)

## EQUALIZATION PAYMENTS BY PROVINCE, 1957-58 TO 1972-73

(In thousands of dollars)

	<u>Nfld.</u>	<u>P.E.I.</u>	<u>N.S.</u>	<u>N.B.</u>	<u>Que.</u>	<u>Ont.</u>	<u>Man.</u>	<u>Sask.</u>	<u>Alta.</u>	<u>B.C.</u>	<u>Total</u>
1957 Arrangements											
1957-58	11,823	3,089	17,188	8,631	46,342	—	14,220	20,314	11,981	5,522	139,110
1958-59	20,131	5,561	26,258	22,641	63,275	—	13,495	20,389	13,407	6,704	191,861
1959-60	22,142	5,964	27,906	24,640	78,106	—	14,795	23,530	16,385	5,885	219,353
1960-61	20,255	5,561	25,913	23,975	69,874	—	13,349	21,904	15,357	6,052	202,240
1961-62	20,961	5,369	26,294	24,111	72,682	—	13,420	23,296	14,278	5,571	205,982
1962 Arrangements											
1962-63	24,012	6,931	29,117	25,518	68,773	—	13,705	22,895	12,319	—	203,270
1963-64	23,779	7,201	31,290	26,999	65,311	—	12,920	21,868	7,137	—	196,505
1964-65	27,061	8,111	37,668	33,048	96,121	—	18,694	22,002	1,190	—	243,895
1965-66	34,926	9,490	43,786	39,857	133,115	—	27,250	29,206	—	—	317,630
1966-67	39,191	10,451	47,902	44,214	151,343	—	30,500	31,407	—	—	355,008
1967 Arrangements											
1967-68	65,350	14,015	72,536	62,744	273,097	—	37,287	24,522	—	—	549,551
1968-69	72,978	16,128	79,435	70,712	392,249	—	46,822	30,307	—	—	708,631
1969-70	95,897	19,095	89,859	85,538	439,585	—	50,722	72,548	—	—	853,244
1970-71	96,707	19,804	91,704	89,233	408,729	—	52,217	96,426	—	—	854,820
1971-72	110,076	20,842	94,597	93,978	446,549	—	50,045	54,834	—	—	870,921
1972 Arrangements											
1972-73	112,754	23,669	104,293	104,798	446,104	—	58,057	94,182	—	—	943,857

## NOTES:

- (1) The payments in this table consist of payments described in successive fiscal arrangements statutes as "equalization" (including transitional guarantees for Quebec, Manitoba, Saskatchewan and Alberta from 1962-63 to 1964-65 and for Saskatchewan in 1967-68) plus the Atlantic Provinces Adjustment Grants. Payments for the years 1967-68 to 1972-73 include amounts in respect of tax points abated for post-secondary education.
- (2) The amounts shown are equalization entitlements for the year shown at the left irrespective of when paid. All adjustment payments are therefore attributed to the year for which the revenues are equalized.
- (3) The amounts shown for the years 1957-58 to 1965-66 are final. The amount for 1966-67 is final subject to a small revision in respect of estate tax equalization which will be finally determined in 1972-73. The amounts for 1967-68 to 1969-70 are final except for the adjustment following determination of the June 1, 1971 population. The amounts for 1970-71 are estimated; they consist of the interim amounts paid in 1970-71 plus an estimate of the adjustment to be made in March, 1973; no account is taken of the post-census population adjustment. The amount for 1971-72 consists of the interim amounts being paid during that year. The amount for 1972-73 is the Federal Main Estimate for that year.
- (4) While the payments are grouped by quinquennial arrangement, there were mid-period changes in (a) 1958-59 (when the Atlantic Provinces Adjustment Grants were started) and (b) in 1964-65 when the standard of equalization was raised from national average to top two provinces but natural resource revenues were dropped as a positive element of equalization.



EQUALIZATION PAYMENTS PER CAPITA BY PROVINCE, 1957-58 TO 1972-73  
(Dollars)

<u>Fiscal Year</u>	<u>Nfld.</u>	<u>P.E.I.</u>	<u>N.S.</u>	<u>N.B.</u>	<u>Que.</u>	<u>Ont.</u>	<u>Man.</u>	<u>Sask.</u>	<u>Alta.</u>	<u>B.C.</u>
1957 ARRANGEMENTS										
1957-58	28	31	25	15	10	—	16	23	10	4
1958-59	47	56	37	40	13	—	15	23	11	4
1959-60	50	59	39	42	16	—	17	26	13	4
1960-61	45	54	36	41	14	—	15	24	12	4
1961-62	46	51	36	40	14	—	15	25	11	3
1962 ARRANGEMENTS										
1962-63	51	65	39	42	13	—	15	25	9	—
1963-64	50	67	42	44	12	—	14	23	5	—
1964-65	56	74	50	54	17	—	19	23	1	—
1965-66	72	87	58	65	23	—	28	31	—	—
1966-67	79	96	63	72	26	—	32	33	—	—
1967 ARRANGEMENTS										
1967-68	131	129	96	101	47	—	39	26	—	—
1968-69	144	147	105	113	66	—	48	32	—	—
1969-70	187	174	118	137	73	—	52	76	—	—
1970-71	187	180	120	143	68	—	53	102	—	—
1971-72	210	188	123	149	74	—	51	59	—	—
1972 ARRANGEMENTS										
1972-73	213	213	135	164	74	—	58	102	—	—

NOTES: See accompanying table on absolute amount of payments.

# HYPOTHETICAL ILLUSTRATION OF ALTERNATIVE METHODS OF CALCULATING EQUALIZATION TO A NATIONAL AVERAGE STANDARD

(Calculated with reference to equalizing provincial revenues from gasoline tax)

## Assumptions:

- (1) Two province federation: *Province A*, wealthy, with 3,000,000 people, and *Province B*, poor, with 2,000,000 people.
- (2) *Province A* has per capita consumption of 200 gallons of gasoline and *Province B*, has per capita consumption of 100 gallons of gasoline.
- (3) *Province A* has a tax per gallon of 16¢ and *Province B* has a tax per gallon of 22¢, for respective yields of \$96 and \$44 million, totalling \$140 million.

## Calculation of Equalization using National Average Rate of Taxation Approach

	Province A	Province B	Total
1. Revenues to be equalized			\$140 million
2. Population	3 million	2 million	5 million
3. National average revenues per capita (line 1 ÷ line 2)			\$28
4. Tax base	600 million gal.	200 million gal.	800 million gal.
5. National average rate of taxation (line 1 ÷ line 4)			17½¢ per gal.
6. Provincial yield at national average revenues per capita (line 2 x line 3)	\$84 million	\$56 million	\$140 million
7. Provincial yield at national average rate of taxation applied to own base (line 4 x line 5)	<u>\$105 million</u>	<u>\$35 million</u>	\$140 million
8. Equalization entitlement (line 6 – line 7)	<u>—</u>	<u>\$21 million</u>	

## Calculation of Equalization using Fiscal Capacity Deficiency Approach

	Province A	Province B	Total
1. Revenues to be equalized			\$140 million
2. Population	3 million	2 million	5 million
3. Tax base	600 million gal.	200 million gal.	800 million gal.
4. Share of population	60.0%	40.0%	100%
5. Share of tax base	75.0%	25.0%	100%
6. Fiscal capacity deficiency (line 4 – line 5)	<u>—</u>	<u>15.0%</u>	
7. Equalization entitlement (line 1 x line 6)	<u>—</u>	<u>\$21 million</u>	

## Algebraic Demonstration that Two Approaches are Identical

- Assumptions: let  $E_1$  = equalization entitlement of given province  
 let  $R$  = revenues to be equalized  
 let  $p_1$  = population of given province  
 let  $P$  = population of all provinces  
 let  $b_1$  = tax base of given province  
 let  $E$  = tax base of all provinces

Then, as shown in the calculation of equalization using the national average rate of taxation approach:

$$\begin{aligned}
 E_1 &= \left[ \begin{array}{c} p_1 \\ P \end{array} \cdot \begin{array}{c} R \\ P \end{array} \right] - \left[ \begin{array}{c} b_1 \\ B \end{array} \cdot \begin{array}{c} R \\ B \end{array} \right] \\
 &= \left[ \begin{array}{c} p_1 \\ P \end{array} \cdot \begin{array}{c} R \\ P \end{array} \right] - \left[ \begin{array}{c} b_1 \\ B \end{array} \cdot \begin{array}{c} R \\ B \end{array} \right] \\
 &= R \left[ \begin{array}{c} p_1 \\ P \end{array} \cdot \begin{array}{c} p_1 \\ P \end{array} \right] - R \left[ \begin{array}{c} b_1 \\ B \end{array} \cdot \begin{array}{c} b_1 \\ B \end{array} \right] \quad \text{which is the fiscal capacity deficiency approach to determining equalization}
 \end{aligned}$$

TABLE I

PROVINCIAL REVENUE EQUALIZATION PAYMENTS TO THE PROVINCES  
UNDER THE FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT, 1972

(Main Estimate for 1972-73)

(in thousands of dollars)

	Nfld.	P.J.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	7 Recipient Provinces Total
1. Personal income tax	40,816	9,197	35,057	41,139	118,435	-299,536	20,928	56,367	11,320	-40,878	+321,939
2. Corporation income tax	8,619	2,079	11,152	10,122	23,474	-63,589	3,493	16,675	-9,477	-2,548	+75,614
3. General and miscellaneous sales taxes	15,810	4,275	12,911	12,996	190,048	-83,558	2,841	15,775	-32,770	-55,792	+165,653
4. Motive fuel taxes	12,283	453	4,463	2,647	15,840	-26,928	3,807	154	-13,521	4	+39,647
5. Motor vehicle licensing revenues	4,267	157	1,551	920	5,503	-9,355	1,322	53	-4,697	1	+13,773
6. Alcoholic beverage revenues	6,431	170	1,909	5,433	33,841	-23,870	-1,294	2,228	-4,390	-22,319	+48,718
7. Health insurance premiums	6,994	1,516	4,540	5,095	16,444	-38,384	1,415	6,708	1,856	-7,851	+42,712
8. Succession duties and gift taxes	4,615	792	2,857	3,922	1,153	-25,825	3,643	4,221	5,836	-1,214	+21,203
9. Race track taxes	1,063	80	948	980	-681	-7,448	1,068	1,679	345	1,860	+5,137
10. Forestry revenues	-1,117	701	4,165	-190	10,004	32,847	4,654	2,636	-4,681	-58,381	+20,853
11. Oil royalties	4,384	920	6,415	5,285	50,107	66,268	7,503	-20,535	-125,339	4,992	+54,079
12. Natural gas royalties	1,256	264	1,838	1,503	14,352	18,777	2,358	1,505	-43,495	1,642	+23,076
13. Sales of Crown leases and reservations on oil and natural gas lands	1,729	363	2,530	2,086	19,764	26,138	3,246	-32	-51,619	-4,205	+29,686
14. Other oil and gas revenues	1,896	379	2,774	2,287	21,672	28,133	3,362	-5,944	-51,454	-3,105	+26,426
15. Metallic and non-metallic mineral revenues	-4,665	339	1,769	564	492	815	-2,159	-816	5,022	-1,361	-4,476
16. Water power rentals	-306	272	1,693	647	-10,814	6,159	-239	1,357	3,677	-2,446	-7,390
17. Other provincial taxes	4,169	823	3,888	4,012	10,027	-25,041	807	5,107	-2,218	-1,574	+28,833
18. Other provincial revenues	4,959	979	4,624	4,773	11,928	-29,786	960	6,075	-2,639	-1,873	+34,298
19. Share of income tax on power utilities	-449	-90	-791	577	3,518	-1,846	342	969	-4,160	1,930	+4,076
20. Total equalization entitlements	+112,754	+23,669	+104,293	+104,798	+446,104	-456,029	+58,057	+94,182	-313,042	-193,118	+943,857

Note: The amounts in this table are the products of amounts shown in Tables II and III respectively for revenues and Fiscal capacity deficiency or excess.



TABLE II

## FIRST ESTIMATE OF PROVINCIAL REVENUES TO BE EQUALIZED BY REVENUE SOURCE, 1972-73

Revenue Source	Estimated Revenues of the Ten Provinces (\$'000)
1. Personal income tax	3,015,055
2. Corporation income tax	740,980
3. General and miscellaneous sales taxes	2,437,218
4. Motive fuel taxes	1,228,342
5. Motor vehicle licensing revenues	426,734
6. Alcoholic beverage revenues	646,148
7. Health insurance premiums	682,981
8. Succession duties and gift taxes	213,224
9. Race track taxes	44,964
10. Forestry revenues	138,604
11. Oil royalties	181,805
12. Natural gas royalties	52,086
13. Sales of Crown leases and reservations on oil and gas lands	71,709
14. Other oil and gas revenues	78,633
15. Metallic and non-metallic mineral revenues	67,057
16. Water power rentals	53,801
17. Other provincial taxes	376,179
18. Other provincial revenues (including institutional revenues)	447,467
19. Share of income tax on power utilities	23,647
20. Total provincial revenues	<u>10,926,634</u>

TABLE III

## CALCULATION OF "FISCAL CAPACITY DEFICIENCY" OR "EXCESS" FROM POPULATION AND REVENUE BASE SHARES, 1972-73

(All figures are percentages)

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Total for Equalization Receiving Provinces
<b>POPULATION SHARE</b>											
1. June 1, 1972 population (office estimate)	2.41145	0.50599	3.52829	2.90833	27.56074	36.44983	4.52660	4.19383	7.61271	10.30223	45.63523
<b>REVENUE BASE SHARES</b>											
(most recent available)(a)											
2. Personal income tax	1.05770	0.20094	2.36556	1.54389	23.63263	46.38452	3.83249	2.32432	7.23725	11.65804	34.95753
3. Corporation income tax	1.24827	0.22542	2.02334	1.54229	24.39275	45.03154	4.05524	1.94344	8.89166	10.64605	35.43075
4. General and miscellaneous sales taxes	1.76275	0.33059	2.99855	2.37508	23.41482	39.87824	4.41004	3.54658	8.95726	12.59138	38.83841
5. Motive Fuel Taxes	1.41146	0.46911	3.16492	2.69282	26.27121	38.64297	4.21671	4.18133	8.71350	10.30194	42.40756
6. Motor vehicle licence revenues	1.41146	0.46911	3.16492	2.69282	26.27121	38.64207	4.21671	4.18133	8.71350	10.30194	42.40756
7. Alcoholic beverage revenues	1.41617	0.47973	3.23288	2.06756	22.32344	40.14405	4.72681	3.84899	8.29218	13.75646	38.09558
8. Premiums	1.38740	0.28400	2.86357	2.16233	25.15303	42.06985	4.31943	3.21162	7.34103	11.45178	39.38138
9. Succession duties and gift taxes	0.24718	0.13438	2.18851	1.06894	27.01978	48.56154	2.81804	2.21416	4.87583	10.87164	35.69099
10. Race track taxes	0.04624	0.32706	1.41950	0.72822	29.07525	53.01438	2.15068	0.45872	6.84544	6.16483	34.20567
11. Forestry revenues	3.21711	-	0.52303	3.04567	20.34326	12.75145	1.16849	2.29225	4.23571	52.42303	30.58981
12. Oil royalties	-	-	-	0.00162	-	-	0.39959	15.48854	76.55396	7.55629	15.88975
13. Natural gas royalties	-	-	-	0.02306	0.00538	0.39974	-	1.30429	91.11882	7.14871	1.33273
14. Sale of Crown leases on oil and gas lands	-	0.02463	-	-	-	0.67220	0.25063	4.23790	79.59631	16.16579	4.23790
15. Other oil and gas revenues	-	-	-	-	-	-	-	11.75337	73.04823	14.25094	12.02863
16. Metallic and non-metallic mineral revenues	9.36871	-	0.89069	2.06657	26.82639	35.23427	7.74139	5.41044	0.12350	12.33204	52.31019
17. Water power rentals	2.98001	-	0.38066	1.70561	47.66167	25.00256	4.97095	1.67106	0.77859	14.84889	59.36996
18. Other provincial taxes	1.30318	0.28727	0.49486	1.84171	24.89514	43.10642	4.31206	2.83628	8.20236	10.72072	37.97050
19. Other provincial revenues	1.30318	0.28727	2.49486	1.84171	24.89514	43.10642	4.31206	2.83628	8.20236	10.72072	37.97050
20. Share of income tax on power utilities	4.31034	0.88718	6.87144	0.46870	12.68413	44.25427	3.08001	0.09625	25.20506	2.14262	28.39805

TABLE III (Cont'd)

FISCAL CAPACITY DEFICIENCY (+) OR EXCESS (-)	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Total for Equalization Receiving Provinces
21. Personal income tax (line 1 - line 2)	1.35375	0.40505	1.16273	1.36444	0.92811	-9.93469	0.69411	1.86951	0.37546	-1.35581	+10.67770
22. Corporation income tax (line 1 - line 3)	1.16318	0.28057	1.50495	1.06012	3.16799	-8.58171	0.47136	2.25039	-1.27895	-0.34382	+10.20448
23. General and miscellaneous sales taxes (line 1 - line 4)	0.64870	0.17540	0.52774	0.53325	1.44592	-3.42841	0.11656	0.64725	-1.34455	-2.28915	+6.79682
24. Motive fuel taxes (line 1 - line 5)	0.99999	0.03688	0.56737	0.71551	1.28953	-2.19224	0.30989	0.01250	-1.10079	0.00029	+3.22767
25. Motor vehicle licence revenues (line 1 - line 6)	0.99999	0.03688	0.36337	0.21531	1.28953	-2.19224	0.30989	0.01250	-1.10079	0.00029	+3.22767
26. Alcoholic beverage revenues (line 1 - line 7)	0.99528	0.02626	0.29541	0.84407	5.21130	-3.69422	-0.20021	0.34484	-0.67947	-3.45423	+7.53965
27. Premiums (line 1 - line 8)	1.02405	0.22199	0.66472	0.74600	2.40771	-5.89002	0.20717	0.98221	0.27168	-1.14955	+6.25385
28. Succession duties and gift taxes (line 1 - line 9)	2.16427	0.37161	1.33978	1.83939	0.54096	-12.11171	1.70856	1.97967	2.73688	-0.56941	+9.94424
29. Race track taxes (line 1 - line 10)	2.36521	0.17893	2.10879	2.18011	1.51451	-16.56455	2.37592	3.73511	0.76727	4.13740	+11.42956
30. Forestry revenues (line 1 - line 11)	-0.80566	0.50599	3.00526	-0.13734	7.21748	23.69838	3.35811	1.90158	3.37700	-42.12080	+15.04542
31. Oil royalties (line 1 - line 12)	2.41145	0.50599	3.52829	2.90671	27.56074	36.44983	4.12701	-11.29471	-68.94125	2.74594	+29.74548
32. Natural gas royalties (line 1 - line 13)	2.41145	0.50599	3.52829	2.88527	27.55536	36.05009	4.52660	2.88954	-83.50611	3.15352	+44.30250
33. Sale of Crown leases on oil and gas lands (line 1 - line 14)	2.41145	0.50599	3.52829	2.90833	27.56074	36.44983	4.52660	-0.04407	-71.98360	-5.86356	+41.39733
34. Other oil and gas revenues (line 1 - line 15)	2.41145	0.48136	3.52829	2.90833	27.56074	35.77763	4.27597	-7.55954	-65.43552	-3.94871	+33.60660
35. Metallic and non-metallic mineral revenues (line 1 - line 16)	-6.95726	0.50599	2.63760	0.84176	0.73435	1.21556	-3.22079	-1.21661	7.48921	-2.02981	-6.67496
36. Water power rentals (line 1 - line 17)	-0.56856	0.50599	3.14763	1.20272	-20.10093	11.44727	-0.44435	2.52277	6.83412	-4.54666	-13.73473
37. Other provincial taxes (line 1 - line 18)	1.10827	0.21872	1.03343	1.06662	2.66560	-6.65659	0.21454	1.35755	-0.58965	-0.41849	+7.66473
38. Other provincial revenues (line 1 - line 19)	1.10827	0.21872	1.03343	1.06662	2.66560	-6.65659	0.21454	1.35755	-0.58965	-0.41849	+7.66473
39. Share of income tax on power utilities	-1.89889	-0.38119	-3.34315	2.43963	14.87661	-7.80444	1.44659	4.09758	-17.59235	8.15961	+17.23718

(a) Revenue base shares derived from amounts shown for revenue base in ANNEX A, subject to adjustment of certain bases as shown in ANNEX B.



## ANNEX A

## REVENUE BASES USED FOR ESTIMATING REVENUE BASE SHARES FOR 1972-73

(Subject to adjustment of certain bases in Annex B)  
(in thousands unless otherwise specified)

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Total
<b>REVENUE SOURCE AND BASE</b>											
1. Personal Income Tax											
1970 "Basic Tax" assessed, federal individual income tax, as of October 15, 1971	\$ 72,089	13,777	162,082	105,164	1,623,189	1,122,181	262,361	161,941	487,907	780,735	6,791,396
2. Corporation Income Tax											
Allocated corporation taxable income for 1970 taxation year (excluding non-resident-owned investment and schedule D Crown corporations) assessed as of October 15, 1971	\$ 78,433	14,164	127,133	96,907	1,532,677	1,870,181	254,804	122,133	558,692	668,926	6,283,329
3. General and Miscellaneous Sales Taxes (See Schedule A)	\$ 580,507	109,936	994,563	785,339	7,781,626	1,462,822	1,462,822	1,208,682	2,893,091	4,022,058	32,699,536
4. Motive Fuel Taxes											
5. Motor Vehicle Licensing Revenues											
Motive fuel sales, 1970 (final)	'000 gals. 81,070	27,105	182,746	154,577	1,520,629	1,191,911	243,264	245,505	495,042	581,411	5,723,282
6. Alcoholic Beverage Revenues											
Sales of alcoholic beverages, 1969-70											
a. spirits	369,000	137,000	849,000	510,000	4,634,000	9,779,000	1,100,000	491,000	9,720,000	13,990,000	33,597,000
b. wine	66,000	56,000	482,000	409,000	4,313,000	8,100,000	794,000	682,000	1,613,000	2,784,000	17,056,000
c. line b x 0.215	14,203	12,051	103,726	88,017	928,158	1,260,426	1,060,426	146,000	1,418	899,117	3,060,481
d. beer	1,060,000	1,000,000	8,000,000	5,000,000	20,000,000	10,000,000	1,000,000	1,000,000	14,772,000	23,923,000	33,306,000
e. line d x 0.027	135,157	28,261	239,088	161,840	2,683,742	2,700,000	401,798	320,198	650,706	905,923	8,877,073
f. total (lines a + c + e)	518,360	177,312	1,191,814	759,857	8,245,900	14,539,126	1,451,664	1,451,664	12,688,331	14,884,040	36,344,324
7. Hospital Insurance Premiums											
Weighted number of taxable income tax returns, 1969 (See Schedule B)	No. 134,530	27,808	279,659	210,522	2,461,327	3,994,902	431,865	322,335	698,112	1,067,300	9,628,109
8. Succession Duties and Gift Taxes											
Provincial distribution by situs of property of gross estate tax assessments on domiciled estates											
1967-68	\$ 438	490	4,689	1,665	43,981	8,131	1,449	1,595	8,618	16,346	166,944
1968-69	\$ 555	237	2,930	1,787	46,689	105,341	6,603	4,188	9,831	36,334	295,113
1969-70	\$ 562	180	4,914	2,376	47,435	87,826	3,987	3,906	8,038	21,695	180,919
1970-71	\$ 334	120	4,192	2,341	68,385	96,768	5,998	3,741	11,035	18,324	211,238
Total	\$ 1,889	1,027	16,725	8,169	206,490	1,116	21,536	16,921	37,362	83,083	764,218
9. Race track taxes											
Amounts wagered at pari-mutuel tracks on harness and running races, 1970	\$ 267	1,900	8,241	4,203	169,210	612,500	12,475	2,708	39,103	34,982	575,446
10. Forestry Revenues											
Forest production from provincial Crown lands, 1970 (final)	m.cu.ft. 99,854	0	16,234	94,533	631,423	68,750	56,000	1,115	131,470	1,627,129	3,103,844
11. Oil Royalties											
Value of crude petroleum production from Crown lands, 1969	\$ 0	0	0	0	0	0	3,195	123,842	612,104	60,418	799,572

## ANNEX A (Continued)

	<u>Nfld.</u>	<u>P.E.I.</u>	<u>N.S.</u>	<u>N.B.</u>	<u>Que.</u>	<u>Ont.</u>	<u>Man.</u>	<u>Sask.</u>	<u>Alta.</u>	<u>B.C.</u>	<u>Total</u>
12. Natural Gas Royalties											
Value of production of natural gas, natural gas by-products and naturally occurring gaseous products from Crown lands, 1969	\$ 0	0	0	0	21	1,560	0	5,090	355,593	27,898	390,252
13. Sales of Crown Leases on Oil and Gas Lands											
Actual provincial revenues from sales of Crown leases on oil and gas lands, 1969-70	\$ 0	0	0	0	0	0	0	4,638	87,111	17,692	109,441
14. Other Oil and Gas											
Actual provincial revenues from oil and gas, 1969-70, other than those described in 11, 12 and 13.	\$ 0	17	0	0	0	464	173	8,113	50,423	9,837	69,027
15. Metallic and Non-Metallic Mineral Revenues											
Net value of mining production exclusive of fuels and structural materials, 1969	\$ 160,670	0	15,275	35,441	460,063	604,255	132,865	92,787	2,118	211,490	1,714,964
16. Water Power Rentals											
Electrical energy generated from hydro sources, 1970 (preliminary)	'000 kwh 4,658,000	0	595,000	2,666,000	74,499,000	39,081,000	7,770,000	2,612,000	1,217,000	23,210,000	156,308,000
17. Other Provincial Taxes											
18. Other Provincial Revenues											
Combination of adjusted personal income and adjusted corporation profits weighted according to shares of revenue source initially paid by non-business and business taxpayers. (See Schedule C)	\$ 2,106,337	464,319	4,032,473	2,976,772	40,238,255	69,673,341	6,969,628	4,584,302	13,257,561	17,328,011	161,630,999
19. Share of Income Tax on Power Utilities											
Actual payments in 1970-71	\$ 1,030	212	1,642	112	3,031	10,575	736	23	6,023	512	23,896

## SCHEDULE A

## CONSUMPTION TAXES - GENERAL AND MISCELLANEOUS

N.I.W. TAX BASE 1969-70

	<u>Nfld.</u>	<u>P.E.I.</u>	<u>N.S.</u>	<u>N.B.</u>	<u>Que.</u>	<u>Ont.</u>	<u>Man.</u>	<u>Sask.</u>	<u>Alta.</u>	<u>B.C.</u>	<u>10 Provinces Total</u>
1. Total sales by retail establishments 1969	\$'000 481,366	123,449	854,117	703,504	6,861,448	6,088,424	1,187,227	1,041,763	228,113	3,108,468	27,344,441
2. Less food sales, 1969	\$'000 143,920	30,800	213,640	175,000	1,675,520	2,086,560	274,120	268,520	437,080	578,760	5,883,920
3. Less sale of children's clothing and footwear, 1969	\$'000 9,776	1,797	12,040	10,417	92,567	110,893	14,627	15,089	25,639	29,830	322,675
4. Less sales of gasoline and diesel fuel, 1969	\$'000 24,416	11,586	6,446	40,411	563,511	369,310	86,763	78,311	143,440	175,239	1,623,154
5. Sub-total, taxable retail sales, 1969 (line 1 minus 2, 3 & 4)	\$'000 303,254	79,164	595,976	480,670	4,827,990	7,732,261	832,018	693,785	1,644,945	2,324,629	19,514,692
6. Cost of construction material used, 1969 (Sub-total)	\$'000 140,818	15,088	224,847	136,686	1,205,647	2,119,482	328,571	267,626	682,296	748,155	5,869,216
7. Investment in place in new machinery & equipment, 1969	\$'000 111,000	18,000	154,000	163,000	1,294,000	2,482,000	261,000	296,000	566,000	732,000	6,077,000
8. Less investment in new machinery & equipment for agriculture & for fishing 1969	\$'000 7,000	6,500	17,000	14,600	97,500	190,100	68,500	126,100	156,400	45,600	729,300
9. Less sales of new commercial motor vehicles, 1969	\$'000 8,734	2,733	21,200	21,088	110,429	248,310	34,270	32,087	105,380	121,141	716,824
10. Residual (line 7 minus 8 & 9)	\$'000 95,266	8,760	115,764	126,114	1,079,871	2,046,370	187,740	130,811	104,320	368,239	4,630,876
11. Less 20% of residual	\$'000 19,053	1,753	23,153	25,343	215,974	409,274	31,546	26,163	60,864	113,052	926,175
12. Estimated taxable component of net investment in place in new machinery & equipment, 1969 (line 10 minus 11)	\$'000 76,213	7,007	92,611	100,771	863,897	1,637,096	156,194	104,648	243,456	455,207	3,704,701
13. Investment in repairs on machinery & equipment, 1969	\$'000 80,000	7,000	67,000	59,000	655,000	1,127,000	134,000	126,000	226,000	390,600	2,871,600
14. Less investment in repairs on machinery & equipment for agriculture and fishing, 1969	\$'000 5,600	3,000	8,000	4,300	30,500	51,900	21,000	48,000	41,200	16,000	229,500
15. Residual (line 13 minus 14)	\$'000 74,400	4,000	59,000	54,700	624,500	1,075,100	113,000	78,000	184,800	374,600	2,642,100
16. Less 60% of residual	\$'000 44,640	2,400	35,400	32,820	374,700	645,060	67,800	46,800	110,880	224,760	1,585,260
17. Estimated taxable component of net investment in repairs on machinery and equipment, 1969 (line 15 minus 16)	\$'000 29,760	1,600	23,600	21,880	249,800	430,040	45,200	31,200	73,920	149,840	1,056,840





SCHEDULE B  
TAX BASE FOR HOSPITAL INSURANCE AND MEDICAL CARE INSURANCE PREMIUMS  
FROM 1969 TAXATION STATISTICS  
NUMBER OF TAXABLE RETURNS

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Total: 10 Provinces
<b>Taxed as single with no dependant</b>											
1. below \$1,700 total income	8,660	2,864	18,109	13,729	112,397	192,204	25,458	19,447	38,272	53,290	484,430
2. above \$1,700 total income	34,920	10,304	90,813	67,400	843,075	1,462,234	159,223	113,795	249,868	383,375	3,415,707
3. sub-total	43,580	13,168	108,922	81,129	955,472	1,654,438	185,381	133,242	288,140	436,665	3,900,137
<b>Taxed as single with 1 or more dependants</b>											
4. below \$2,400 total income	1,150	297	1,380	1,284	6,049	10,365	1,540	1,230	1,945	2,175	27,418
5. above \$2,400 total income	9,320	2,338	19,539	16,820	147,818	385,124	31,534	27,996	57,134	72,615	733,100
6. sub-total	10,470	2,635	20,919	18,104	153,887	393,492	32,894	24,226	59,079	74,812	760,518
<b>Taxed as married with no dependant</b>											
7. below \$3,100 total income	2,402	692	5,552	3,801	30,288	42,056	6,820	7,801	8,757	12,839	121,008
8. above \$3,100 total income	8,837	1,661	21,000	15,149	171,583	262,193	30,201	23,303	43,528	81,765	659,220
9. sub-total	11,239	2,353	26,552	18,950	201,871	304,249	37,021	31,104	52,285	94,604	780,228
<b>Taxed as married with 1 dependant</b>											
10. below \$3,400 total income	1,889	335	2,750	1,881	12,513	12,506	2,433	2,805	3,451	2,902	43,465
11. above \$3,400 total income	7,765	1,225	15,561	11,163	142,144	178,639	20,180	15,058	31,430	52,305	475,470
12. sub-total	9,654	1,560	18,311	13,044	154,657	191,145	22,613	17,863	34,881	55,207	518,935
<b>Taxed as married with 2 dependants</b>											
13. below \$3,800 total income	1,693	345	2,270	1,670	12,946	11,352	1,586	2,943	3,194	3,179	41,178
14. above \$3,800 total income	8,741	1,354	16,704	12,063	130,901	216,981	23,048	18,864	39,784	67,937	556,386
15. sub-total	10,434	1,699	18,974	13,733	163,853	228,339	24,631	21,807	42,978	71,116	597,564
<b>Taxed as married with 3 dependants</b>											
16. below \$4,100 total income	1,492	205	1,575	1,134	8,746	6,996	1,337	1,487	2,022	1,878	26,872
17. above \$4,100 total income	6,491	1,009	10,917	7,915	98,332	136,795	14,331	12,317	27,700	40,562	356,369
18. sub-total	7,983	1,214	12,492	9,049	107,078	143,791	15,668	13,804	29,722	42,440	383,241
<b>Taxed as married with 4 dependants</b>											
19. below \$4,600 total income	976	186	1,293	1,188	6,753	5,138	844	1,486	1,582	1,422	20,868
20. above \$4,600 total income	4,233	573	5,558	4,589	55,111	70,546	7,441	6,579	15,123	18,841	188,594
21. sub-total	5,209	759	6,851	5,777	61,864	75,684	8,285	8,065	16,705	20,263	209,462
<b>Taxed as married with 5 or more dependants</b>											
22. below \$5,500 total income	2,226	335	2,121	1,945	9,858	7,345	1,462	1,606	1,905	1,697	30,500
23. above \$5,500 total income	4,418	592	5,144	3,862	43,211	48,050	4,419	5,123	9,438	12,805	137,062
24. sub-total	6,644	927	7,265	5,807	53,069	55,395	5,881	6,729	11,343	14,502	167,562
<b>Total taxed as married or as single with 1 or more dependants</b>											
25. exempt (lines 4, 7, 10, 13, 16, 19 and 22)	11,828	2,395	16,941	12,903	87,153	95,761	16,022	19,358	22,856	26,092	311,309
26. taxable (lines 5, 8, 11, 14, 17, 20 and 23)	49,805	8,752	94,423	71,561	809,126	1,266,334	130,971	104,240	224,137	346,852	3,106,201
27. sub-total	61,633	11,147	111,364	84,464	896,279	1,362,095	146,993	123,598	246,993	372,944	3,417,510
<b>Tax base</b>											
28. Line 2	34,920	10,304	90,813	67,400	843,075	1,462,234	159,223	113,795	249,868	383,375	3,415,707
29. Line 26 times 2	99,610	17,504	188,846	143,122	1,618,252	2,532,668	261,942	208,480	448,274	693,704	6,212,402
30. Tax base (line 28 + line 29)	134,530	27,808	279,659	210,522	2,461,327	3,994,902	421,865	322,275	698,142	1,077,079	9,628,109

## SCHEDULE C

## REVENUE BASE FOR OTHER PROVINCIAL TAXES AND FOR OTHER PROVINCIAL REVENUES, 1970 (PRELIMINARY)

(Total income base consisting of non-business income (adjusted personal income) and business income (adjusted corporation profits) weighted according to shares of revenue source initially paid by non-business and business taxpayers)

(thousands of dollars)

	<u>Nfld.</u>	<u>P.E.I.</u>	<u>N.S.</u>	<u>N.B.</u>	<u>Que.</u>	<u>Ont.</u>	<u>Man.</u>	<u>Sask.</u>	<u>Alta.</u>	<u>B.C.</u>	<u>Total</u>
1. Personal Income	924,000	215,000	1,901,000	1,420,000	16,893,000	27,370,000	2,939,000	2,252,000	4,919,000	7,037,000	65,870,000
2. Changes in farm-held inventory	0	-1,000	+2,000	-2,000	0	+32,000	-26,000	-9,000	+20,000	+7,000	+23,000
3. Net income of non-farm unincorporated business	52,000	20,000	150,000	94,000	1,069,000	1,800,000	228,000	255,000	369,000	510,000	4,547,000
4. Imputed residential rent included in 3	6,000	2,000	15,000	11,000	103,000	229,000	33,000	49,000	59,000	58,000	565,000
5. Net income of non-farm unincorporated business, excluding imputed residential rent (3-4)	46,000	18,000	135,000	83,000	966,000	1,571,000	195,000	206,000	310,000	452,000	3,982,000
6. 30% of line 5	13,800	5,400	40,500	24,900	289,800	471,300	58,500	61,800	93,000	135,600	1,194,600
7. Total non-business income (line 1 minus lines 2 and 6)	910,200	210,600	1,858,500	1,397,100	16,603,200	26,866,700	2,906,500	2,199,200	4,806,000	6,894,400	64,652,400
8. Allocated corporation taxable income, 1970, as of October 15/71	78,433	14,164	127,133	96,907	1,532,677	2,829,480	254,804	122,113	558,692	668,926	6,283,329
9. 30% of net income of non-farm unincorporated business, excluding imputed residential rent (as in line 6)	13,800	5,400	40,500	24,900	289,800	471,300	58,500	61,800	93,000	135,600	1,194,600
10. Total unweighted business income (line 8 + line 9)	92,233	19,564	167,633	121,807	1,822,477	3,300,780	313,304	183,913	651,692	804,526	7,477,929
11. Total business income (weighted)											
3/2 x 64,652,400 x line 10											
7,477,929											
= 12.968644 x line 10	1,196,137	253,719	2,173,973	1,579,672	23,635,055	42,806,641	4,063,128	2,385,102	8,451,561	10,433,611	96,978,599
12. Total income (line 7 + line 11)	2,106,337	464,319	4,032,473	2,976,772	40,238,255	69,673,341	6,969,628	4,584,302	13,257,561	17,328,011	161,630,999



## ANNEX B

## Adjustments to Certain Tax Base Shares Taking Into Account Population Changes During the Period by which Tax Bases Lag Population

(percentage)

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Total 7 Provinces
1. Share of population, 1972 (Office estimate)	2.41145	0.50599	3.52829	2.90833	27.56074	36.44983	4.52660	4.19383	7.61271	10.30223	45.63523
2. Share of population, 1969 (as of June 1, Statistics Canada)	2.44599	0.52346	3.63091	2.97421	28.47625	35.46207	4.65880	4.56363	7.42838	9.83630	47.27325
3. Share of population, 1970 (as of June 1, Statistics Canada)	2.42873	0.51575	3.59152	2.92573	28.19299	35.80739	4.59939	4.41673	7.50188	10.01969	46.67104
Factors of adjustment											
4. Line 1 divided by line 2	0.98588	0.96663	0.97174	0.97783	0.96785	1.02785	0.97162	0.91897	1.02481	1.04737	0.96535
5. Line 1 divided by line 3	0.99289	0.98108	0.98239	0.99405	0.97757	1.01704	0.98413	0.94953	1.01477	1.02820	0.97781
Personal income tax											
6. Share of 1970 preliminary base	1.06148	0.20286	2.38658	1.34849	23.90067	43.97213	3.86314	2.38450	7.18419	11.49594	35.34772
7. Adjusted tax base (line 6 x line 5)	1.05393	0.19902	2.34453	1.53928	23.36458	46.79689	3.80183	2.26413	7.29030	11.82013	34.56734
8. 50% of adjustment: ½ (lines 6 + 7)	1.05771	0.20094	2.36537	1.54389	23.63263	46.38452	3.83249	2.32433	7.23725	11.65804	34.95756
General and miscellaneous sales taxes											
9. Share of 1969 final base	1.77528	0.33620	3.04152	2.40168	23.79736	39.33056	4.47332	3.69633	8.84750	12.30005	39.52189
10. Adjusted tax base (line 9 x line 4)	1.75021	0.32498	2.95557	2.34847	23.03227	40.42592	4.34656	3.39682	9.06701	12.88270	38.15439
11. 50% of adjustment: ½ (lines 9 + 10)	1.76275	0.33059	2.99855	2.37508	23.41482	39.87824	4.41004	3.54658	8.95726	12.59138	38.83841
Sales of motive fuels											
12. Share of 1970 final base	1.41649	0.47359	3.19303	2.70085	26.56918	38.29853	4.25043	4.28958	8.64962	10.15870	42.89315
13. Adjusted tax base (line 12 x line 5)	1.40642	0.46463	3.13680	2.68478	25.97323	38.98861	4.18298	4.07308	8.77737	10.44518	41.92192
14. 50% of adjustment: ½ (lines 12 + 13)	1.41146	0.46911	3.16492	2.69282	26.27121	38.64207	4.21671	4.18133	8.71350	10.30194	42.40756
Sales of alcoholic beverages											
15. Share of 1969 final base	1.42624	0.48787	3.27921	2.09071	22.68815	39.52972	4.79485	4.01151	8.19057	13.43817	38.77854
16. Adjusted tax base (line 15 x line 4)	1.40610	0.47159	3.18654	2.04440	21.95873	40.69538	4.65877	3.68046	8.39378	14.07474	37.41259
17. 50% of adjustment: ½ (lines 15 + 16)	1.41617	0.47973	3.23288	2.06756	22.32344	40.14405	4.72681	3.84899	8.29218	13.75646	38.09558
Premiums											
18. Share of 1969 final base	1.39726	0.28882	2.90461	2.18654	25.56397	41.49207	4.38166	3.34723	7.25108	11.18682	40.07003
19. Adjusted tax base (line 18 x line 4)	1.37753	0.27918	2.82253	2.13811	24.73209	42.44762	4.25725	3.07600	7.43098	11.71674	38.69269
20. 50% of adjustment: ½ (lines 18 + 19)	1.38740	0.28400	2.86357	2.16233	25.15303	42.06985	4.31943	3.21162	7.34103	11.45178	39.38138
Race track taxes											
21. Share of 1970 final base	0.04640	0.33018	1.43211	0.73039	29.40502	52.54307	2.16788	0.47059	6.79525	6.07911	34.58257
22. Adjusted tax base (line 21 x line 5)	0.04607	0.32393	1.40689	0.72604	28.74547	53.48569	2.13348	0.44684	6.89562	6.25054	33.32372
23. 50% of adjustment: ½ (lines 21 + 22)	0.04624	0.32706	1.41950	0.72822	29.07525	53.01438	2.15068	0.45872	6.84544	6.16483	34.20567

## NOTE TO ANNEX B

The above calculation is done for interim calculations of equalization only. In such calculations the tax or revenue base data will lag the population data by one, two or even three years, i.e., it will relate to a period of time one, two or three years earlier when population shares of the provinces may have been different. In fact this has been found to be a significant matter because: (a) there has been a persistent trend for population shares of lower income provinces to decline over time and (b) in the personal income and consumption tax fields there tends to be a direct relationship between change in population and tax base shares.

The adjustment is effected by adjusting each province's revenue base share for one-half the change in population share during the period that the revenue base lags the population data. To cite one example from the above table in the case of general and miscellaneous sales taxes, the revenue base data are for 1969 and the population data are for 1972, i.e., there is a three year lag. During this period of lag, the estimated Saskatchewan share of population is shown to decline from 4.56363 per cent (line 2) to 4.19383 per cent (line 1). The Saskatchewan share of population in 1972 therefore represents  $0.91897$  that of 1969,  $\left[ \frac{4.19383}{4.56363} = 0.91897 \right]$  as shown in line 4. Applying

this percentage to the Saskatchewan share of 1969 base for general and miscellaneous consumption taxes, reduces the share of 3.69633 (line 9) to 3.39682 (line 10). In order to take a 50 per cent adjustment, a straight average is used for the percentages shown on lines 9 and 10, i.e. 3.54658, as shown on line 11.

$$\left[ \frac{3.69633 + 3.39682}{2} = 3.54658 \right]$$

APPENDIX "B"

TABLES AND CHARTS  
SHOWING REVENUES AND EXPENDITURES  
BY LEVEL OF GOVERNMENT  
ON A NATIONAL ACCOUNTS BASIS  
1926-1970



TABLE 1  
ALLOCATION OF REVENUES BY LEVEL OF GOVERNMENT ON A NATIONAL ACCOUNTS  
BASIS, 1926-1970

Period	Year	Federal Revenues from own Sources	Provincial- Municipal Revenues from own Sources	Revenues Total Revenues from own Sources	Federal Share of Total	Provincial- Municipal Share of Total
		(\$000'000)	(\$000'000)	(\$000'000)	(%)	(%)
Pre-Tax Rental Era	1926	370	437	807	45.8	54.2
	1927	385	460	845	45.6	54.4
	1928	429	489	918	46.7	53.3
	1929	396	537	933	42.4	57.6
	1930	271	538	809	33.5	66.5
	1931	227	508	735	30.9	69.1
	1932	211	487	698	30.2	69.8
	1933	245	467	712	34.4	65.6
	1934	294	489	783	37.5	62.5
	1935	310	540	850	36.5	63.5
	1936	399	580	979	40.8	59.2
	1937	460	598	1,058	43.5	56.5
	1938	411	610	1,021	40.3	59.7
	1939	455	619	1,074	42.4	57.6
	1940	856	674	1,530	55.9	44.1
Tax Rental Era	1941	1,493	705	2,198	67.9	32.1
	1942	2,010	662	2,672	75.2	24.8
	1943	2,435	693	3,128	77.8	22.2
	1944	2,576	721	3,297	78.1	21.9
	1945	2,431	791	3,222	75.5	24.5
	1946	2,595	895	3,490	74.4	25.6
	1947	2,733	1,082	3,815	71.6	28.4
	1948	2,667	1,262	3,929	67.9	32.1
	1949	2,645	1,335	3,980	66.5	33.5
	1950	2,962	1,471	4,433	66.8	33.2
	1951	4,099	1,706	5,805	70.6	29.4
	1952	4,616	1,781	6,397	72.2	27.8
	1953	4,734	1,881	6,615	71.6	28.4
	1954	4,531	1,995	6,526	69.4	30.6
	1955	4,926	2,212	7,138	69.0	31.0
Post Rental Era	1956	5,610	2,521	8,131	69.0	31.0
	1957	5,579	2,923	8,502	65.6	34.4
	1958	5,311	3,153	8,464	62.7	37.3
	1959	6,035	3,577	9,612	62.8	37.2
	1960	6,406	3,839	10,245	62.5	37.5
	1961	6,662	4,168	10,830	61.5	38.5
	1962	6,855	5,057	11,912	57.5	42.5
	1963	7,191	5,482	12,673	56.7	43.3
	1964	8,209	6,102	14,311	57.4	42.6
	1965	8,951	7,032	15,983	56.0	44.0
Post Rental Era	1966	9,888	8,123	18,011	54.9	45.1
	1967	10,752	9,262	20,014	53.7	46.3
	1968	11,966	10,723	22,689	52.7	47.3
	1969	14,091	12,276	26,367	53.4	46.6
	1970	15,054	13,745	28,799	52.3	47.7

TABLE 2

ALLOCATION OF EXPENDITURES BY LEVEL OF GOVERNMENT ON A NATIONAL ACCOUNTS BASIS, 1926-1970:  
(A) "INITIAL EXPENDITURES" (PRIOR TO INTERGOVERNMENTAL TRANSFERS) AND  
(B) "FINAL EXPENDITURES" (AFTER INTERGOVERNMENTAL TRANSFERS)

Period	Year	Initial Expenditures (before transfers)		Final Expenditures (after transfers)		Total Expenditures	Shares of Initial Expenditures		Shares of Final Expenditures	
		Federal (1) (\$000'000)	Provincial- Municipal (2) (\$000'000)	Federal (3) (\$000'000)	Provincial- Municipal (4) (\$000'000)	(cols. 1 + 2 or 3 + 4) (5) (\$000'000)	Federal (col. 1 ÷ 5) (6) (%)	Provincial- Municipal (col. 2 ÷ 5) (7) (%)	Federal (col. 3 ÷ 5) (8) (%)	Provincial- Municipal (col. 4 ÷ 5) (9) (%)
Pre-Tax Rental Era	1926	302	448	287	463	750	40.3	59.7	38.3	61.7
	1927	317	481	301	497	798	39.7	60.3	37.7	62.3
	1928	324	510	307	527	834	38.8	61.2	36.8	63.2
	1929	340	582	323	599	922	36.9	63.1	35.0	65.0
	1930	367	663	342	688	1,030	35.7	64.3	33.2	66.8
	1931	387	659	331	715	1,046	37.0	63.0	31.6	68.4
	1932	365	612	303	674	977	34.4	65.6	31.0	69.0
	1933	359	529	303	585	888	40.4	59.6	34.1	65.9
	1934	387	584	316	655	971	39.9	60.1	32.5	67.5
	1935	431	590	357	664	1,021	42.2	57.8	35.0	65.0
	1936	436	576	345	667	1,012	43.1	56.9	34.1	65.9
	1937	451	639	346	744	1,090	41.4	58.6	31.7	68.3
	1938	498	671	412	757	1,169	42.6	57.4	35.2	64.8
	1939	457	660	378	739	1,117	40.9	59.1	33.8	66.2
	1940	987	601	917	671	1,588	62.2	37.8	57.7	42.3
	1941	1,523	616	1,469	670	2,139	71.2	28.8	68.7	31.3
Tax Rental Era	1942	3,723	505	3,573	655	4,228	85.1	14.9	84.5	15.5
	1943	4,340	531	4,192	679	4,871	89.1	10.9	86.1	13.9
	1944	5,274	580	5,119	735	5,854	90.1	9.9	87.4	12.6
	1945	4,292	650	4,135	807	4,942	86.8	13.2	83.7	16.3
	1946	2,978	787	2,804	961	3,765	79.1	20.9	74.5	25.5
	1947	2,117	1,006	1,925	1,198	3,123	67.8	32.2	61.6	38.4
	1948	1,934	1,305	1,784	1,455	3,239	59.7	40.3	55.1	44.9
	1949	2,134	1,476	1,944	1,668	3,610	59.1	40.9	53.9	46.1
	1950	2,336	1,567	2,085	1,818	3,903	59.9	40.1	53.4	46.6
	1951	3,148	1,851	2,889	2,110	4,999	63.0	37.0	51.8	48.2
	1952	4,353	1,919	3,985	2,287	6,272	69.4	30.6	63.5	36.5
	1953	4,610	1,949	4,198	2,361	6,559	70.3	29.7	64.0	36.0
	1954	4,585	2,221	4,155	2,651	6,806	67.4	32.6	61.0	39.0
	1955	4,723	2,454	4,233	3,004	7,177	65.8	34.2	59.5	40.5
	1956	5,018	2,847	4,533	3,332	7,865	63.8	36.2	57.6	42.4
Post-Rental Era	1957	5,350	3,192	4,829	3,718	8,542	62.6	37.4	56.5	43.5
	1958	6,049	3,464	5,386	4,127	9,513	63.6	36.4	56.6	43.4
	1959	6,312	3,839	5,432	4,719	10,151	62.2	37.8	53.5	46.5
	1960	6,684	4,280	5,690	5,274	10,964	61.0	39.0	51.9	48.1
	1961	7,064	4,611	5,936	5,739	11,675	60.8	39.5	50.8	49.2
	1962	7,365	5,291	6,231	6,425	12,656	58.2	41.8	49.2	50.8
	1963	7,488	5,809	6,319	6,978	13,297	56.3	43.7	47.5	52.5
	1964	7,927	6,276	6,675	7,528	14,203	55.8	44.2	47.0	53.0
	1965	8,410	7,188	6,976	8,622	15,598	53.9	46.1	44.7	55.3
	1966	9,593	8,542	7,931	10,204	18,135	52.9	47.1	43.7	56.3
	1967	10,837	9,663	8,845	11,655	20,500	52.9	47.1	43.1	56.9
	1968	11,999	10,718	9,547	13,170	22,717	52.8	47.2	42.0	58.0
	1969	13,318	12,038	10,590	14,766	25,356	52.5	47.5	41.8	58.2
	1970	15,066	13,838	11,669	17,235	28,904	52.1	47.9	40.4	59.6

TABLE 3

TRANSFERS FROM THE FEDERAL GOVERNMENT TO PROVINCIAL AND MUNICIPAL GOVERNMENTS, AS A PERCENTAGE OF FEDERAL REVENUES FROM OWN SOURCES AND AS A PERCENTAGE OF PROVINCIAL-MUNICIPAL REVENUES FROM OWN SOURCES, NATIONAL ACCOUNTS DATA, 1926 - 1970

	(1)	(2)	(3)	(4)	(5)
	Federal Transfers to Other Levels of Government	Total Federal Revenues From Own Sources	Provincial- Municipal Revenues From Own Sources	Federal Transfers as a % of Federal Revenues From Own Sources	Provincial-Municipal Transfers Received as a % of Provincial- Municipal Revenues From Own Sources
	\$000,000	\$000,000	\$000,000	(Col. 1 ÷ 2) %	(Col. 1 ÷ 3) %
Pre-Tax Rental Era					
1926	15	370	437	4.1	3.4
1927	16	385	460	4.2	3.5
1928	17	429	489	4.0	3.5
1929	17	396	537	4.3	3.2
1930	25	271	538	9.2	4.6
1931	56	227	508	24.7	11.0
1932	62	211	487	29.4	12.7
1933	56	245	467	22.9	12.0
1934	71	294	489	24.1	14.5
1935	74	310	540	23.9	13.7
1936	91	399	580	22.8	15.7
1937	105	460	598	22.8	17.6
1938	86	411	610	20.9	14.1
1939	79	455	619	17.4	12.8
1940	70	856	674	8.2	10.4
1941	54	1,493	705	3.6	7.7
Tax Rental Era					
1942	150	2,010	662	7.5	22.7
1943	148	2,435	693	6.1	21.4
1944	155	2,576	721	6.0	21.5
1945	157	2,431	791	6.5	19.8
1946	174	2,595	895	6.7	19.4
1947	192	2,733	1,082	7.0	17.7
1948	150	2,667	1,262	5.6	11.9
1949	187	2,645	1,335	7.1	14.0
1950	251	2,962	1,471	8.5	17.1
1951	259	4,099	1,706	6.3	15.2
1952	368	4,616	1,781	8.0	20.7
1953	412	4,734	1,881	8.7	21.9
1954	430	4,531	1,995	9.5	21.6
1955	450	4,926	2,212	9.1	20.3
1956	485	5,610	2,521	8.6	19.2
1957	521	5,579	2,923	9.3	17.8
1958	663	5,311	3,153	12.5	21.0
1959	880	6,035	3,577	14.6	24.6
1960	994	6,406	3,839	15.5	25.9
1961	1,128	6,662	4,168	16.9	27.1
Post-Rental Era					
1962	1,134	6,855	5,057	16.5	22.4
1963	1,169	7,191	5,482	16.3	21.3
1964	1,252	8,209	6,102	15.3	20.5
1965	1,434	8,951	7,032	16.0	20.4
1966	1,662	9,888	8,123	16.8	20.5
1967	1,992	10,752	9,262	18.5	21.5
1968	2,452	11,966	10,723	20.5	22.9
1969	2,728	14,091	12,276	19.4	22.2
1970	3,397	15,054	13,745	22.6	24.7



CHART 1  
FEDERAL AND PROVINCIAL-MUNICIPAL SHARES OF TOTAL REVENUES

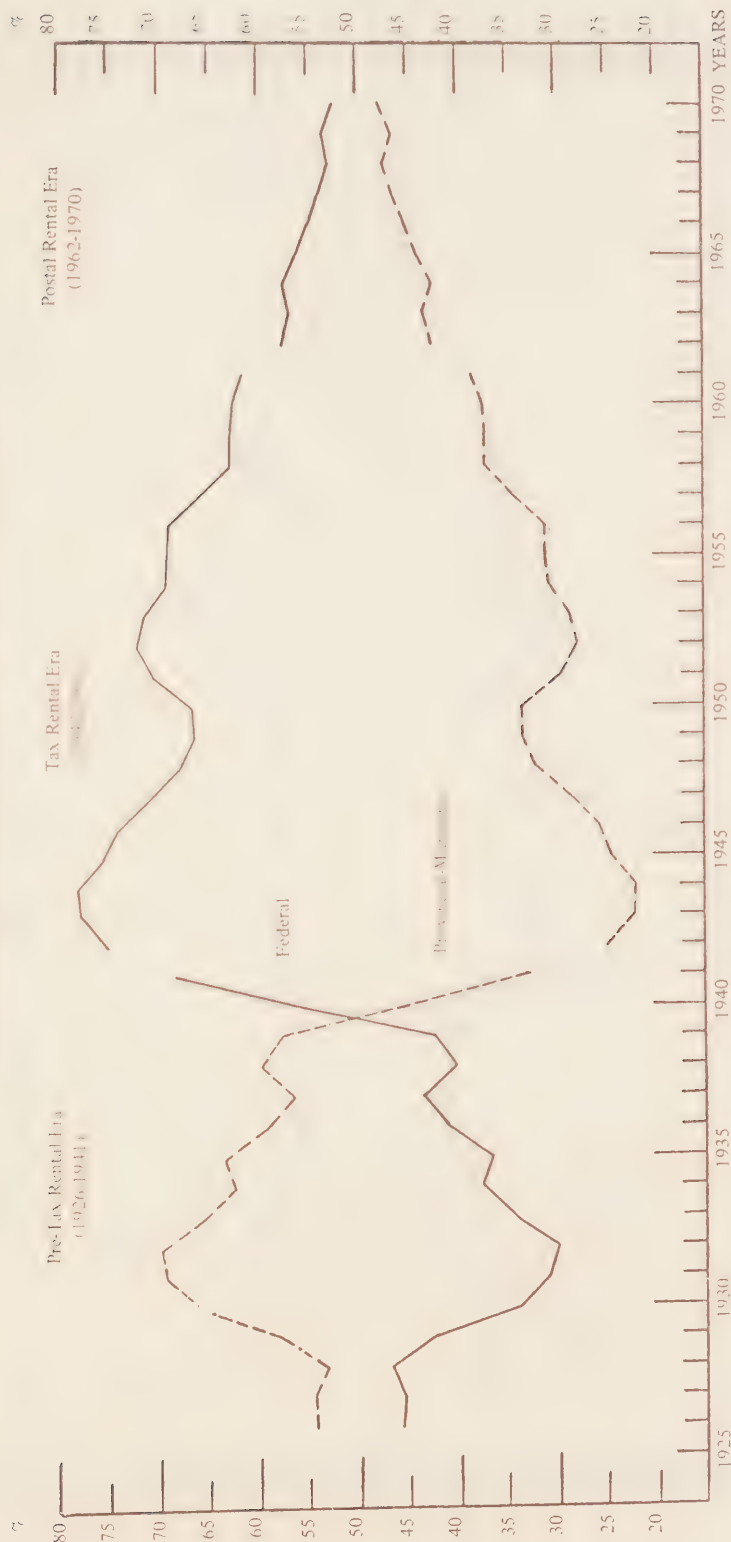


CHART 2

ALLOCATION OF INITIAL EXPENDITURES BY LEVEL OF GOVERNMENT ON A NATIONAL ACCOUNTS BASIS, 1926-1970

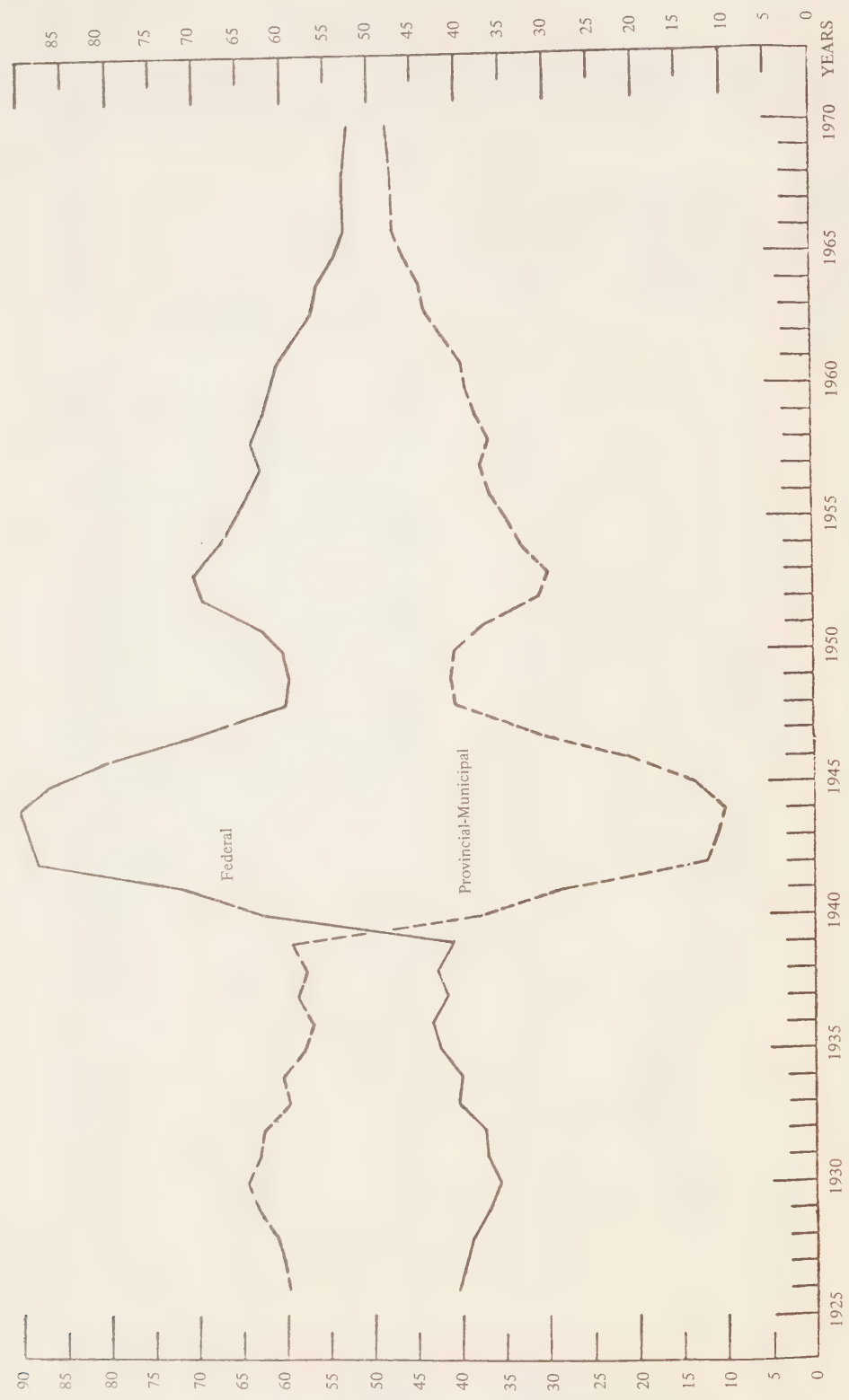
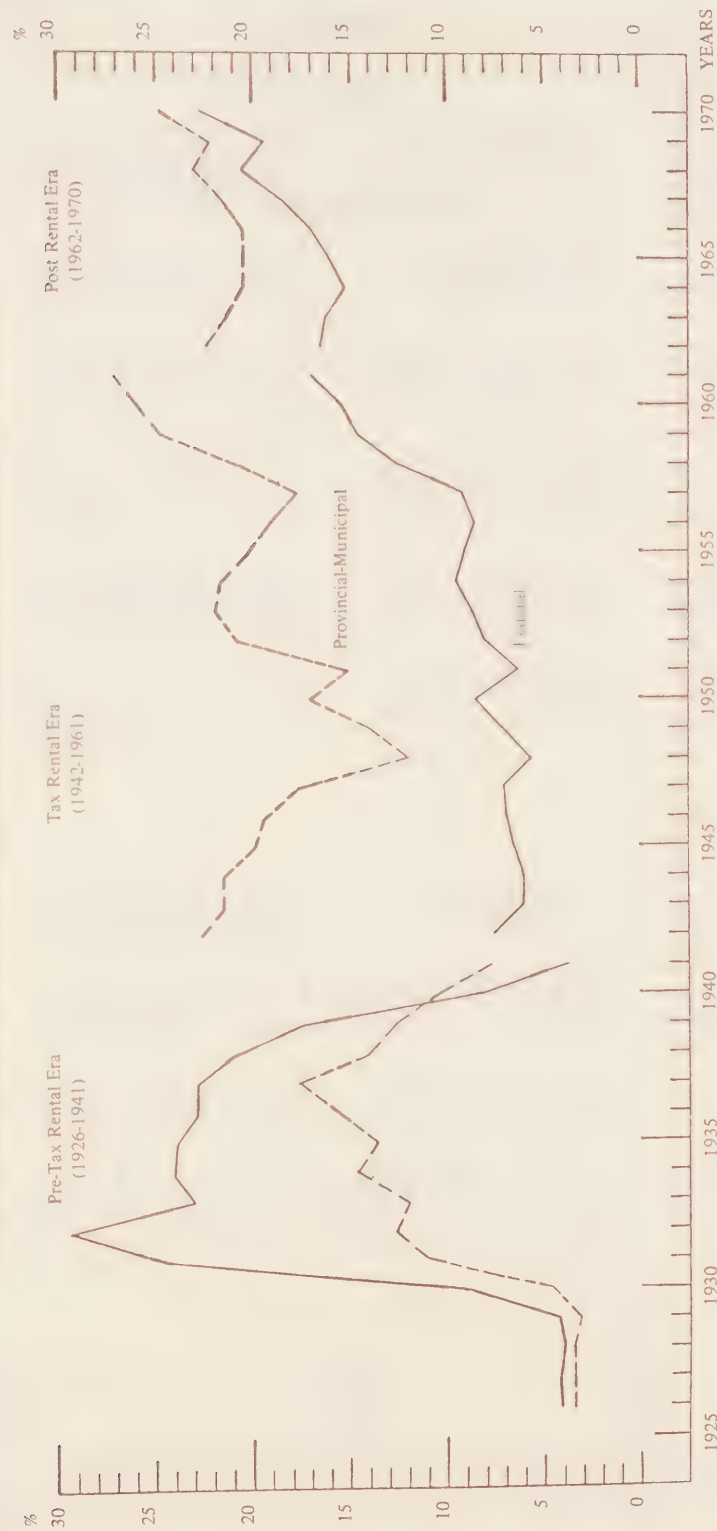


Chart 3  
TRANSFERS FROM THE FEDERAL GOVERNMENT TO PROVINCIAL AND MUNICIPAL GOVERNMENTS, AS A  
PERCENTAGE OF FEDERAL REVENUES AND OF PROVINCIAL-MUNICIPAL REVENUES FROM OWN SOURCES.





APPENDIX "C"

TABLES RELATING

TO

TAX COLLECTION AGREEMENTS

Table 1  
INDIVIDUAL INCOME TAX COLLECTIONS PAYMENTS ON ACCOUNT AND FINAL ADJUSTMENTS  
IN RESPECT OF THE FOLLOWING TAXATION YEARS 1962 to 1972  
(in thousands of dollars)

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Total	General Federal Tax abated %
1. Payments on Account a. re: taxation years												
1962	\$ 3,056	506	6,611	4,242	—	150,021	20,380	14,292	24,000	35,995	261,603	16
1963	\$ 3,488	577	7,246	5,413	—	175,528	22,890	16,053	27,395	41,087	297,977	17
1964	\$ 4,080	786	9,469	6,211	—	200,226	23,628	19,367	30,343	41,797	343,967	18
1965	\$ 5,924	1,173	13,520	9,036	—	284,999	33,084	27,369	41,634	68,933	483,842	21
1966	\$ 8,113	1,606	18,315	12,633	—	392,588	42,549	37,436	56,322	95,528	665,095	24
1967	\$ 11,542	2,349	26,013	18,114	—	554,743	58,849	50,374	78,663	138,408	936,133	28
1968	\$ 13,480	2,678	29,406	20,891	—	640,386	64,064	56,479	85,710	161,256	1,084,550	28
1969	\$ 18,319	3,321	37,063	33,507	—	764,250	79,801	69,220	128,007	194,032	1,321,820	28
1970	\$ 23,904	3,799	43,681	40,811	—	896,325	108,101	73,707	163,542	223,446	1,517,426	28
1971	\$ 27,096	4,764	51,775	46,983	—	1,012,787	121,538	69,437	188,234	263,211	1,788,427	28
1972	\$ 32,649	6,267	78,246	54,500	—	1,116,627	139,695	78,128	220,680	298,879	2,067,671	(30.5)*
2. Final Adjustments a. re: taxation years												
1962	\$ -132	+57	+169	-258	—	-9,158	1,447	+23	2,269	-1,729	-14,744	
1963	\$ +43	+122	+508	-41	—	-4,384	-1,341	+1,227	-2,591	+26	-6,431	
1964	\$ +229	+67	+251	+422	—	+7,405	-699	+2,581	-438	+2,966	+12,784	
1965	\$ +70	+43	-18	+342	—	+1,249	-2,594	+815	-793	+3,034	+2,168	
1966	\$ +221	+54	-138	+265	—	-3,740	-2,121	-1,787	+1,129	+4,374	-1,743	
1967	\$ +349	-10	-71	-362	—	-20,110	+591	-1,501	+4,625	-1,465	-17,230	
1968	\$ +1,027	+38	+1,789	+615	—	-2,163	+1,425	-5,308	+5,788	-3,426	-265	
1969	\$ +519	-22	+1,991	-843	—	-69,986	-2,038	-18,280	+2,617	+4,453	-1,644	
1970	\$ +474	+176	+2,736	-246	—	-1,964	-3,696	-17,500	+1,056	+474	-18,290	
3. Total Payments on Account and Final Adjustments a. re: taxation years												
1962	\$ 2,924	563	6,780	4,484	—	142,863	15,933	14,315	21,731	34,266	246,859	
1963	\$ 3,531	699	8,054	5,372	—	169,144	21,549	17,280	24,804	41,113	291,546	
1964	\$ 4,309	853	9,720	6,933	—	207,631	24,929	21,948	29,905	50,763	356,751	
1965	\$ 5,994	1,216	13,502	9,378	—	286,248	30,291	28,384	40,841	71,987	488,010	
1966	\$ 8,334	1,660	18,177	12,898	—	388,848	40,428	35,649	57,456	99,902	663,352	
1967	\$ 11,891	2,339	25,942	18,476	—	544,633	56,440	48,873	83,288	137,013	918,895	
1968	\$ 14,507	2,716	31,195	21,506	—	638,423	65,459	51,174	99,445	159,830	1,084,285	
1969	\$ 18,838	3,299	39,054	32,664	—	774,206	77,766	80,940	130,924	198,485	1,326,176	
1970	\$ 24,378	3,975	46,417	40,625	—	894,411	104,308	56,407	164,598	223,920	1,559,136	

\*Under tax reform a provincial rate of 30.5 points is equivalent to 28 points prior to tax reform.

Table 2

Corporation Income Tax Collections  
Payments on Account and Federal Adjustments  
in respect of the following taxation years  
1966 to 1972

(in thousands of dollars)

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Total	General Federal Tax Abated %
<b>1. Payments on Account</b> a. re: taxation years												
1962	\$ 4,782	1,475	7,318	5,841	—	—	-16,810	10,842	25,922	33,521	106,511	9
1963	\$ 4,955	1,529	7,584	6,053	—	—	-17,420	11,236	26,862	34,737	110,376	9
1964	\$ 5,019	600	6,925	5,731	—	—	16,334	11,237	25,413	36,912	108,171	9
1965	\$ 6,874	827	7,985	6,574	—	—	20,430	14,904	30,702	46,932	135,228	9
1966	\$ 8,729	838	7,908	7,068	—	—	21,921	14,896	29,714	47,816	138,890	9
1967	\$ 7,667	933	8,881	7,586	—	—	22,981	15,190	34,051	63,835	161,124	10
1968	\$ 9,046	984	10,283	8,056	—	—	24,110	17,385	40,892	55,105	165,861	10
1969	\$ 10,164	1,257	12,041	9,514	—	—	29,312	21,831	56,063	71,671	211,853	10
1970	\$ 8,884	1,066	11,030	8,470	—	—	30,827	17,733	52,447	70,506	200,963	10
1971	\$ 8,271	1,320	12,463	9,729	—	—	32,203	15,148	57,643	83,113	219,890	10
1972	\$ 10,505	1,575	14,208	10,191	—	—	37,605	15,207	70,140	77,487	236,918	10
<b>2. Final Adjustments</b> a. re: taxation years												
1962	\$ -1,097	-937	-1,114	-1,134	—	—	-2,455	-1,347	-3,169	-634	-11,887	
1963	\$ +628	-858	-1,098	-713	—	—	-826	+870	-1,925	+3,116	-806	
1964	\$ +2,421	+114	-184	+294	—	—	+2,351	+1,460	-85	+3,749	+10,120	
1965	\$ -1,156	-61	-700	-351	—	—	-1,387	-2,317	-2,769	+5,646	-3,095	
1966	\$ -2,167	+18	+1,043	-55	—	—	-722	+391	+5,881	+198	+4,587	
1967	\$ -779	+70	+914	+114	—	—	+720	+2,211	+9,866	-6,942	+5,274	
1968	\$ -701	+107	+1,006	+612	—	—	+2,375	+697	+7,904	+14,836	+26,836	
1969	\$ -1,613	+126	+1,022	+683	—	—	-752	5,954	+1,014	+12,410	+6,936	
1970	\$ +450	+329	+1,561	+561	—	—	+1,291	-4,257	+9,090	-2,426	+6,599	
<b>3. Total Payments on Account and Final Adjustments</b> a. re: taxation years												
1962	\$ 3,685	538	6,204	4,707	—	—	14,355	9,495	22,753	32,887	94,624	
1963	\$ 5,583	671	6,486	5,340	—	—	16,594	12,106	24,937	37,853	109,570	
1964	\$ 7,440	714	6,741	6,025	—	—	18,685	12,697	25,328	40,661	118,291	
1965	\$ 5,718	766	7,285	6,223	—	—	19,043	12,587	27,933	52,578	132,133	
1966	\$ 6,562	856	8,951	7,013	—	—	21,199	15,287	35,595	48,014	143,477	
1967	\$ 6,888	1,003	9,795	7,700	—	—	23,701	17,401	43,017	56,893	166,398	
1968	\$ 8,345	1,091	11,289	8,668	—	—	26,485	18,082	48,796	69,941	192,697	
1969	\$ 8,551	1,383	13,063	10,197	—	—	28,560	15,877	57,077	84,081	218,789	
1970	\$ 9,334	1,395	12,591	9,031	—	—	32,118	13,476	61,537	68,080	207,562	









FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT  
1972

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON  
**BANKING, TRADE AND COMMERCE**

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 2

TUESDAY, MARCH 28, 1972

Complete Proceedings on Bill C-169,  
Intituled:  
"An Act to amend the Income Tax Act"

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Hayden
Beaubien	Hays
Benidickson	Isnor
Blois	Lang
Bourget	Langlois
Burchill	Macnaughton
Carter	*Martin
Choquette	Molgat
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
*Flynn	White—(29)
Gélinas	
Grosart	
Haig	

\**Ex officio* members

30 Members (Quorum 7)

# Order of Reference

Extract from the Minutes of the Proceedings of the Senate,  
March 27, 1972:

"Ordered, That the Order of the Day for the second reading of the Bill C-169, intituled: "An Act to amend the Income Tax Act" be brought forward.

Pursuant to the Order of the Day, the Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Bill C-169, intituled: "An Act to amend the Income Tax Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden, moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Tuesday, March 28, 1972.

(3)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine the following:

Bill C-169, "An Act to amend the Income Tax Act".

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Bourget, Burchill, Carter, Connolly (*Ottawa West*), Cook, Flynn, Isnor, Smith and Welch. (12)

*WITNESS*

*Department of Finance:*

Mr. A. E. J. Thompson,  
Director,  
Corporations and Business Income Division,  
Tax Policy Division.

After discussion and upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.35 a.m. the Committee adjourned to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee.*



# Report of the Committee

Tuesday, March 28, 1972.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-169, intituled: "An Act to amend the Income Tax Act", has in obedience to the order of reference of March 27, 1972, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,  
*Chairman.*



# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Tuesday, March 28, 1972

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-169, to amend the Income Tax Act, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we have Mr. Thompson here this morning to answer questions. He is a director in the Tax Policy Branch, the Department of Finance.

Mr. Thompson, in clause 1 of the bill, which deals with the reduction in the individual tax, there are two elements. The deduction is calculated. One is "the tax otherwise payable under this Part", which refers to section 123 of the act, and also "any amount added to the tax otherwise payable under this part by the individual for the year, pursuant to subsection (1)." That is the 30 per cent on income earned outside a province. Would you illustrate how that would work? Take the man's tax otherwise payable under section 117, which is the individual rate, at whatever his marginal rate is. Let us assume that his tax amounts to \$2,000. Let us assume that he lives in a province other than Ontario, and that some of his income is earned in a province other than where he lives. How would the second part fit into this, in a calculation?

**Mr. A. E. J. Thompson, Director, Corporations and Business Income Division, Tax Policy Branch, Department of Finance:** Mr. Chairman and honourable senators, in general terms, first of all, the tax added that is referred to in paragraph (b) is the tax that would apply, say, in the Northwest Territories, in lieu of the standard provincial tax of 30.5 per cent. If, in your example, half of the individual's income were earned in the Northwest Territories, then this 30 per cent additional tax would apply to half the tax you referred to; that is, \$2,000.

**The Chairman:** If his marginal rate is 30 per cent, that would be another 30 per cent?

**Mr. Thompson:** It would be 30 per cent on his tax. It would not be on his marginal rate.

**The Chairman:** It would be 30 per cent on the tax that would be payable in relation to the income from the Northwest Territories.

**Mr. Thompson:** That is right.

**The Chairman:** Yes.

**Mr. Thompson:** That would be the additional tax. Then the 3 per cent abatement under Bill C-169 would apply to that.

**The Chairman:** So the 3 per cent would apply not only to the amount you arrive at by virtue of applying the marginal rate but also the amount you arrive at by applying the 30 per cent to his income in the Northwest Territories.

**Mr. Thompson:** That is right.

**The Chairman:** We were also told that Ontario had agreed to go along with the federal reduction of 3 per cent. For a resident of Ontario that means that the 3 per cent reduction is calculated only on what his marginal rate produces in the way of federal taxes.

**Mr. Thompson:** You are speaking of the Ontario income tax liability?

**The Chairman:** Yes. I am speaking about an Ontario resident and I am applying this 3 per cent reduction under clause 1. If Ontario has said it will go along with the federal 3 per cent reduction, then this means that the Ontario resident would get a 3 per cent reduction on the amount of his federal tax.

**Mr. Thompson:** And also on his Ontario personal income tax.

**The Chairman:** Yes. I have it straight now. But in any other province the resident would be paying income tax on any income that he earned in a province other than where he was living.

**Mr. Thompson:** Well, in the other provinces there would be this 3 per cent reduction in the federal income tax, but there would be just the standard provincial personal tax. Because those provinces, other than Ontario, have not enacted any 3 per cent reduction, their usual rate just applies. So that, for example, if the standard rate of personal tax in an agreeing province was 30.5 per cent of the federal tax, that rate would continue to apply in 1972 without the 3 per cent reduction.

**The Chairman:** Oh, yes.

**Senator Flynn:** If I pay \$2,000 to the federal treasury, I get the reduction of 3 per cent. That is \$60. If I pay the same amount to the Quebec treasury, and I think we pay approximately the same amount in Quebec, I do not get the reduction of 3 per cent on the tax payable to the provincial treasury.



**Mr. Thompson:** That is correct, because Quebec has not enacted any similar reduction.

**Senator Flynn:** So the amount payable under this part is really the amount payable to the federal treasury after deducting all you are entitled to deduct to account for the provincial tax.

**Mr. Thompson:** Well, under the new act the provincial tax is calculated as a percentage of the federal tax; but, essentially, that is right.

**Senator Flynn:** Yes. That is why I say that you deduct it before you apply the 3 per cent. Ontario has agreed that on the part which is deductible from the federal tax it would be paid of the Ontario government and they would allow also a 3 per cent reduction. Is that it?

**Mr. Thompson:** That is the effect. The mechanics are not quite the way you describe it, but that is the effect of it.

**The Chairman:** What I was trying to get at was the real application of section 120, which is referred to in clause 1. Section 120 says that:

120. (1) There shall be added to the tax otherwise payable under this Part by an individual for a taxation year an amount that bears the same relation to 30 per cent of the tax otherwise payable under this Part by him for the year that

(a) his income for the year, other than his income earned in the year in a province,

bears to

(b) his income for the year.

So it would be a percentage of his provincial income over his total income, and that is in addition to his tax where the income is not earned in a province. Now, do you say, Mr. Thompson, that "province" there applies only to the Yukon and Northwest Territories?

**Mr. Thompson:** The Yukon and Northwest Territories are the jurisdictions to which this section applies, yes.

**The Chairman:** If, for example, I lived in Manitoba and I had 50 per cent of my income in Saskatchewan, I would pay the federal rate on my total income and I would get a 3 per cent reduction. Then I would pay provincial taxes in Manitoba and Saskatchewan, on whatever portion of the income was there, with no reduction on that part of it.

**Mr. Thompson:** That is right.

**Senator Flynn:** Mr. Chairman, did I understand that you were reading subsection (1), or were you interpreting it as applying only to the Yukon and Northwest Territories?

**The Chairman:** I read it, and then I asked Mr. Thompson if it applied only to those two jurisdictions. It does not say that in the section.

**Senator Flynn:** It does not say that? It is by inference only that we know that it applies to the Yukon and Northwest Territories?

**The Chairman:** Mr. Thompson, what is it that makes you say the section applies only to the Yukon and Northwest Territories?

**Mr. Thompson:** Well, paragraph (a) of that subsection (1) refers to income other than income earned in a province. Then, for this purpose, "province" is defined not to include the Northwest Territories and the Yukon.

**Senator Flynn:** Very well.

**The Chairman:** I expect we have cleared up that point. Are there any other questions?

**Senator Carter:** I am not quite clear on the mechanics of it. You pay a federal income tax, is that it? You calculate the federal income tax and deduct 3 per cent of your federal income tax, and your provincial tax then is based on the balance? How do you calculate your provincial tax?

**Mr. Thompson:** The provincial tax is based on the federal tax before the 3 per cent is deducted.

**Senator Carter:** Before it is deducted?

**Mr. Thompson:** That is right. So the provincial tax stays the same unless the province takes its own action.

**Senator Flynn:** May I ask what is the amount that the federal treasury will lose by this 3 per cent? What is it estimated at?

**The Chairman:** Do you mean on the individual?

**Senator Flynn:** Yes.

**Senator Cook:** It will be \$400 million in two years.

**The Chairman:** The figures I gave last night were \$125 million for the 1971-72 year and \$225 million for the fiscal year 1972-73, for a total of \$350 million.

**Senator Flynn:** Why is the first year \$125 million?

**The Chairman:** Because it is only half a year in 1971-72.

**Senator Flynn:** And that represents 3 per cent? So what is the total amount expected to be collected under the new Income Tax Act?

**Senator Bourget:** It would be about \$8 billion.

**The Chairman:** No.

**Senator Bourget:** If you multiply \$225 million by 33 it gives you just about \$7.5 billion.

**The Chairman:** The 3 per cent represents \$350 million.

**Senator Flynn:** I thought you said it was \$225 million.

**The Chairman:** It is \$225 million for the second year, and \$125 million for the first year.

**Senator Cook:** You are adding the two years together. He wants to know what it is in one year.

**The Chairman:** In one year?

**Senator Bourget:** It is just about \$7.5 billion.

**The Chairman:** Well, first of all, it is only a guess. There are certain periods in the year when more money comes in than in other periods. You see that in the reflection of corporate taxes, for example.

**Senator Flynn:** I was interested in finding out what is going to be collected in 1972 under the new Income Tax Act, and what was collected, say, in 1970 or 1971, whichever are the latest figures that you have.

**The Chairman:** Well, then you would take the \$225 million, which is the second full year.

**Senator Bourget:** And you would get \$7.5 billion.

**Senator Flynn:** I agree that it would be between \$7 billion and \$8 billion, but how does that compare with 1970-71?

**Mr. Thompson:** I do not have those figures on hand, senator. They would be in the budget White Paper.

**The Chairman:** Would you make a point of getting those figures for me, and just drop me a note so that I can send out a memo to the committee?

**Senator Flynn:** I would be interested in knowing whether there is a real reduction in income tax under the new system or new act.

**Senator Cook:** The yield could remain the same, and yet there could still be a decrease.

**The Chairman:** It is supposed to remain relatively the same.

**Senator Flynn:** That is why I am interested in this.

**The Chairman:** You note my language: "supposed to remain relatively the same." The volume may go up, but the relationship is supposed to remain the same.

**Senator Flynn:** Perhaps the witness could also supply similar figures with respect to corporate income tax.

**The Chairman:** Yes. Could you give us both sets of figures, Mr. Thompson? You can drop me a note and I can distribute it to the committee.

**Mr. Thompson:** Yes.

**Senator Cook:** In other words, the proportion of the Gross National Product should go down although the yield might not be as much. In theory the proportion of the GNP that the government is taking should be a little less, although the actual yield may be a little more since the GNP is going up all the time.

**The Chairman:** Are we through with that particular question?

Then we move into the area of the 7 per cent reduction in the corporate tax otherwise payable, and I suppose the main calculation is an easy one to make, in the sense that you determine what your corporation tax is and you have a reduction of 7 per cent. Is it when you come to the refundable portion, both of capital gains tax and income tax, that you run into problems, and Senator Bourget and I know something about them now. I am not sure yet that the procedure we used to arrive at a figure that agreed with the figure in the statute is the correct way, but it reached the correct result.

**Senator Cook:** Is the department going to issue all companies with a slide-rule?

**The Chairman:** Mr. Thompson, in dealing with the consequential amendments, there are really two of them in clause 3 and clause 4. Would you address yourself to clause 3, which is the consequential amendment in relation to the refundable tax connected with investment income of investment companies?

**Mr. Thompson:** Mr. Chairman, clause 3 relates principally to corporations which are classified under the act as private corporations. The intention of the refund mechanism is that once interest income, for example, of a private corporation is passed out as a dividend, there would be no corporate tax as such levied on that income in the end result. First of all, the corporation pays 50 points of tax, but then at the time they distribute they get a refund of half of that, and are left with 25 points of tax at the corporate level for which the dividend tax credit provides offsetting relief to the individual shareholder. So, the individual who puts his investment in a corporation for other purposes has the same eventual tax burden as if he held the investment directly himself. That is the intention of the mechanism.

Now, with the 7 per cent reduction in the corporate tax—the 50 points—it necessarily follows that the refund has to be reduced by 7 per cent as well. That is why you find in clause 3 that the refund is 93 per cent of what it otherwise would have been.

**The Chairman:** It spells it out, because you may have cases of corporations having investment periods other than calendar years, and that is why you have several of the subclauses appearing in clause 3. This covers how to calculate when it is part of one year and part of another year so the rate of reduction is constant.

**Senator Flynn:** And it applies from January 1, 1972.

**The Chairman:** Yes, but the taxation year of a company that starts on July 1, 1971 would end on June 30, 1972, so that you have a portion of both years in there. That is why they have gone to the extent they have in clause 3 to spell that out. It is not complicated; in fact, it is easy to understand that that is the purpose of it; but if you were asked to put a name on that 93 per cent, what would you call it?

**Mr. Thompson:** Well, in a way it is half of the reduced federal tax, but I would not want to put a simple name on it. I would be interested in your simple name for it, if you have one.

**The Chairman:** Well, I am asking you to name it. What you say here is 93 per cent of that portion of the amount so determined in section 129, but what is the 93 per cent when you get it? What do we call it?

**Mr. Thompson:** Well, it is easier to describe the amount to which the 93 per cent is applied. It is half the corporate tax on the private corporation which is refundable; in other words, it is a refundable corporate tax to a private corporation.

**The Chairman:** Let us take an investment company with an income of \$10,000. Now it pays out \$10,000 in dividends.

**Mr. Thompson:** It has interest income of \$10,000?

**The Chairman:** Yes, and it pays it out in dividends.

**Mr. Thompson:** Well, we will have to go through the tax it pays first. It has \$10,000 of interest income and its gross corporate tax liability is \$5,000. Then, without this reduction, it has a refundable tax of half that, which is \$2,500, so that the net tax by the time it distributes is \$2,500, so it can pay a dividend of \$7,500. If it just has one individual resident shareholder, let us say, in a 50 per cent bracket, he would have a dividend of \$7,500 which he would gross up to \$10,000, and he would have a \$5,000 liability against which he would have \$2,500 credit, so that he would pay a further \$2,500 in tax and end up netting \$5,000. On the original interest income of \$10,000 he has netted \$5,000, the same as if he had held the bonds directly.

**The Chairman:** That is all very well, but now let us apply the 7 per cent refundable.

**Senator Beaubien:** Mr. Thompson, did you say "bond interest"? Surely you do not gross up on bond interest?

**Mr. Thompson:** No, but if the interest is received by the company first and tax is paid in this manner, it emerges from the company as a dividend. Instead of being interest of \$10,000, it emerges from the company as a dividend.

**Senator Beaubien:** I understand that, but I thought you said "bond interest" at one stage.

**Mr. Thompson:** I was just pointing out that if this were interest on bonds and if he received the interest directly, the net amount

after taxes would be the same as if the bonds were held in the company.

**The Chairman:** Now let us get down to the reduction part of it.

**Mr. Thompson:** The figures get a little harder to recite, but the \$5,000 corporate tax liability would be reduced by 7 per cent, so that it would end up at \$4,650. The refund would be 93 per cent of \$2,500, what it would otherwise be under the terms of the legislation. This would be half the corporate tax after the reduction, or, in other words, \$2,325. So, in this particular case the corporation would have a surplus of \$7,675 which would be a little more than it otherwise would have enjoyed.

**The Chairman:** Yes, if there is a tax reduction it would have to enjoy some surplus.

**Mr. Thompson:** Yes, that is right. It could then pay a dividend of \$7,675 which would be grossed up, as it was before, and with a credit for that gross-up.

**Senator Flynn:** The purpose of the bill is to allow a seven per cent reduction of the tax otherwise payable. It does not matter what the mechanism is. That will be their problem, I am afraid.

**The Chairman:** Yes, I was curious to know how simple or difficult this matter was arithmetically. It is not merely a case where you take 93 per cent of the tax otherwise payable in relation to the part which is refundable. First of all, on an interest income of \$10,000 the tax otherwise payable would be \$5,000 which is the general corporate tax. Then, if the refundable is 50 per cent of that amount you are actually paying \$2,500. When I figure the seven per cent reduction, it is seven per cent of the basic tax of 50 per cent as it has been affected and reduced by the amount of the refundable. This is supposed to translate into this rate of 93 per cent. But of what is this 93 per cent?

**Mr. Thompson:** It is 93 per cent of the refundable tax.

**The Chairman:** 93 per cent of the \$2,500 that I have used in my illustration. In that case, instead of receiving a refundable of \$2,500, I will receive \$2,500 less the seven per cent?

**Mr. Thompson:** That is correct.

**The Chairman:** Is that clear to the committee?

**Senator Connolly:** Mr. Chairman, I suppose that from the taxpayer's point of view the forms which he is required to fill out will, in fact, reflect the provisions of the sections; and this would be a fairly simple calculation, provided he is confident that the form actually complies with the provisions of the Act.

**The Chairman:** Well, quite apart from that, it would be very nice if the members of this committee understood how this works out.

**Senator Bourget:** It is our business to know how this works out.



**Senator Cook:** I feel you are asking too much, Mr. Chairman.

**The Chairman:** No, I do not think so.

**Mr. Thompson:** Mr. Chairman, I might add that the combined effect is to reduce the net corporate tax by seven per cent. This has to be split between these two items, because the refund may not take place at the same time.

**The Chairman:** It could work out this way: if the intention is to reduce the basic tax by seven per cent, seven per cent of \$5,000 is \$350. Under the law, this is divided equally between the tax which you pay and the amount of refundable tax which you receive. If that \$350 is divided in this manner, my real tax deduction is \$175, is that correct?

**Mr. Thompson:** That is correct.

**The Chairman:** That was our approach last evening, was it not, Senator Bourget?

Are there any other questions on this matter?

**Senator Bourget:** Last evening I required Senator Hayden's assistance because he drew my attention to the fact that it was a five per cent abatement and it was calculated at five per cent.

**Senator Flynn:** The provincial corporate income tax is not decreased by these reductions.

**Mr. Thompson:** No, the provincial corporate tax would apply at the same rate.

**Senator Flynn:** Yes, perhaps with the exception of Ontario.

**Mr. Thompson:** No, they have only adjusted the personal income tax.

**Senator Connolly:** In other words, as Senator Flynn has indicated, if the federal authorities reduced or increased the taxes, it would be up to the provinces to levy their own taxes accordingly. What is done on the federal level does not affect the rate or amount of the provincial tax.

**The Chairman:** I think that is correct.

**Mr. Thompson:** In general terms, that is correct.

**The Chairman:** Are there any other questions on this subject?

If not, let us turn to clause 4 which has to do with refundable capital gains. This is the point at which the figure of 91.25 per cent may become enshrined for all posterity. This rate reflects the reduction by reason of the refundable portion of the capital gains tax. Would you care to explain how you arrived at the figure of 91.25 per cent?

**Mr. Thompson:** There are a number of ways to look at it.

**The Chairman:** Let us deal with an actual case. This applies to mutual funds and private investment companies, is that correct?

**Mr. Thompson:** Mutual funds and investment corporations. It does not apply to private corporations which are covered under another provision. It applies to the capital gains of mutual funds and investment corporations as defined in the Income Tax Act.

**Senator Carter:** Does it apply to capital gains for individuals?

**The Chairman:** No, this is a corporate tax.

**Senator Flynn:** The three per cent tax would apply to the capital gains tax payable by an individual. You just consider half of your gains as income, and it should be taxed as such. It would be interesting now to have a capital gain.

**The Chairman:** Mr. Thompson, I hope this problem will not take as long for you to figure out as it took Senator Bourget and myself last evening.

**Senator Connolly:** I prefer your suggestion, Mr. Chairman, that we take an actual case and work from there.

**The Chairman:** The witness is taking an example now.

**Mr. Thompson:** For instance, in the case of a capital gain of \$100 in the mutual fund, one-half of the capital gain is taxable, in other words, \$50, and is subject to federal corporate tax of 40 per cent, which is \$20, and provincial tax, for the sake of simplicity, of 10 per cent, which would be \$5. There is therefore \$25 of tax and the mutual fund has \$75 of surplus. Without the current reduction the federal government refunds the whole \$20 upon distribution by the mutual fund. I might point out that that is all the tax it receives. The province is expected to refund the other \$5, so that the mutual fund corporation would be in a position to distribute the whole \$100 of capital gain.

**The Chairman:** The tax is applied finally against the person who receives the distribution.

**Mr. Thompson:** Yes.

**Senator Connolly:** At the marginal personal rate.

**The Chairman:** That is right.

**Mr. Thompson:** Yes, it would be taxed to the individual investor as a capital gain.

**Senator Connolly:** The whole \$100.

**The Chairman:** The individual would receive his tax credit.

**Mr. Thompson:** No, this would be a capital gain, Mr. Chairman, half of which would be included in income.

**The Chairman:** You are correct. Half would go into income.

**Senator Connolly:** Therefore half would be taxed at his marginal rate.

**The Chairman:** And half would come out without tax.

**Mr. Thompson:** The portion with which we are concerned is the \$20 of federal tax.

**Senator Connolly:** I believe the purpose was clarified at a committee meeting earlier, but it has escaped me. The tax is levied on the mutual fund, \$20, for example, for the federal government and \$5 for the provincial government, before distribution is made.

**The Chairman:** Both of them being refundable.

**Senator Connolly:** When the distribution is made they become refundable. Why is that course taken?

**The Chairman:** To force distribution.

**Senator Connolly:** I remember now. That is it.

**Senator Flynn:** Is it a good thing to force distribution?

**The Chairman:** In some aspects it is.

**Senator Connolly:** It is in a mutual fund. I suppose it would be bad in an operating business, where the capital might be needed for re-investment.

**The Chairman:** That is correct. It would be bad in a business which is set up to accumulate funds for certain capital purposes. They would pay a penalty for doing that and would have to assess whether to do it in that manner, as individuals, or borrow the money.

**Senator Cook:** If they can borrow.

**The Chairman:** These are aspects with which, while we comment on them today, we are less concerned than with the arithmetical mechanics.

**Senator Flynn:** Yes, we have passed the act.

**Senator Connolly:** I had forgotten the reason for it, but there is no question that it is as you say.

**Mr. Thompson:** I might comment with respect to that broader question that if the capital gain to a mutual fund or private corporation is not distributed within the year, the taxes will still be refundable in a later year.

**The Chairman:** Is there not a limit of four years?

**Mr. Thompson:** No, there is no limit.

**Senator Flynn:** It could be distributed 10 years later and the same credit would be granted.

**Mr. Thompson:** That is right.

**The Chairman:** But when is the tax payable?

**Mr. Thompson:** The corporation would have to pay the \$25 of tax, but so would an individual.

**Senator Flynn:** But the refund would be received in any event upon distribution of the surplus.

**The Chairman:** That is correct, but the tax bite would apply in the year in which the gain was made.

**Mr. Thompson:** That is right, but it applies equally to an individual.

**The Chairman:** That is correct. You were going along the route to arriving at 91.25 per cent.

**Mr. Thompson:** We are concerned with the federal tax refund which, in this example, is \$20, being the net federal rate of 40 per cent applied to half the dividend.

**Senator Connolly:** Half the capital gain.

**Mr. Thompson:** Yes, you are correct, it is the capital gain. The 7 per cent reduction is applied not to the net federal rate of 40 per cent, but to the gross federal rate of 50 per cent, resulting in a reduction of 3.5 points.

**Senator Connolly:** This will confuse the committee because now you are not speaking of percentage, but of percentage points.

**The Chairman:** We have reached the point of saying that in dealing with this type of corporation to begin with the basic rate is applied. If we stop there, the 7 per cent reduction would be 7 per cent of the 50 per cent. Is that right? That would be 3.5 per cent.

**Senator Connolly:** No, because the 50 per cent is not tax. This is a reduction in tax, not a reduction in taxable amount.

**The Chairman:** No, that is quite true. Maybe we had better do it in dollars and keep to our example of \$10,000.

**Mr. Thompson:** We could continue with the \$100 of capital gain. The tax reduction of 7 per cent for 1972 results in \$1.75 on \$20.

**Senator Bourget:** To apply that to \$100, \$1.75 must be multiplied by 5.

**Mr. Thompson:** If we could just carry on with these figures for the moment, we have \$20 of refund, but the tax reduction of 7 per cent amounts to \$1.75. The net federal tax to be refunded is therefore only \$18.25.

**Senator Carter:** \$1.75 is 7 per cent of \$25, is it not, rather than of \$20?

**Mr. Thompson:** This is the point I endeavoured to explain before. That is correct, because mechanically the 7 per cent reduction is applied to the federal tax before the 10-point provincial abatement. The confusion arises from this.

**The Chairman:** This is where the honourable senator and I became confused last night. I believe you may have been the author of this schedule, which reads something like this, that the effect of the 7 per cent reduction of these capital gains may be shown arithmetically as follows. The first item is the basic tax, which in those circumstances in relation to this type of company, under section 123 is 25 per cent. The full rate is 50 per cent, but since we are speaking of capital gains, it is 25 per cent. A 7 per cent reduction on 25 per cent is 1.75 per cent, resulting in an effective tax rate of 23.25 per cent.

The next thing we must do is deduct the 10 per cent abatement for provincial tax from the 25 per cent, which is the basic tax on the capital gain. That gives us five, and gets our actual federal tax liability down to 20. The 7 per cent reduction of 1.75 gets the effective tax rate, after reflecting the reduction, down to 18.25.

We got that far all right last night, senator. The refundable then comes in. Can you pick up from there, Mr. Thompson?

**Mr. Thompson:** In the case of a capital gain on a mutual fund, the entire federal tax is refunded. Therefore, it is the same figure.

**The Chairman:** If the entire federal tax is refunded, why is there a tax reduction?

**Mr. Thompson:** Well, mechanically, if the entire capital gain on a mutual fund is distributed in 1972, there is no federal corporate tax, and therefore there is no corporate tax reduction. In other words, the 7 per cent applies only to whatever net federal tax there is on the capital gain on a mutual fund. If distribution is assumed in the same year, which is likely to be the case, there is no net federal tax on mutual funds, and therefore no corporate tax reduction. However, the individual investor would report the capital gain, and would claim his personal tax reduction.

**The Chairman:** Is it fair to say that the refundable portion of the capital gains tax, by reason of the 7 per cent reduction on the basic rate, is less than it would otherwise be?

**Mr. Thompson:** Yes.

**The Chairman:** Is that not where the difference develops? The refundable would be 25. That is half the corporate rate, but according to our calculation, it gets down to 20. That is what the refundable would be—No, the refundable would be 18.25, which is the effective tax rate.

**Mr. Thompson:** Yes. That is the net federal tax of 20, minus the 7 per cent reduction on \$25.

**The Chairman:** I have gone that far with you. Now, how do we end up with 91.25 per cent?

**Mr. Thompson:** The \$18.25 is 91.25 per cent of \$20.

**Senator Connolly:** Yes.

**Senator Flynn:** It is 70 per cent of \$25.

**Mr. Thompson:** Which is \$1.75, which is 8.75 per cent of \$20. Therefore the reduction is 8.75 per cent of \$20, or, putting it another way, one is left with 91.25 per cent of the \$20 refund.

**Senator Flynn:** One does not need to go to the same trouble when calculating the refundable portion of the tax. In clause 3 it says 93 per cent, which is 100 less the 7 per cent decrease. Generally speaking, the percentage of decrease is based on the rate of 50 per cent.

**Mr. Thompson:** The fact that the 7 per cent applies to the basic rate of 50 per cent causes this difficulty, because the federal government keeps only 40 points, really.

**Senator Flynn:** I suppose we have to make an act of faith.

**The Chairman:** Did you say "fate" or "faith"?

**Senator Flynn:** Both.

**Senator Blois:** Is it not possible to have a bill drafted in simpler terms? We have here people who are experts, and they do not understand it, and you have been working on this since last night. How is a small corporation likely to figure it out? Surely there must be a way of drafting the bill in simpler terms which the average person can understand.

**The Chairman:** The delay on my part, and that of my professional assistant, in reaching a conclusion last night was because we did not immediately seize on the 10 per cent provincial abatement which reduces that basic tax rate. Therefore our figures were out. The moment we recognized that the 10 per cent provincial abatement should be reflected, the figures fell into place. To simplify it and to apply the reduction in situations where there is an element of refundable tax is difficult, no matter what one might say about it. Since the reduction is primarily a reduction in the basic rate, one has to start from there and move along, and still reflect the refundable portion.

The department has selected one way of doing this. It has been consistent in clauses 3 and 4 by taking 93 per cent and 91.25 per cent. I suppose they might just as easily have used the figure 8.74 per cent.

**Senator Flynn:** It is not the fault of the drafters. It is a political decision to reduce by 3 per cent the present rate. Instead of saying, "We are decreasing the rate by 3 per cent", it might have been better to say, "We are decreasing the rate from 40 per cent to 37 per cent." Let us have fixed figures. Replace the figures that are presently in the bill with more definite figures. It is not the fault of the drafters; it is the fault of the decision-makers.



**The Chairman:** Instead of using these calculations, would it not be more practicable to take the result of these calculations and then take a percentage figure?

**Mr. Thompson:** Part of the difficulty with refunds, Mr. Chairman, is that they may not occur at the same time as the original tax. The other approach was considered, but this seemed to be the preferable one.

**Senator Carter:** The \$18.25 figure is what we get back. Instead of \$20, we get \$18.25.

**Mr. Thompson:** It represents both what one pays the federal government and what one gets back upon distribution.

**The Chairman:** You get back the effective rate.

**Senator Carter:** One is going to get it back, anyway. It does not seem to amount to much. One might as well pay 20 per cent and get back \$20 as pay 18.25 per cent and get back \$18.25.

**The Chairman:** Except that the law entitles you to a refund on capital gains tax and it is limited to 7 per cent. You have to reflect that in connection with the basic rate, and that requires a calculation.

I am sure there would be a good deal of yelling if you said, "Well, we will simplify this and recommend that you pay \$20 and receive \$20 back".

**Senator Flynn:** I suppose the problem is that all of this is done by computers.

**Senator Flynn:** Computers will check all the returns.

**The Chairman:** Yes.

**Senator Flynn:** You do not like me to exaggerate the importance of computers in your department. I can understand that, but in fact that is the case.

**Mr. Thompson:** The Department of National Revenue uses computers to some extent.

**Senator Flynn:** My experience is that if the computer fails to register a payment made to the government it takes a long time before it is found.

**Senator Cook:** You know what they say about programming computers: Garbage in, garbage out.

**The Chairman:** We have dealt with the two consequential clauses.

**Senator Carter:** Before we go on, Mr. Chairman, may I just make sure that I have this straight? The \$100 is cut down to \$50 because only half of a capital gain is taxable, and you then take 40 per cent of that, which is \$20, and the refund is calculated by taking 91.25 per cent of \$20, instead of going through all of the mathematical calculations you went through. Is that what you do?

**Mr. Thompson:** That is right. The refund is 91.25 per cent of the \$20.

**Senator Carter:** And the \$20 is the net amount, once the federal share and the provincial share are taken out?

**Mr. Thompson:** Yes.

**The Chairman:** The only two clauses left are the transitional ones, and I think they speak for themselves. The transitional clauses provide a legal basis, technically, for giving these benefits which are given in 1972—in other words, to enable them to apply right through the period that we are dealing with which includes 1971.

These clauses provide that transitional authority, do they not, Mr. Thompson?

**Mr. Thompson:** That is right, to pro rate the time period according to the way the fiscal year overlaps January 1, 1972.

**The Chairman:** They are really dealing with the overlapping of fiscal periods.

**Mr. Thompson:** Yes.

**The Chairman:** Are there any other questions, or is the committee ready to agree that we report the bill without amendment?

**Hon. Senators:** Agreed.

**The Chairman:** Thank you very much, Mr. Thompson. We appreciate the course of lectures and higher mathematics which you gave us this morning.

The committee adjourned.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING SENATE COMMITTEE ON  
**BANKING, TRADE AND COMMERCE**

The Honourable **SALTER A. HAYDEN**, *Chairman*

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Issue No. 3

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WEDNESDAY, JUNE 14, 1972

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Record of an organization meeting convened to consider the procedure to be adopted by the Committee with respect to the matters referred to in the Order of Reference of May 16, 1972.

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APPENDIX: "Comparison of May 8, 1972 Budget Proposals and Recommendations of Standing Senate Committee on Banking, Trade and Commerce".

THE STANDING SENATE COMMITTEE ON  
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Hayden
Beaubien	Hays
Benidickson	Isnor
Blois	Lang
Bourget	Langlois
Burchill	Macnaughton
Carter	*Martin
Choquette	Molgat
Connolly ( <i>Ottawa West</i> )	Molson
Cook	Smith
Croll	Sullivan
Desruisseaux	Walker
Everett	Welch
*Flynn	White—(29)
Gélinas	
Grosart	
Haig	

*\*Ex officio members*

30 Members (Quorum 7)



# Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1972

"With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Fournier (*de Lanaudière*):

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider any bills based on the Budget Resolutions relating to income tax in advance of the said Bills coming before the Senate; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,  
*Clerk of the Senate.*

# Minutes of Proceedings

Wednesday, June 14, 1972.

(4)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider:

The procedure to be adopted by the Committee with respect to the matters referred to in the Order of Reference of May 16, 1972.

*Present:* The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Isnor, Lang, Martin, Molson, Smith and Welch—(15).

*Present, but not of the Committee:* The Honourable Senators McDonald and McIlraith—(2).

*In attendance:* Mr. C. A. Poissant, C.A., of the firm of Thorne, Gunn, Helliwell and Christenson, engaged as Tax Consultant to the Committee and Mr. Charles Mitchell, C.A., of the firm of Thorne, Gunn, Helliwell and Christenson, engaged as Tax Consultant to the Committee.

Upon motion it was *Resolved* that the document entitled "Comparison of May 8, 1972 Budget Proposals and Recommendations of the Standing Senate Committee on Banking, Trade and Commerce" be printed as Appendix to these Proceedings.

Following a lengthy discussion the Committee adjourned at 12:40 p.m. to the call of the Chairman.

*ATTEST:*

Frank A. Jackson,  
*Clerk of the Committee*

# The Standing Senate Committee on Banking, Trade and Commerce

## Evidence

Ottawa, Wednesday, June 14, 1972

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider the procedure to be adopted respecting the Order of Reference of May 16, 1972.

**Senator Salter A. Hayden** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, you have in the brown envelopes that were distributed all the basic material you need. I should warn you that Proceedings No. 47, of November 4, 1971, containing the preliminary report and recommendations of the Committee, is now out of print, and I believe the copies you have are Xerox ones. If you lose your copy it will be difficult to replace, unless you have somebody else's Xeroxed.

Among the other material that you have is an analysis made of the budget and the proposed amendments. You have a copy of that indicating what the Senate's recommendations were and what the budget proposals were. You should also have a CCH statement, which ties in the resolutions to the bill. You therefore have, I think, all the basic material you need. You also have copies of the committee proceedings of the two appearances that Mr. Benson made before the committee.

With us this morning is Mr. Albert Poissant, who was with us when we were dealing with Bill C-259, and also Mr. Charles Mitchell. I was going to suggest that the way in which we might look at this is to consider the recommendations that have been accepted. So far as the recommendations that are not dealt with are concerned, I think we should look at what our recommendations were and attempt to come to a conclusion as to whether we still have the same view towards those recommendations. At this time there is no intention to fault anybody. If the government made its decisions to include certain recommendations of the Senate and not to include others, that is their decision. As and when the bill comes to us, it will be our decision whether we accept that or propose any amendments. All we are looking for here is to get an understanding of the scope and extent of the recommendations that we made and that have not so far been incorporated in the bill.

There is one item that has been called to my attention. We made certain recommendations and comments in connection with the departure tax. In his budget speech the minister made the statement that he thought the treatment that was incorporated in Bill C-259 was too harsh, and that he would have a series of amendments to propose.

**Senator Beaubien:** That is in relation to people leaving the country?

**The Chairman:** Yes. What they will be we do not know. All we know is what we suggested. Therefore, it will be difficult to make any comment on that. We will have to wait until those amendments are proposed. There may be a number of those instances.

**Senator Croll:** Mr. Chairman, I would like to make a few preliminary observations. From your outline of the course of action you propose, it is my view that the purpose is to bring pressure to bear on the government for special consideration for a small group which the government did not deal with in the last budget speech. As I said in the house, special pleading on behalf of special interests who seek special privileges leaves a greater tax burden on the rest of the taxpayers, and more particularly on those Canadians 25 per cent of whom are existing on less than \$5,000 a year.

In addition to that, I consider it highly improper and unethical for two members of the chairman's law firm to appear before a Committee as experts, to be anointed with the mantle of the prestige of the committee and the advantages that can flow from that. For that reason I object to the procedure taken, until such time as the bills come before us for examination.

**The Chairman:** Senator Croll, one of the comments you have made would appear to be a reflection on me. I take it you intended that.

**Senator Croll:** I have said what I had to say. It is there. I made it clear, and I wrote it out in order that I might not be mistaken in what I said.

**The Chairman:** If I might answer what you said, first, would you care to tell us who the "small group" is that you are referring to as looking for special privileges?

**Senator Croll:** Those people on whose behalf you spoke the other day in the Senate, saying that these and these matters had not been given consideration, or had not been accepted by the government.

**The Chairman:** You call it "a small group." The evidence we had in relation to that group was that there were about 50,000 people in it. I do not know whether, in your estimation, that is a small group or not. In mine that is a large group.

**Senator Connolly:** Mr. Chairman, I am a little concerned about the discussion here. First of all, I should like to say this to Senator Croll. In connection with the appearance of two lawyers from the chairman's law firm in Toronto, I think we were very fortunate to



have experts come and advise us on the bill. As it happened, these men had done the work that they did before our committee with a great many legal organizations—the Canadian Bar Association, the Upper Canada Law Society and others, and no doubt at meetings in the private sector and the industrial sector of the country which are considering the tax bill.

They happened to be from the chairman's office, but I do not think that made a particle of difference so far as we were concerned. They were explaining the bill and they were experts.

**The Chairman:** Plus this, that they were invited by the committee.

**Senator Connolly:** Whether they were invited by the committee or not did not matter too much to me. Of course, they would have to be invited by the committee. The fact is that they came here and did this work, without charge—except, I gather, for their expenses, and I am not sure of that—and I think the committee benefited tremendously from that.

That is just one small point, and I am sure Senator Croll will probably come to the same conclusion that I have reached. I have no interest one way or other in regard to this bill. I want to make sure we get good legislation. I think this is the motive which activates all of the members of the committee.

On the general point of "special interest," I do not suppose that anybody who is a taxpayer can be excluded from the class of having a special interest. I am conscious, and I think we are all conscious in this committee, of the fact that, because members are leaders in the industrial community, the business community and the professional community here and there, there is always overhanging us the possibility of a charge that we have a special interest.

Perhaps it is useful that Senator Croll has raised the point. When there is nothing else to write about on Parliament Hill, the press corps will write about this committee and "the special interests" that it has. I think there is a value to this committee, to the public at large, and certainly to the economy, in having people with the know-how and experience that the people on this committee have. They introduced a business point of view, which is a very important point of view, because it is the private sector that has its neck on the fence in connection with the growth and development of the economy. If we have people here who can make a contribution that will indicate what can make the economy work better, I think we are doing something for the benefit of the country.

As I say, I personally do not think I have ever found myself in conflict, despite the fact that I have some professional connections. Even if there is a possibility of conflict, I think the members of this committee have been able, and I think they are able, to segregate their personal and professional and business interests from the interests of the country.

I think this committee has performed well; I think it has done a service to the Senate and to the country.

**Senator Beaubien:** Mr. Chairman, last year when we had Bill C-259 before the committee, we came to the conclusion that there were about eight amendments that we would have put into the bill. We would have amended the bill in eight different cases, if we had

had the time. We came to the conclusion that if we put in the amendments, that would not give the time to the House of Commons to deal with them and return them to us in time to pass them before the end of the year. The Senate was convinced that, unless the measure was passed before the end of the year, it would create a hardship for the people of the country because they would not know where they stood when facing 1972.

Therefore, we told the Minister of Finance that we wanted him to consider these eight amendments. He did not say he was going to put the eight through, or which he would put through or which he would not. What he did say was that there would be an amending bill. The Senate accepted that, because the Senate said that if there is an amending bill we could put them in, if they have to be put in, if they are not put in by the government.

That is how it stands, and that is what we are here for. Could someone run over very quickly or quietly the eight amendments, and have Senator Croll tell us where we are acting for special interests? I think it is a most unworthy reflection on the chairman, and I do not think it makes any sense. Therefore, let us go over them and let Senator Croll tell us where we are acting or trying to act for a special interest. There were eight amendments, were there not?

**The Chairman:** They are in the material.

**Senator Beaubien:** If it is eight amendments we are trying to put through, let him tell us where we are doing something under the counter, as it were, for a special interest.

**Senator Cook:** I must say I agree with Senator Beaubien. I think the amendments proposed have as much validity now as they had then. I agree that we felt it would not be proper for us to press the amendments at that time, because of the dire consequences it would have. But we have not at any time abandoned our amendments. We thought they were good then, and we think they are good amendments now. I do not think, frankly, that there is so much confrontation with the government as there might be with some chap in the Department of Finance who is advising the government. I do not think it is any more valid now, and I think it should be smoked out so that we may see where we stand.

There is no question about this, except on this one, if I understand it rightly, the profit-sharing plan which I think is the one which was referred to, is it not? I was convinced at the time that there was an injustice being done to these people and I still feel that way.

**The Chairman:** We can get on with our business, if there is no other comment. All I can say, in so far as what Senator Croll has said is concerned, is that he did not answer my question—in other words, he says the words speak for themselves. I am prepared to leave it at that.

Any time the committee feels that the chairman is showing some interest that he should not, you can easily have another chairman take over the functions. That is up to the committee to decide. Any moment when you feel that in anything that I do there is any effort to support a special interest, you can raise the issue, if I do not raise it myself.

**Senator Connolly:** That last remark is a key one; because it is up to the individuals on this committee to decide whether or not they have a special interest that prevents them from participating.

**The Chairman:** As far as I am aware, in all the consideration we have given to the tax legislation, I have been concerned only about one thing, that is, that we understood what the proposals were, that we heard the objections of the people and that, too the extent we thought there was merit in the objections the committee dealt with them.

**Senator Benidickson:** Plus the fact that you did not want to be under closure in the final study.

**Senator Croll:** In the last session, Senator Benidickson means.

**Senator Molson:** I think the point that Senator Beaubien and Senator Cook made about our method of dealing with this is valid. I remember very well that I personally asked the minister for an assurance about some amendments, and we were given the assurance that amendments would be made to a number of things. It is perfectly true that he did not promise to bring into effect all the changes that we proposed. He promised to give them full study and, where the government agreed, to bring in the amendments. We discussed as to when we would get the amendments. I for one, and I think probably 75 per cent of this committee, only agreed to the passage of the bill then because of these assurances which we got from the minister.

**Senator Benidickson:** That was on that very important December night.

**Senator Molson:** Then we had further assurances from the government. The Honourable Mr. Turner, the new Minister of Finance, has since made statements which govern the situation, saying, in effect, that the matter in the income tax bill which worried us was certainly of concern to the government, was certainly going to be considered and that we would probably, or perhaps, get amendments if the government still agreed with his thinking.

I would like to read one statement made by Mr. Benson when he attended the meeting of this committee on December 13, 1971, at page 51:31, of our proceedings. This was with respect to a question that these problems were somewhat immediate. I am paraphrasing the minister's statement, but he had said that with regard to most of the problems they are not immediate. I remarked, "That is a little different. They are immediate problems to us, perhaps."

Then he said:

Perhaps they are, but they do not affect one's taxation liability immediately. I am thinking of problems connected with international income. There are other things that will have to be changed as of January 1. For instance, there will be one change with regard to deferred profit-sharing plans, as well as others.

The whole context of these meetings of the committee was that the bill was imperfect as it then was, but that passage was of vital importance in order that we could start 1972 with some assurance of a pattern in order that forms could be issued to enable employers

to make deductions from employees and other administrative procedures commenced. There was, however, this firm governmental undertaking that the problems which we had raised—here I disagree with my friend Senator Croll and state that they were not related to special groups—would be given full consideration. In some cases those problems may have related to relatively small groups. In others they related to relatively large groups, but as far as we were concerned the consideration was the principle of taxation contained in the act, rather than a group.

Our proceedings indicate that a great deal of our time was spent in concern for the largest number of people, those in the lower income brackets whose taxes were reduced, or those who were removed from the taxation roles because of the increased exemptions. In my opinion, this committee did not spend its time worrying with respect to a small group of their friends, and I do not think we are doing that today. We are now proceeding with the study we indicated we would carry out, which was considered by the government, with the Minister of Finance as spokesman, to be a logical procedure to follow in the new year. The only unfortunate aspect is that we are getting down to it far too late, because of the delays which have taken place.

**The Chairman:** If there is no other comment, shall we proceed with the business of the meeting?

**Senator Connolly:** In view of the fact that Senator Molson has referred to the minister's evidence of December 13, I would point out that he returned on December 20 and at pages 52:09 and following of the proceedings spoke in a similar manner to his statements of December 13. This reference completes the picture.

**Senator Benidickson:** Mr. Chairman, I would never have thought that my colleagues would express here or even feel self interest. That is to the credit of the Senate. On the other hand, I had studied these areas as a colleague, in the other place, of Senator Croll. I believe we share an ambition that the Senate will never be charged with self interest. Senator Croll and I have discussed one or two of these possibilities.

May I say that the young and most competent advisers who were provided by the chairman for the assistance of the committee impressed me tremendously. I am rusty in the law, but I thought they explained matters in an "A, B, C" fashion very well. There are other possibilities, but I do not quite share Senator Croll's view in that regard. It was, however, an interesting view. I remain grateful to the chairman for making these advisers available, although he could not have them compensated. I remain grateful to our former Senator Lazarus Phillips for devoting hours and days of work to our deliberations because of his regard for the Senate.

I believe that the chairman's motion to review an assessment of amendments accepted and not accepted is appropriate.

**The Chairman:** I would like to make one comment. I consider Senator Croll's statement a reflection on the chairman, that he has attempted to promote special interests, and I resent it. It is not true. I challenge my friend to establish anywhere in the record that I took any such part. My position before this committee when Mr. Benson was here, and even before his appearance, was that as long as we received an assurance that there would be an amending bill it was good enough.



Hon. Senators: Agreed.

**The Chairman:** If he wished to say that some recommendations were good enough, fine; that some he would consider, fine. But our position was that as long as we would receive an amending bill we could apply some of our thoughts to it. All we want is the opportunity to do it. If that is promotion, then it is a peculiar interpretation of "promotion." The motion which I made the other day was to refer the proposed amendments in relation to income tax to this committee to examine and report. If because I illustrated one of the points on which we made a recommendation, and on which the minister, in his budget speech, made some comment indicating that there will be further consideration in a grouping of deferred profit-sharing plans, pension plans and retirement savings plans—

**Senator Benidickson:** I watched very carefully, and you added many items deserving our attention.

**The Chairman:** I just wish to finish what I was saying. This is not the first time that Senator Croll has made statements of this kind. It is fortunate, from his point of view, that the press is here. Any allegation of special interest is bound to be picked up. Whether I am inferring that that was his intention, he can draw his own conclusion. If he is drawing lines in his criticism of the chair, then I am ready to have him draw lines here, in the Senate or in any other place; except that when statements are made, they should be supported, because they will be reported in the press as statements without any search or consideration. Any time that this committee needs help in the consideration of a bill, if I am in a position to provide it, and the committee wants it, I am prepared to provide it. Honourable senators can read every word that was said by these people who were from my office, and they will not find the promotion of any point of view. They will find clearly an explanation of the intent and purposes of the bill, with demonstrations on the blackboard.

**Senator Cook:** With pros and cons.

**The Chairman:** Yes. If that is promoting special interests, then Senator Croll must have his own interpretation of "special interests".

We have with us Mr. Poissant. Subject to what the committee may say, I was going to ask him to open the proceedings by dealing with recommendations which we made in our several reports, and how they were dealt with; firstly, the recommendations which we made and which have been accepted in the form which we recommended, and whether there have been any variations.

If it is acceptable to the committee, I would ask Mr. Poissant or Mr. Mitchell to deal with that. I think that honourable senators will be able to follow it quite easily if they keep before them the memorandum which analyzes the headings.

**Senator Isnor:** Mr. Chairman, I am greatly concerned with what has happened here this morning, particularly in view of the reporting of the proceedings up to the present time. I was wondering whether we should take action to suppress the minutes up to this point.

**Senator Beaubien:** I would like to second that.

**The Chairman:** What was the motion?

**Senator Carter:** To suppress the minutes up to this point.

**The Chairman:** The press is here. We cannot very well tell them to suppress it.

**Senator Isnor:** It is not so much the press report, but the report of the committee's proceedings.

**The Chairman:** As far as the chairman is concerned, there is a *Hansard* report and it should stand. I may want to refer to it at some time.

**Senator Isnor:** That is carrying it too far.

**The Chairman:** I would prefer to have it, and not have any suppression or alteration of any sort.

**Senator Connolly:** There is no representative of the press here.

**Senator Carter:** The press is not represented here.

**Senator Molson:** It was earlier.

**The Chairman:** There is a *Hansard* report. Our proceedings have been taken down, and I think they should stand.

**Senator Beaubien:** Mr. Chairman, I think we have to consider very carefully what you want. I do not think the committee should go against your wishes. In a way, I think it would be better if the proceedings were not recorded, but that is my own private opinion.

**Senator Molson:** I would be frightened to do that. I do not think we want to start suppressing things. I believe it is better to let the record stand. I think it would be misunderstood if we suppressed it.

**The Chairman:** It might provide an opportunity for more comment.

**Senator Molson:** Yes, or it might turn out to be grossly unfair to you, to Senator Croll or to anybody. We know what has been said, and I think it should stand.

**Senator Isnor:** It would have been better if it had been *in camera*.

**The Chairman:** But we are not sitting *in camera*. You have made your point without putting forward a motion, have you?

**Senator Isnor:** I do not think I made a motion, so we will let it go at that.

**The Chairman:** All right. It is a matter of record. Perhaps Mr. Poissant and Mr. Mitchell will now proceed.

**Mr. C. Albert Poissant, Tax Consultant to the Committee:** Mr. Chairman and honourable senators, I would say that the summary which was prepared and which you have in front of you is very



complete. It shows the recommendations that the committee made and what is coming out of the budget proposals. Perhaps, before we start, I should refer to the priorities which appear on page 51:8. They are the nine priorities which were mentioned by Senator Beaubien earlier this morning. The first one is Gifts, Bequests and Devises to Charities.

**Senator Connolly:** You have lost us.

**The Chairman:** It is on page 51:8.

**Mr. Poissant:** The committee will want to have in mind the priorities mentioned. The first one is Gifts, Bequests and Devises to Charities. The second is Employees Profit Sharing Plans. The third is Deferred Profit Sharing Plans. The fourth is Passive Income. The fifth is *De Minimis* Rule. The sixth is Tax-Exempt Non-resident Investors. The seventh is Non-Resident owned Investment Corporations. The eighth is Private General Insurance Corporations; and finally, Deemed Realization on Ceasing to be a Resident of Canada.

If we go back to the summary, you will notice that passive income was one of the nine priorities of your committee. Passive income and *de minimis* rule have to do with foreign control property income. We could say that the proposal recommends the deferral of the application for two years.

**The Chairman:** That is the budget proposal.

**Mr. Poissant:** That is the budget proposal. The committee had asked for a one-year deferral, if you read (d) on page 1:

The effective date of implementation of the passive income rules be deferred one year.

The minister in his proposals suggested that he will defer it by two years, giving the government sufficient time to study the implication of this passive foreign property income.

**The Chairman:** And give the opportunity to introduce rules for tax on passive income.

**Senator Connolly:** In other words, on this one our point was not only accepted but was given "200" per cent implementation.

**The Chairman:** On that, yes.

**Mr. Poissant:** If you will permit me, Mr. Chairman, there was a seminar held at the University of Montreal by the International Fiscal Association, the main subject of which was passive income. Most of the speakers at the seminar held that a deferral of two years was good but was not really giving those corporations that were in the process of going into foreign countries the opportunity of knowing what will be the legal situation two years from now. I might say that these were "cream" speakers from Canada, tax experts, and all of them were of about the same opinion, that the government should as soon as possible let the public know what will be its final intention, because a deferral of two years is good but it does not let the Canadian taxpayers know what their final situation would be. I make this passing comment, Mr. Chairman, so that the committee will know what steps to take in its final decision.

**Senator Burchill:** Our recommendation was two years?

**The Chairman:** We suggested one year.

**Mr. Poissant:** One year was one of the recommendations of your committee, made in the absence of definite amendments; that it should be deferred at least one year. In some cases that still does not solve the problem. The problems of yesterday still remain; they are not completely solved, except that some companies might gain the benefit by having this additional two years. All in all, unless the clear governmental policy is known, corporations like those who were here, such as Alcan and Massey-Ferguson, are still in the position that they do not know where they are going.

**Senator Cook:** All they have done is defer attacking the problem for two years.

**Mr. Poissant:** That is right.

**Senator Cook:** But they have given consideration to the amendments that we suggested before, which are perfectly valid for us to suggest again.

**The Chairman:** The minister in his budget speech did say that they were looking at the matter, and that there would be the introduction of rules. He has not indicated in what direction they will be going. If you want to see what Mr. Benson said on this subject, you will find it in volume 51 at page 26, starting at the bottom of the page, where he said:

We are looking at the passive income section. It has been misinterpreted to some degree by the public, in that the definition is fairly broad and it allows such things as interest on receivables and normal amounts that a corporation would receive in their business operations as being non-passive income.

Then I interjected to say to the minister:

The one thing that bothers me about that, Mr. Minister, is that there is a good deal of jurisprudence which has been developed over the years as to what is income from a business and what is income from property; and, unfortunately, we have many cases which say that rental income is income from property.

If we are going to have conflicts, we feel there should be some clarification so as to be sure that active business should not exclude income from property. As to the ramifications of that, I cannot tell you at the moment.

Then Mr. Benson said:

This is what we have been looking at, but our view was that we should make the definition as broad as possible so that the normal business operations would not be subject to the passive income rules.

When we started looking at this we felt that if we further confined it it would make the jurisprudence more confining than we want it to be. We are trying to determine how we can best do this.

So the minister appreciated the problem and the jurisprudence as to the distinction between income from business and income from property. Under the passive rules in the form in which they were in the bill before us, income from property was going to be passive income, and it would be subject to full rates of income tax. It would

not constitute carrying on an active business in order that dividends, for instance, might be brought home and then be subject to corporate tax. There was quite a lengthy discussion by the minister. The jurisprudence was very clear. I had a bushel and a peck of it before me in cases, which I showed to the minister. Now they are looking at it.

When we get into international relationships and the benefit of them to Canada, I am sure they would not come under the heading, in any sense, of small groups and special interests. In the case of Alcan and Massey-Ferguson, they are tremendous employers in Canada, and we had evidence from them as to the thousands upon thousands of employees. A lot of this employment turns on the export market which they have in their international relations. The minister realized the problem, and all the present minister has said is, "We are going into it to decide to what extent the rules should be spelled out."

**Senator Connolly:** Could Mr. Poissant tell us whether or not the group he heard discuss this matter had made representations to the department or to the government in connection with the wisdom of having the rules established very soon?

**The Chairman:** My understanding is that even before Alcan and Massey-Ferguson came before us they had made representations and lengthy representations. I would conclude from the information I have heard, which admittedly is hearsay, that they have been continuously at the job since then, so as to point out what the problems are and give any assistance they can in proper drafting. If there are no further questions on that, what is the next item Mr. Poissant?

**Mr. Poissant:** Dividends received from foreign affiliates: all dividends received by Canadian corporations from foreign affiliates should be exempt from tax regardless of whether the affiliate is located in a treaty country or not.

**The Chairman:** Would you amplify that a little?

**Mr. Poissant:** There is a distinction between a tax treaty country and a dividend received from a non-tax treaty country. Your committee felt that both should be treated equally, because it was not fair for a Canadian corporation to go into a country where the Canadian government was not able to negotiate a tax treaty with that country, and be penalized because of this. Therefore, Canadian corporations invited by the Canadian government to go abroad to help, especially the non-developed countries, should not be penalized if finally the government was unable to settle a protocol or tax convention with that country.

**The Chairman:** You are talking about the difference in rate.

**Mr. Poissant:** There is a difference of rate. One would be according to the tax treaty in this country and the other would be taxable at the full rate. The rate is to be 15 per cent until 1976, and after that it will be 25 per cent, again unless there is a treaty with that country.

**The Chairman:** If there is a treaty the rate will be less.

**Mr. Poissant:** It will be according to the treaty.

**The Chairman:** Which you would assume would be less?

**Mr. Poissant:** Yes.

**Senator Cook:** That question is still open. They made no comment.

**The Chairman:** That is right.

**Senator Molson:** On both this item and the first one the concern really is to put Canadian corporations on the same footing as their international competitors. Is that right, Mr. Chairman?

**The Chairman:** That is right.

**Senator Molson:** I think the matters have been given increased importance in view of the American initiatives with DISC and these other programs.

**The Chairman:** Their DISC program.

**Senator Molson:** And the other program they have in view.

**The Chairman:** Where they have special legislation deferring up to 50 per cent of tax on exporting companies who come within the category of DISC corporations. This would simply enable the Canadian exporter in the international market to be, I will not say on an equal footing but closer to an equal footing, in competition.

**Senator Connolly:** The thinking behind our view was that in order to be continued the Canadian corporation would be paying tax in the country where they were doing business and the dividends would be paid out of the taxpayers' money.

**The Chairman:** Yes. There would be a tax in the foreign jurisdiction and then the dividends would be taxable in the hands of the Canadian parent of this foreign affiliate; so the condition would be worsened.

**Senator Carter:** With regard to these amendments, particularly the first one, where it is a two-year deferral, how much notice should be given, what is a reasonable amount of notice that a company should have in a case like that? If this one is deferred to 1975, should the public not know by 1974 just what the situation is, or is that too long notice?

**The Chairman:** Obviously, it would be good public relations, but there is a deferral now, which the public would know, until this date which is mentioned. Presumably the public who are interested will have the opportunity of dealing with any proposed rules to govern this kind of income.

It has been the practice of the department to consult industry affected, not as to particular rates but on the general theory of how their position would be affected. I would say that we are more conscious now than ever of how the Canadian position of companies operating abroad is going to be affected by Canadian taxation, because the threat of special treatment to American competitors of Canadian companies which are operating abroad is even greater now.



**Senator Carter:** Unless they had a year's notice, it could seriously interfere with their forward planning. They would want to know what they are heading into. Otherwise, they would have to plan right up to the last moment.

**The Chairman:** I would think that the government would be conscious of that.

**Senator Cook:** They would probably make their plans, assuming that the worst is going to take place.

**Mr. Charles B. Mitchell, Tax Consultant to the Committee:** Mr. Chairman, if I may interject, I think that last year representations were made to Alcan that amendments would be introduced to these provisions in about May of this year, this spring. At that time the provisions were supposed to take effect in 1973. They said that if the provisions were being amended in the spring of this year, they would need another year in which to do some house cleaning, so I take it they would say they needed two years.

**The Chairman:** The next item, Mr. Poissant.

**Mr. Poissant:** We are on page 2. The Senate recommendation was:

### 3. Farmers

(a) Provision be made for the continued recognition of a farmer's "basic herd" as a capital asset.

(b) Permit a rollover of farm land and any other capital property used by an individual in a farming activity (no deemed disposition at death).

There was no comment in the budget at all in respect of that. You will recall that this was not one of the priorities.

**Senator Burchill:** Was there any comment in the House of Commons on that point?

**Senator Beaubien:** The basic herd?

**Senator Croll:** They discussed it.

**The Chairman:** They discussed it. That was when the original bill was in the House of Commons.

**Senator Burchill:** Later on?

**Mr. Poissant:** At budget time?

**Senator Croll:** The original discussion.

**Mr. Poissant:** There was no discussion, as I recall, at the time the budget was tabled.

**Senator Cook:** I think Senator Hays had a very colourful remark about that. I do not remember it now.

**The Chairman:** He was very concerned at this being brought forward. We heard some of the farming groups and agricultural associations. We did feel fairly strongly about rollover, where the farm has passed down in the family and it is still used for farming

purposes. We thought there should be a deferral of any tax in that period. There has been no comment on it, so I think this committee at some stage, when the bill comes before us, will have to decide whether or not it is going to press this point further. It is not a decision we need to make at this time.

**Senator Molson:** Was there no reference to farmland rollover income in Mr. Turner's speech?

**The Chairman:** You mean, in the budget?

**Senator Molson:** Yes.

**The Chairman:** No.

**Senator Molson:** I do not know why.

**Mr. Poissant:** There is one rollover.

**Senator Connolly:** When we talk about "rollover," we mean a disposition from father to son.

**Mr. Chairman,** this is a matter that we will discuss when the bill comes before us?

**The Chairman:** That is right.

**Senator Connolly:** Then we can find out whether or not there is any consideration being given to this.

**Senator Cook:** If I am right, the minister turned that down flat.

**Senator Beaubien:** That is my recollection, too.

**Mr. Poissant:** There is no mention whatever.

**Senator Cook:** No, but did not the minister flatly reject this before us?

**Mr. Poissant:** If I recall, yes. He said he did not see any need to carry this basic herd provision. On the point of rollover, it was mentioned, but I do not recall exactly what he said.

**The Chairman:** He turned down the basic herd proposal; and as to the other aspect, he said he was going to look at it.

**Senator Cook:** Shall we say, he was unsympathetic to the basic herd.

**The Chairman:** The next item, Mr. Poissant.

**Mr. Poissant:** It is also on page 2. The Senate recommendations were:

### 4. Employees Profit Sharing Plans

(a) Permit a rollover of property distributed in specie by the trustee of an employee's profit sharing plan to a retiring member.

(b) Do not tax the employee until he ultimately disposes of such property, at which time any gain should be given capital gains treatment.



You will notice that the Senate recommendations were adopted in full, by resolution No. 13, if you wish to make a note of that.

**Senator Isnor:** No. 4 applied to only one company, did it not?

**The Chairman:** No. 4 deals with profit-sharing plans. There are two types of plans, profit-sharing plans and deferred profit-sharing plans. We had a number of companies in here on the profit-sharing plans.

**Senator Connolly:** Senator Isnor asked whether No. 4 applied to only one company?

**Senator Croll:** He was thinking of No. 5.

**Senator Connolly:** There are many companies that have employees' profit-sharing plans.

**The Chairman:** As far as I know, in connection with No. 5, there were—

**Senator Isnor:** I am talking about No. 4.

**The Chairman:** A number of companies appeared in connection with item 4. Our recommendations have been fully implemented.

**Senator Isnor:** I thought only one company issued shares to employees.

**The Chairman:** No. You may have Dofasco in mind.

**Senator Isnor:** No.

**The Chairman:** Simpsons-Sears appeared in connection with item 5.

**Mr. Poissant:** Mr. Chairman, in answer to the senator's question, employees' profit-sharing plans are of very wide application in Canada, although only one company may have referred to it before the committee.

#### 5. Deferred Profit Sharing Plans

- (a) Averaging provisions are inadequate.
- (b) Amounts distributed to a retiring employee should be accorded capital gains treatment to the extent that they include capital gains realized by the trust.
- (c) Property distributed in specie to an employee should be permitted a rollover.
- (d) The employee should not be taxed until he ultimately disposes of the property, at which time any gain should be accorded capital gains treatment.

The remarks made with respect to these paragraphs are as follows:

- (a) Government sees no reason for not treating these plans in the same manner as pension plans and registered retirement savings plans.
- (b) Government to conduct a general review of the taxation of retirement income plans, including deferred profit sharing plans.

(c) Amounts in a deferred profit sharing plan to the *credit* of an employee as of January 1st, 1972 (as opposed to amounts *vested*) are to be eligible for averaging under the old section 36 rules.

That should read "section 36 of the act".

**Senator Isnor:** Did some of us not express preference for that over the old section?

**The Chairman:** No. Our recommendations in connection with deferred profit-sharing plans were to the effect that the averaging to which they were entitled under section 36 of the old act should be continued. They were more generous than the general averaging provisions contained in the bill. The alternative contained in the bill was the limited time allowed to opt for the old section 36 averaging. That simply meant that when a lump sum payment was made from a profit-sharing plan to an employee it was all income. There was no distinction made between capital gain and income. The marginal rate of the taxpayer was to be the average of his rate in the three years before he received the lump sum payment.

The general averaging provisions contained in the bill that we considered were on a five-year basis to establish the marginal rate. The other so-called benefit contained in the bill to the deferred profit-sharing employee was that he could invest in a forward-averaging annuity and simply receive payments of the annuity portion each year as income in his hands. The objections made to us in evidence were that these employees had entered the plans in order to receive a lump sum payment ultimately. They did not desire an annuity, and had they known this would be the case would not have entered this type of plan. It was also recommended that capital gains should receive capital gains treatment. The budget did accord capital gains treatment to such gains for profit-sharing plans but not for deferred profit-sharing plans.

The other point was that the bill gave members of such plans until January 1, 1972 to take the benefit of averaging under section 36 of the old act. However, taking advantage of that lost him the other averaging benefits. We felt that all averaging benefits should remain and recommended that capital gain should be treated as a capital gain. We have introduced capital gain as a form of income for which the taxpayer is accountable and provided a separate rate.

**Senator Cook:** Is it capital gains when realized by employees?

**The Chairman:** There are two instances in which capital gains are deferred. One is in the fund as the trustee administers it. The other is in the accumulation which ultimately is paid to each employee on the basis that he is entitled to it. This would contain elements of both income and capital gain. We recommended that the capital gain element should bear capital gains tax and that the income element should receive income tax treatment. The bill provided for everything to be deemed income, with no distinction for capital gain.

There arise such cases as where trustees, instead of distributing cash to an employee, will distribute his percentage interest in shares or securities held by the fund. We adopted the position that the capital gain element in that distribution should be taxed only at capital gains rates. Secondly, it should only be taxed when the gain is realized, because that is the general principle of the bill with respect to capital gains treatment.

The minister has not accepted those recommendations, and part of the statement he made in connection with them appears to contain an element of misunderstanding.

**Senator Cook:** It does not really make sense.

**The Chairman:** As to the position of deferred profit-sharing plans, bear in mind that under such a plan the employee uses tax-paid dollars for his contributions. He does not take the exemption benefits such as those for contributions to a profit-sharing plan, a pension plan or retirement savings plan. It is true that when he receives the money he does not pay tax on any part of it. We felt, however, that this was an arrangement made in 1962 between the then Minister of Finance, when section 36, with respect to averaging, was introduced. Employees were to continue with the exemption or deduction of the contribution and to receive special averaging treatment under section 36 when the money was received. All their tax would be paid at that time, when everything would be considered to be income, with no distinction for capital. We thought that in connection with deferred profit-sharing plans the same treatment should be recommended as that for profit-sharing plans.

The minister, Mr. Turner, said in his budget speech on May 8, 1972

... I am not persuaded at this time that the lump sum payment out of a deferred profit-sharing plan should enjoy any special treatment. It seems to me that payments out of such a plan should be treated in much the same manner as payments out of pension plans and registered retirement savings plans. All three of these types of plans have in common the deferral of income tax on the contributions to and the income of the plan.

The misstatement there is that when an employee under a deferred profit-sharing plan makes an annual contribution to the plan or fund, he makes it with tax-paid dollars, so he does not get a deferral; he pays tax on the money he uses. That was the concession. Apparently we were told, in the arrangement with the Minister of Finance in 1962 when the section 36 averaging was brought in, that it was to lighten the burden on the employee when he was getting payment out. Instead of having his income tax rate in the year in which the money came to him, section 36 said "no", that it would be the average of his marginal rate for the three previous years. That could have been of some benefit to him if his income were going down during that period.

The minister has said there is to be a review. What will come out of that review, we do not know. It may well be that at the time the bill is before us there may be amendments to these provisions. I can see scope for one amendment along this line: that in connection with capital gains treatment, instead of being for the capital gain in the fund, instead of being deferred until it is realized, there might be a deemed realization of the capital gain at the moment the lump sum payment comes out to the employee. Even that would be a substantial concession to the employee, because whatever element of capital gain there was, when the money came out to him it would carry the 50 per cent marginal rate instead of the 100 per cent rate.

Trying to look ahead and to read the crystal ball, which I said last night I was not able to do with any perception, this may be a way of making a distinction between the profit-sharing plan and a deferred profit-sharing plan. The minister, in his budget speech, said

in connection with capital gains in the fund during the period it is operating and capital gains at the end of the road when the payment comes out to the employee, that there is a deferral until the gain is realized. That is the principle which we recommended for a profit-sharing plan. We also recommended it for a deferred profit-sharing plan. However, he has not accepted that.

**Senator Cook:** He says, "a general review of the taxation retirement income plans". Would it be in order for us to suggest that there be an exchange of views with whoever is making this review, or to ask him how the review is getting on? In other words, after these reviews take place and are presented it is much harder to make any progress and get any change.

**The Chairman:** I was explaining the position at the present time. We do not have the bill. We are looking at what we recommended and how far the bill goes in connection with that. This is an item which has not been accepted. We note that, and we have all the evidence on record on which we based our recommendations. If there is a further amendment when the bill comes in, and there might well be because I understand there are representations being made in the department on this subject—because, as I indicated earlier to Senator Croll, we were told in committee that there were at least 50,000 people in these two plans, and witnesses appeared before us. If we take that figure of 50,000 and multiply it by at least two, we have a fair segment of the population which have been saving their money by contributing tax-paid dollars, and the employer has been making his contributions subject to the right to deduct what the statute permits. But as and when the employer's contribution comes out, it is income in the hands of the employee and he pays full marginal rates.

**Senator Connolly:** Did I understand you to say that the employer's contribution to the deferred profit-sharing plan is tax-free for the employer when he makes it?

**The Chairman:** To the extent provided in the statute of an exemption that the employer is entitled to when he contributes to a pension plan, a profit-sharing plan or a deferred profit-sharing plan. There is an exemption to the employer.

**Senator Cook:** But it must be an approved plan.

**The Chairman:** It is income to the employee.

**Senator Cook:** The plan may go on and on, and then there is a sudden change in the ground rules.

**Senator Burchill:** When he receives his payment at the end of the road, are there any restrictions on how he must invest it? Does he have to put it into an annuity?

**The Chairman:** Under the bill for a deferred profit-sharing plan, the employer is offered several choices. He could buy a forward averaging annuity, converting it into an annuity, and, of course, only a portion of it would be payable each year to the employee and the portion would be income in his hands. He would pay less income on that. If he lived long enough he would be paying a substantial amount of tax. But the employees who appeared before the committee said they were attracted to this plan because of the lump sum payments feature, and they were ready to contribute tax-paid dollars in order to get this section 36 deferral at the end of the road.



The bill took away section 36 deferral which they have enjoyed for any period after January 1, 1972. If you claimed it, as you were entitled to up to that period, you did not get the benefit of the general averaging, and the general averaging under the present bill is, I think, reasonably generous. It is your average rate over the previous five years which, depending on how your income has been going, might be substantially less than your income in the year in which you get all the money. However, I do not think there is any more evidence that we need to look for at this time, because we had enough evidence to make a recommendation, and we now have to see what happens.

**Senator Beaubien:** Mr. Poissant, if there is a capital loss in the concept of capital gains, what is the tax treatment?

**Mr. Poissant:** In the fund?

**Senator Beaubien:** Yes.

**Senator Connolly:** Will you repeat the question?

**Senator Beaubien:** What will be the tax treatment if in the plan there is a capital loss?

**Mr. Poissant:** It would be exactly as the chairman said. It would have the same treatment as a capital gain. In other words, instead of getting X thousands of dollars out of the plan, you would get X thousands of dollars less the loss that the fund had. That would be the net income that you would get at the end of the road, which would be subject to normal tax, except for that part of the fund that would have accrued to the credit of an employee at the end of 1971.

The chairman gave the distinction between the deferred profit and the profit-sharing plan. The only minor adjustments that were made were technical amendments. Section 36 will be applicable not only on the amount vested in the employee but on the amount to his credit at the end of December 1971. This is a major and important distinction, because a member could be a contributor to a deferred profit-sharing plan but not be entitled to any amount at the end of December 1971, because of a special provision in the plan, say 10 years of employment and, say, at 35 years of age. As the original Bill C-259 was worded, if that amount was not vested to the employee at the end of December 1971, he would not be entitled to the special election. They have removed that anomaly by a provision deeming that there are no restrictions in the plan. In other words, if there are \$2,000 or \$3,000 to the credit of any employee in a plan at the end of December 1971, he would be entitled to elect under the old section election for that amount.

**The Chairman:** Then there is the other point that under the proposal the present Minister of Finance made, if you take the benefit of this section 36 election you are still entitled to take the benefit of the general averaging on the rest of the income that may come out to you. These two items represent items that we asked for, and these have been granted. A capital gains treatment has not been granted so far.

**Senator Connolly:** It seems to me that there is not a fundamental misunderstanding, but perhaps a key misunderstanding here, I guess not on the part of the minister, because this is a detail and we cannot expect the minister to really appreciate it in the context of a budget; there is a misunderstanding or overlooking on the part

of officials who are dealing with the details of these sections. I think the significant point is the fact that they treat contributions to a deferred profit-sharing plan as deductible, the same as contributions to a pension plan and a profit-sharing plan.

**The Chairman:** In the statement the minister does relate them together, and that is not the way it operates.

**Senator Connolly:** I think this is a basic misunderstanding, which I suppose was by officials in the department perhaps overlooking this very important aspect.

**The Chairman:** The main thrust of the recommendation we made was that the employees in these deferred profit-sharing plans were using for their contributions tax-paid dollars.

**Senator Connolly:** That is it. My own view is that if nothing else happened this portion of our evidence should be referred to the officials for consideration.

**The Chairman:** The next item is No. 6.

**Mr. Poissant:** This is departure tax. This was one of the priorities. Your committee asked:

- (a) Minister should have discretion to grant relief in respect of a departure caused by illness, by the transfer of an employee at the direction of an employer, or by any other deserving reason.
- (b) When a taxpayer ceases to be a resident of Canada he should be deemed to dispose of all his assets at fair market value and should have to pay tax at a fixed rate of say 20% on such gains.
- (c) If the taxpayer elects to defer payment of this tax, he should not be obliged to pay Canadian tax on his world income if he is not in fact resident in Canada in the year of actual realization (as the Act presently provides). Instead the taxpayer should be subject to Canadian tax on taxable capital gains in the same manner as other non-residents (i.e. only on the gains actually realized).

If we stop here, there were some proposals made in resolutions No. 7 and No. 12. I do not know at this stage if this is all the minister had in mind, but at this stage, as stated in the column under Budget Proposals, a Canadian ceasing to be a resident will have the right to treat his non-Canadian property as being Canadian property, and therefore defer the tax payment on that until the gain is actually realized. This is in line with what your committee has asked, because your committee has asked that he should not be taxed on his world income in the year he realizes the property after he ceases to be a resident. Your committee felt this was too harsh, that there is no reason why a non-resident should be taxed on his world income in the year he makes a gain. Now, by using this alternative, I imagine that the Canadian ceasing to be a resident and not paying tax immediately will have the right, when he realizes that gain, to be taxed only on that gain but not on his world income.

**Senator Connolly:** Did you say a Canadian ceasing to be a resident?

**Mr. Poissant:** To be a resident.



**Senator Connolly:** Do you not mean anybody ceasing to be a resident?

**Mr. Poissant:** Of Canada.

**Senator Connolly:** That is right. If he is a foreigner who has been resident in Canada and lives in Canada, your remarks apply to him too, do they?

**Mr. Poissant:** This is ceasing to be a resident. I assume ceasing to be a resident is ceasing to be a Canadian resident. If he were a foreigner and does not become a resident, he would not be subject to any tax whatsoever.

**Senator Connolly:** I may not be following you. Let us say Mr. "X" is a British subject who lives in Canada for two or three years; then he leaves; he has departed. I take it your argument applies to him equally as to a Canadian, myself, for instance, who might want to go and live in the Bahamas. That is the only point I am making at this time.

**Mr. Poissant:** There is another budget proposal in (b), which may be what you are referring to:

Where a person leaves Canada and has not been resident in Canada for more than 36 months over the preceding 10 years, any accrued gains on property which he owned when he entered Canada will not be subject to tax when he leaves.

That is to say, using your example, you have been in Canada only two years, and when you entered Canada you had some property. If you leave the country after two years you will not have been here more than 36 months in the last 10 years and will not be subject to capital gains tax on property that you had when you arrived in Canada. It would seem that the property you acquired after you arrived in Canada might be subject to capital gains tax.

**Senator Carter:** Acquired anywhere or acquired only in Canada?

**Mr. Poissant:** Anywhere. Canadians are taxable on their world income. You will be subject again to the rule applicable in (a), where you could treat those properties as being Canadian taxable property. Say, for example, they are Chrysler Corporation shares which you had when you entered Canada. When you leave two years later you may elect to consider those shares as being Canadian tax property, not being taxed at the time of your departure but taxed only at the time when you realize or dispose of those Chrysler shares. Again, in my view, there might be a problem of collection here.

**The Chairman:** There is a little word in there, "security". Security in those circumstances, so that you gain that status in declaring those assets whenever you have them as being Canadian assets. The net result of that is to defer any capital gains tax which you might otherwise have to pay, on leaving the country. But there is a little question in there, in the regular print—not in fine print—the question of security, that is "subject to provision of satisfactory security". So these recommendations have gone some distance in meeting what we recommended, and I would expect there will be more changes and more relief. This is one of our priority items in the list of eight items.

They have dealt with it in part. The minister in his budget speech has said that he will introduce amendments to change the rules in certain items in certain ways which he indicated. Until we see what they are, we are not really in a position to determine whether ultimately all our recommendations are going to be implemented or not. We will have to wait for the bill.

**Senator Connolly:** Under paragraph (a) of the budget proposals column, the words, towards the end of that paragraph, are "taxable Canadian property". That is a technical term, is it not. I think there is a technical definition of "taxable Canadian property", in section 115, is there not?

**Mr. Mitchell:** That is right.

**Senator Connolly:** I suppose that would include securities of various kinds that a departing Canadian taxpayer, or a departing resident of Canada would hold.

**Mr. Mitchell:** That would generally not include securities of public corporations, shares of public corporations, but would include shares of private corporations.

**Senator Connolly:** Foreign public corporations?

**Mr. Mitchell:** Foreign public corporations would not be taxable under "Canadian property". Neither would shares of Canadian public corporations, but shares of private corporations would be.

**Senator Connolly:** Even if those private corporations were foreign corporations?

**Mr. Mitchell:** That is a technical definition. The term "private corporations" does not include a foreign corporation.

**Senator Connolly:** Under the provisions of the act?

**Mr. Mitchell:** That is right.

**Senator Connolly:** So a Canadian taxpayer leaving Canada, owning shares in a private corporation incorporated outside Canada -

**Mr. Mitchell:** That would not be taxable Canadian property.

**Senator Connolly:** It could not become taxable?

**Mr. Mitchell:** No.

**Senator Carter:** What about real estate?

**Mr. Mitchell:** Real estate in Canada is taxable in Canada.

**Senator Carter:** Not outside?

**Mr. Mitchell:** Not outside.

**The Chairman:** We can go on to the next heading. It is No. 7. This was an item that was No. 1 in our list of priorities.

**Mr. Mitchell:** The reference is to resolution No. 10 and 11 in the budget. The Senate recommendations were:

7. Gifts, Bequests and Devises to Charities

Where capital property is transferred to a charitable organization by way of gift, bequest or devise the taxpayer should be considered to have disposed of the property at its "cost amount".

That was what your committee requested.

The proposal was made in the budget in the following way:

(a) Where property is gifted to a charity and is suitable for actual use in the charity's activity, the donor may elect to value the property at any amount between its cost and its fair market value.

In other words, your committee asked for the cost base to be used and the government proposal is that it could be that, or the fair market value, any amount the taxpayer wants to choose, in between its cost or his cost or the actual fair market value at the time of the donation.

**Senator Beaubien:** A tax-free zone.

**Mr. Poissant:** No, senator, it is not quite that. Let us say that the shares of a company cost you \$10,000 and at the time you want to make the gift the fair market value would be \$20,000. You can pick up either \$10,000 or \$20,000, or a value in between. If you pick up, say, \$15,000, you would be deemed to have realized a gain of \$5,000, in which case the capital gain follows the normal treatment of capital gains, divided by two, and this is the amount which will be added to your income; and if added to at the same time, this is the amount that will be deductible as part of your yearly allowable donation—\$15,000, not \$20,000 as in the example.

**The Chairman:** Mr. Poissant, you remember that what gave rise to this was that we had quite a number of charitable organizations appearing before us, and they thought that the provision in Bill C-259 would shut off many contributions which they were receiving—because of the fact that under Bill C-259, if a person made a contribution in property to a charitable organization and it was within the limits of the exemption that he could make, when he died, if that property had appreciated in value, there was a deemed realization which would be carried back and charged against his estate for capital gains purposes. They said this would shut off giving donations, because a man may be prepared to accept some of those consequences at a time when he is in charge of his own affairs and can control their liquidity, but when he is gone and it goes into his estate you have not the same guidance and direction. They thought the net result would be to change and reduce the character of giving. We had many briefs on that. We made a recommendation—as a matter of fact, it was our No. 1 recommendation in order of priority—and I would say that the budget proposals met that. Would you say so, Mr. Poissant?

**Mr. Poissant:** Yes.

**Senator Carter:** Are there any situations in which it would be an advantage to the donor to choose a figure above the cost?

**Senator Molson:** Yes.

**Mr. Poissant:** Yes. If he had a loss carried forward, for instance, that is a capital loss which he might want to be offset by capital gains, he might want to use this. On the other hand, I would imagine that unless he had another type of income in that year, he would not get too much benefit, because he would have no deduction from this for charitable donations in that year because of the limitation, unless, of course, he has other income. I suppose there might be a situation where it would be to his advantage to use it.

**Mr. Mitchell:** There is also this situation. Take a simple example, if the cost is nothing, your cost base is nothing. If you dispose of it at a fair market value of \$5,000, then it has been disposed of at \$5,000 and the amount you are taxable on is one-half of that amount, \$2,500; but your deduction for charitable donations is \$5,000. So it may be to your advantage to get a \$5,000 deduction for the charitable donation and only include the \$2,500 in income. That would depend on what your income would be in that year.

**Mr. Poissant:** Mr. Chairman, I would like to make a remark here. It seems to me that there will be some restriction in the type of donation allowed this treatment. The resolution contained in the Special Report Number 14, Extra Edition, CCH, May 9, 1972, at page 11, resolution 11, states:

... in the case of any such other donee, as suitable for use by it directly in the course of carrying on its public service functions, ...

This restriction might be very important in the case of a painting, for instance. Would that be used by a charitable organization as suitable for use by it directly in the course of carrying on its public service functions? That is a debatable point.

**The Chairman:** Yes, it is almost as debatable as the interpretation under a bill which may soon be before us as to whether something is of significant value or interest to Canada. It may be of great value to those concerned with it, but not take away or add anything so far as Canada is concerned. It may leave the situation the same as previously with respect to income tax, purchasing power and wages. The interpretation of this, frankly, would bother me if I had to express an opinion as to whether a painting given to a charitable organization could be said to be suitable for actual use in the activity of the charity. I suppose a painting given to a museum would qualify. Otherwise it would have to be sold and the money gifted.

**Senator Molson:** A charge of 25 cents might be made for attendance at a suitable function once a year in order to view the picture in the office.

**The Chairman:** Yes. Auctions are conducted at which contributions are made to charitable organizations and the paintings sold. I would say, therefore, that it is suitable for use in the activity of the charity when it is used for raising money.

**Senator Connolly:** What would be the situation were a painting given to the Canadian National Institute for the Blind?

**The Chairman:** I am not sure that the Braille system goes far enough.



**Senator Connolly:** People could pay to tour the building and incidentally view the painting.

**Senator Lang:** This section has been quite widely abused. I can understand the qualification, and in my opinion it is reasonable.

**The Chairman:** I am not even suggesting in anything I say that I criticize the use of the words "suitable for actual use in the charity's activity."

**Mr. Poissant:** The next item to which I would like to direct a comment appears in the same page, at (b):

Any bequest to a charity will be regarded as having been made in the taxation year in which the taxpayer died, in order to enable the taxpayer to deduct the value of the gift from his income in the year of death (subject to the normal limit on deductible charitable donations).

The normal limit is the 20 per cent. I would like to say, en passant, Mr. Chairman, that perhaps your committee will desire to study the possibility of having the excess charitable donation carried back one year. In the event a taxpayer died early in a taxation year and made such a gift, maybe the 20 per cent charitable donation limit would not be applicable and he would lose that benefit. There would perhaps be nothing wrong in granting him the right to use the excess applied in the previous year.

**Senator Connolly:** What do we do with regard to this point? Do we just note it?

**The Chairman:** We note the point and in any report or recommendation we make to the Senate we should include reference to it. This committee in due course will make a report to the Senate, which may be made before the bill is received and this is a point to which we would direct our attention.

**Mr. Poissant:** Item 8 is Mining and Petroleum (A) Earned Depletion. There were three recommendations made by your committee: (A) Earned Depletion; (B) Accelerated Capital Cost Allowance; and (C) Transfers of Resource Properties.

**The Chairman:** In connection with our priority items, we enumerated nine. In 51-8 we added a paragraph in the following language:

Secondly—An Assurance that further consideration will be given to items recommended in the Senate Reports but not set out in the list of Top Priority Recommendations, more particularly in relation to rollovers (1st Senate Report P. 47-4) Consolidated Returns (1st Senate Report P. 47-15) Mining and Petroleum (1st Senate Report P. 47-10) (2nd Senate Report P. 50-8).

We have now enumerated in the first column of item 8 the points we recommended. Mr. Poissant will go through that and tell us how far there has been acceptance.

**Mr. Poissant:** Out of the three recommendations, only one was changed.

## 8. Mining and Petroleum (A) Earned Depletion

(a) All Canadian exploration and development expenses should qualify to earn depletion, as should depreciable mine assets (whether new or used), depreciable production equipment and natural gas plants, and expenditures on new buildings and machinery as well as on expanded buildings and machinery. Therefore any expenditure which is required to reduce the profit from which depletion may be deducted should qualify as an eligible expenditure.

(b) The transitional period to convert from automatic depletion to earned depletion should be extended to 1980, or alternatively, companies should be permitted to "bank" eligible expenditures whenever incurred after deducting from such "bank" all depletion previously allowed.

The budget proposal had this to say:

The class of expenditures which earn depletion are to be extended to include all equipment acquired after May 8th, 1972 for the purpose of processing in Canada mineral ores after extraction and up to the prime metal stage. This will include all processing, whether or not related to a new mine or a major expansion, as well as custom processing. All income from such processing operations will be considered as income against which depletion may be claimed and in respect of which the 15 per cent provincial abatement will apply.

**The Chairman:** With respect to this item, which they have recognized, we heard a great deal of evidence regarding restrictions on the operation, for instance, of custom milling; and of a major expansion of your property, as to whether you should be able to write off the cost of that as part of your completion allowances. It was very important to people who made this proposal and generally to the industry. They have accepted this one recommendation. We have to decide what position we are going to take in relation to the items that were not accepted, and wait and see if any further representations will be made to us by the people concerned. We will have another opportunity to consider this when the bill comes to us.

**Mr. Poissant:** "Accelerated Capital Cost Allowance". The recommendations were mainly technical in this area, such as broadening of the definitions of "building", "mining machinery and equipment", "social capital transportation costs", and "major expansion of an existing mine." There was no comment made at all on that proposal. (c) Transfer of Resource Properties.

**Senator Connolly:** With regard to social capital transportation costs, that, I take it, would include sewers, water, and things like that, which are supplied in a remote area where capital development is going on in the mining field; is that so?

**Mr. Poissant:** Yes.

**Senator Connolly:** This is a matter of very serious concern and interest to provincial governments, if a major mining development is occurring in a remote area.

**The Chairman:** This was the burden of all the evidence that we had, that the direction of mining development is extending close to



cities, where there are power installations and everything else. You have to start from scratch and provide all the facilities, such as living quarters—

**Senator Connolly:** Roads, railways, power . . .

**The Chairman:** All the social amenities.

**Senator Connolly:** I was wondering whether the provinces had made representations on this point.

**The Chairman:** Possibly that is one area we should explore. It would not be difficult to do for some provinces.

**Senator Connolly:** We may see it as a real problem. The provinces may see it as a natural problem. They may have to pick up the tab for putting in roads, sewers, water systems, although not for building houses.

**The Chairman:** If our recommendation had been accepted, the effect would have been to reduce the amount of income that would otherwise be taxable—is that correct?

**Mr. Poissant:** That is true.

**The Chairman:** In a sense, that would reduce the income to provinces.

**Mr. Poissant:** What your committee was after was an increase in the depletion base, by adding to the definition. In reply to Senator Connolly . . .

**Senator Connolly:** I did not follow the chairman's comment.

**The Chairman:** I said that if the recommendations that we made had been allowed, there would be an extra benefit from their right to claim depletion in relation to these items. Therefore, there would be less exposure to income tax by there being less taxable income, and that would reflect on the income available to the province.

**Mr. Poissant:** If the province adopted the same definition.

**The Chairman:** Yes. I cannot conceive of the federal authority adopting it and the province, where the development is taking place, not adopting it. The question is: How far does our responsibility go in that regard?

**Senator Connolly:** Another factor is that perhaps the development organization could supply the services much more cheaply and adequately and at much less cost than would be incurred if the provinces had to build the road, and get the power lines in.

**The Chairman:** Do you think that would be the prime factor in the consideration by provinces?

**Senator Connolly:** Yes, because they would not have to commit their own capital.

**The Chairman:** Therefore, they would support what their federal authority proposed. On the other hand, any expansion of that kind creating a city, with public buildings, sewers, water, education and everything else, affords a lot of opportunities to the province, if it has direct control of all that development. Ontario does have an Ontario Development Corporation which can make grants.

**Senator Connolly:** Yes. And they have the general responsibility to develop in underdeveloped areas. Some of these developments have a very definite life cycle. Ore bodies can run out. Then the towns and all the established facilities are conditioned by the life of the mine. Once the mine has been depleted, the town becomes a ghost town. We have seen this happen.

**Mr. Poissant:** This is something that could be covered by regulation rather than by a change in the statute. I have no idea if they are still thinking of changing the regulations without necessarily announcing it in a budget speech. They could do it by changing the regulations rather than by statute.

**Senator Connolly:** Do I understand that if a mine organization goes into a remote area and installs hydro facilities, sewers, water, roads, et cetera, by regulation it might be allowed as a base upon which they can earn depletion?

**Mr. Mitchell:** We are talking about two different things. The regulations may say that it is a regular rate for these items, or that it is an accelerated rate. I believe that a lot of these social services are based on earned depletion.

**Senator Connolly:** You think they are available for earned depletion?

**Mr. Mitchell:** Yes. My mistake; I was looking at the committee report. They do not come under earned depletion.

**Mr. Poissant:** Mr. Chairman, may I say that the Canadian Bar Association and the Canadian Institute of Chartered Accountants presented a brief in March of this year. In this brief they make pretty well the same recommendation as your committee did. Their report says that "building" should include both, a building or other structure. It says that the recent decision in the tax case of *B.C. Forest Products Ltd. versus the Minister of National Revenue* indicates the need for inclusion of the term "structures". When it talks about "mining machinery and equipment" it says that this would not appear to include "access roads" or "on-property railroads," as stated in the summary, or "milling" as distinct from mining assets, or class 10 type of assets such as "mining buildings," et cetera. They recommend that all of these items be considered for inclusion. Finally, they say that the "social capital" includes transportation facilities, and that "transportation facilities" are not truly "social capital" but should more properly be included in item 1 or 2 of their recommendations. This is along the lines of your committee report, to make these definitions more inclusive, or make it clearer so that the taxpayer knows exactly what is included in "building", what is included in "mining machinery and equipment", and finally what is included in "social capital transportation costs". Then we come to (c) "Transfers of Resource Properties":

The transfer of Canadian resource properties between related companies should be permitted to occur without incidence of tax.

There is no comment made.

**Senator Carter:** If I might refer to Senator Connolly's point about the buildings, living quarters and sewers, no company will go into a remote area unless they have proved resources to continue for at least 20 years to amortize their capital. Over that 20-year period they would automatically amortize the social costs, would they not?

**Mr. Poissant:** Except that you have asked, in your report, that this should be in the accelerated capital cost allowance, it should be written off faster. It would normally be written off over a period of years, but the report asks that it be included in the accelerated capital cost allowance, for faster write off.

**Senator Carter:** I was thinking about Senator Connolly's point that ore bodies run out after a certain time. Over a 20- or 30-year period most of these capital costs and other things would have been taken care of automatically.

**Mr. Poissant:** Written off; you are right.

Then we come to No. 9, rollovers:

The rollover provisions should be broadened to include all situations where the underlying ownership remains the same.

The budget proposals had this to say:

Rollovers to be broadened for persons leaving Canada who resided in Canada over a short term only, for distributions of property out of an employee's profit sharing plan, and to perfect the spousal trust exemption in cases where a spousal trust is required to pay death duties.

We referred to this before on the departure tax, and secondly the one on the property out of an employee's profit-sharing plan. The other one was the espousal trust exemptions.

**The Chairman:** I can tell you that rollovers is one of the items included generally in our top priority items. We named nine items, and then we said we wanted assurance and further consideration in relation to a number of other items including rollovers. I do not think we made any specific reference to espousal trust exemption. We said basically that the rollover provisions that is really the deferral of tax—should be broadened to include all situations where the underlying ownership remains the same. There has been some recognition of that to the extent that we have indicated. Two of these we itemized in our recommendations, and they have been accepted. My recollection is that we did not particularly itemize the espousal trust exemption.

**Mr. Mitchell:** It may possibly have been referred to in the brief that the Law Society submitted to us, but I am not too sure on that point.

**Senator Molson:** There is a reference here to 47-4. In 47-4 I do not see rollovers. As a matter of fact, I do not see 47-4.

**The Chairman:** You mean in the top priority?

**Senator Molson:** I open volume 47 at 47-5, so I am a little puzzled to know where to find 47-4. It is very complicated. There must be a 47-4, because that is the reference.

**Mr. Poissant:** At 47-13 we see "Deferred Recognition of Capital Gains (Rollovers)". It is a wrong reference. It should be 47-13.

**Senator Molson:** I think we should correct that reference on page 8 of volume 51 at the top, in Appendix B, under the last paragraph "Secondly"; it is 47-13.

**The Chairman:** We did concentrate on proof reading, but sometimes Homer nods.

**Senator Molson:** I am not being critical in any way, Mr. Chairman.

**The Chairman:** What is the next item?

**Mr. Poissant:** "Designated Surplus":

The special tax on dividends paid out of designated surplus should be withdrawn.

There is no comment.

**The Chairman:** I suppose our position is that if it remains the same in the bill when it comes to us we will have to consider the evidence we had and decide whether we think there should be an amendment. This item was developed in the submission of the Canadian Bar Association, and of the Canadian Institute of Chartered Accountants on designated surplus at page 7-2 in their brief. The 7 means Part 7 under the heading "Acquisitions, Reorganizations and Rollovers". It might be well, rather than have me read this into the record, the committee would agree to have this printed as part of the record. It is only two paragraphs, about half a page. Then, when the committee comes to read the report, you will have a handy reference and will not have to dig out of the larger volume.

Is that agreed?

Hon. Senators: Agreed.

*The relevant paragraphs follows:*

#### *Designated Surplus*

A combination of the substantially re-drafted designated surplus provisions, together with the general requirement that a gain be recognized on the transfer of assets between corporations, will mean that, in general, it will be substantially more difficult, when one company purchases the shares of another, to combine the real businesses of the companies involved.

We believe that any tax which the government feels should be exacted because of the acquisition of one business by another should, in general, be payable at the time of acquisition, and in most cases by the vendor. To ask that substantial additional tax be paid on a combination of the acquired and the acquiring businesses at a later date when such consolidation may be desirable for business reasons is simply to require the business to be continued on a separate basis. We doubt that a tax on designated surplus will raise significant revenues for the government: rather it will merely encourage the continuance of Canadian business in fragmented and perhaps uneconomic units. Elsewhere, we have recommended that the government review the designated surplus provisions with a view to considering whether, over some period of time, such provisions might be



significantly reduced in their impact. We mention the point again here, because considerations involving designated surplus also relate strongly to the consideration of the tax consequences of acquisitions, reorganizations and rollovers.

**The Chairman:** On consolidated returns of income, we called the attention of the government to that, if you recall, and there is no comment.

I think many accountants, lawyers and business people felt a very strong view that there should be a right to file consolidated returns.

**Senator Molson:** Mr. Chairman, I believe there has been a change in the possibility of its application, in the budget, where the rate of taxation on manufacturing activities is different from that of other corporate activities, and the matter of consolidation as a result would be even more complicated than it would have been before.

**The Chairman:** You mean, it would reduce the corporate rate?

**Senator Molson:** On some of the corporation's activities. I have not sought any expert advice or had any discussion with experts on this.

**The Chairman:** Remember the illustration we had here about the man who got some legal advice that may not have turned out too well? He incorporated individually each hamburger stand as a separate company. Some made money and some of them did not. On those that made money he had to pay tax, but on the ones that did not make money the loss was for his account. He should have got good advice.

**Senator Molson:** Then you get manufacturing and non-manufacturing in different proportions.

**The Chairman:** Possibly we should make a note to look at this.

**Senator Molson:** To re-examine it.

**The Chairman:** To see what may be the effect.

**Mr. Poissant:** This has not been published yet, the definition of what will be "manufacturing."

**Senator Molson:** No, not the definition; but everyone I know of is very busy trying to make up their mind as to whether they consider certain activities come under one heading or the other. When you have large and diversified companies, it is quite a problem.

**The Chairman:** As between manufacturing and processing.

**Mr. Poissant:** The Bar had this to say, Mr. Chairman, with regard to these consolidated returns of income:

We recommend that the government consider the adoption of a system of filing of corporate returns of any group of corporations in which one particular group of

shareholders owns, directly or indirectly, 90% of the issued shares of each of the corporations concerned. Such consolidated returns would be prepared on essentially the same basis as consolidated financial statements, in that profits and losses of corporations could be offset and the impact of intergroup transactions would be eliminated.

**The Chairman:** Frankly, I am just thinking out loud on the point you raised. If I can consolidate losses and profits and take the consolidated return as the base for may being subject to corporate tax, certainly the net that turns out will be the net of the income after you have charged off all your losses on operations that are operating losses. So, the sum total of what would be left is what would be subject to the reduced manufacturing rate or the processing rate, if you are in that kind of business.

**Senator Molson:** If you are in that and other kinds of business, in service industry and in manufacturing, and in different units, and where both activities occur in one corporate frame, one corporation.

**The Chairman:** You may have to "unframe" or "disframe".

**Senator Molson:** "Disframe" or "reframe".

**Mr. Poissant:** You will have to allocate, as it is your income from various sources, but it does not change the need for a consolidated return where it is necessary.

**Senator Molson:** I quite agree with that.

**The Chairman:** I have made a note of it, so that we can look at it.

**Senator Molson:** I think it does need to be re-examined in the light of this amendment.

**The Chairman:** That is right. Now, the next one.

**Mr. Poissant:** The next is No. 12, and the Senate committee recommendation was:

## 12. Construction Industry

The completed contract method on fixed sum contracts of under two years' duration should be incorporated in the proposed legislation as an accepted method to determine a construction business' taxable income for year.

In the budget proposals, there was no comment whatsoever.

**Senator Cook:** Does that mean that because it was not commented on at all it might still come up in the amending act? Has it been commented on in the budget?

**The Chairman:** If you recall, the construction industry appeared before us and did say that as a matter of practice in the department—and this is my recollection—they were permitted to file on a completed contract basis. But there is nothing in the statute which really gives them that right, and they wanted something in the statute. I did understand Mr. Benson to say—I have trouble distinguishing between the times he was here and the times when I was talking to him—that they were going to deal with the construction industry by regulation. I pointed out to him that I did



not know what the value of a regulation was if you did not have some statutory background for it. There is nothing in the proposed amendment that would give authority for filing of a completed contract method; but the practice has gone on for some years.

**Senator Carter:** There was nothing in the previous Income Tax Act, was there?

**The Chairman:** No.

**Senator Carter:** So we are still in the same position?

**The Chairman:** Silence in a statutory enactment is an uncertain basis on which to pass a regulation, or to presume that forever they are going to be effective. Someone may come in sometime and say, "There is no law on this. Therefore I am going to disallow it". The only defence you have is that the custom is there, or that is the traditional method. I think it is something we should note and examine further, and see if the industry has actually received some assurance. If they have, it may well be that it should have statutory confirmation.

**Senator Cook:** In our Proceedings, at page 51:30, Mr. Benson dealt with the point of joint venture.

**Senator Connolly:** Someone should have asked him what the authority was for the present practice or rule.

**The Chairman:** Yes. I think I said something to Mr. Benson about that. At page 51:30 it says:

One submission of the construction industry was in connection with joint ventures.

That was another aspect of it.

**Senator Cook:** Another aspect, yes.

**Senator Burchill:** What is the present practice on a completed contract under two years' duration? Does the contractor, when making out his income tax, estimate the amount of profit made so far? How do they do it now?

**The Chairman:** The explanation they gave to us was that they filed on a completed contract basis. I have not examined any of their returns, nor do I act for any construction company. So it may be that Mr. Poissant or Mr. Mitchell would know more about that aspect of it.

**Mr. Mitchell:** I believe that statement made to the committee is correct, that on contracts of this type the completed contract method is used. That means that no profit or loss is reported on that particular contract until the job is finished.

**Senator Connolly:** It is a sort of cash basis.

**Mr. Poissant:** The great disadvantage of this method, which is permitted by administrative practice at the federal level, is that they say that if you use that method of reporting your income you will not be permitted the "holdback" at the end of the year or at the end of the contract. The industry says that it is unfair, because the government has no right to say that holdbacks are not permitted, when the courts have decided that holdbacks were not income.

Therefore, the construction industry feels that if the complete method is used they should not be refused the right of holdback, which is permitted by court decisions. This is the unfairness of permitting the use of the complete method in practice, but not in the law. Should the department have the right to say that if the taxpayer wants holdback, he cannot use the complete method, this method is not recognized in the Act but only in practice? Therefore the construction industry says: "Insert the complete method, as a recognized method of reporting income, in the Act. Follow your practice but do not refuse us the holdback at completion of the contract, which we are normally allowed to do."

**Senator Connolly:** Are you referring to the holdback made by the principal contractor in respect of subs?

**Mr. Poissant:** The general contractor, or subcontractors with the general contractor.

**The Chairman:** This would take care of the possibility of liens. There must be some holdback.

**Senator Connolly:** How does the problem arise in respect of the holdback by the main contractor in respect of subcontractors? He is simply holding back to protect himself against liens and claims of various types, but that is not income in his hands.

**Mr. Poissant:** Not until it is received.

**Senator Connolly:** That becomes income, perhaps, when it gets to the hands of the subcontractor.

**Mr. Mitchell:** The point is that the amount held from the contractor by the person having the work done is still owing.

**Senator Connolly:** Do you mean the owner?

**Mr. Mitchell:** Yes.

**Mr. Poissant:** This could apply, of course, from the owner to the general contractor and, in turn, from the general contractor to the subcontractor.

**Senator Connolly:** The problem arises that if I am the owner and hold back 15 per cent, when the contractor receives it it becomes income to him.

**Mr. Poissant:** When it is actually received, because it was decided by the court in the *Wilson* case that a holdback is not income until you are entitled to it.

**Senator Connolly:** I can understand the problem of the contractor who wishes to be taxed on the basis of completed contracts. Was the other problem, connected with holdbacks from the contractor by the owner, raised by the industry?

**The Chairman:** As Mr. Mitchell told us, the department declares that if the filing is on the basis of the completed contract, the holdbacks must be included as part of the income on which the profit is calculated. If that is not done there is no law to enable the filing on a complete contract basis.

**Mr. Poissant:** The next item is Caisses populaires and Credit Unions. These amendments have taken place. Item 14, Administration and Enforcement.

**The Chairman:** We made certain recommendations in this regard, on which there is no comment. We will have to decide when the bill is received what we will do.

**Senator Cook:** But my note reads: "The amendments to Bill C-259 alleviated this problem."

**Mr. Poissant:** Yes, that refers to item 13, Caisses Populaires and Credit Unions. Those amendments were made before the final bill and were accepted.

**The Chairman:** We heard the representatives of Caisses Populaires and Credit Unions and accepted the views which they put forward, which were dealt with in one of our reports. Then, suddenly Mr. Benson's office made an announcement of further amendments. These amendments reflected those recommended by the committee, not necessarily because we recommended them, but the Caisses Populaires and Credit Unions persisted in their representations to the minister. It then happened that the amendments were in line with what we recommended, having accepted the position put forward by these two organizations. We have to indicate what happened in relation to our recommendations, so it was necessary to include this item in the list.

We made recommendations with respect to item 14, which refers to Administration and Enforcement, and there is no comment. It is therefore difficult to say anything more at this time. Should these items appear not to have been dealt with at the time the bill is received, we will then decide what should be done.

**Senator Carter:** For the record, the saving provision in section 56(3) should perhaps be inserted. It reads:

(e) The saving provision found in section 56(3) of the former Act should be introduced into the present Act.

It would be useful to insert it here.

**Mr. Poissant:** The old section 56(3) provided that if section 56(1) and section 56(2) are applicable both cannot be used at the same time. It is either one or the other. The replacement section in the new act seems to provide that the minister could apply both section 56, new (1) and section 56, new (2).

**The Chairman:** They are civil penalty sections, are they not?

**Mr. Poissant:** No, they have to do with misrepresentations in tax returns. Section 56(1) provides the four-year limit for imposition by the minister of a 25 per cent penalty for misrepresentation in a return. Section 56(1) and section 56(2) were penalty provisions, but one could not be applied over the other, because of the provisions of section 56(3).

**Senator Carter:** Under the new act the minister could apply both.

**The Chairman:** That is correct.

**Mr. Poissant:** Of course, the wording of section 56(1) has been changed and now the misrepresentation is of any nature, including innocent misrepresentation. The wording has been changed in such a manner that some commentators say it might not be necessary to have the provision of section 56(3) because the wording of section 56(1) and section 56(2) is so clearly defined that one could not encompass the other. Therefore there is no necessity for a saving provision.

**Senator Connolly:** What do you think?

**Mr. Poissant:** I am of the opinion that there should be a section 56(3). I raised that point in a meeting with Mr. Cohen. I was told that some lawyers said there might be a necessity for it, and I still believe, because of the wording, that there should be that provision.

**Senator Connolly:** I do not question the chartered accountants' interpretation, but we have no real interpretation.

**Mr. Poissant:** We do not have before us a copy of the old act.

**Senator Cook:** We have to guard against making it too clear.

**The Chairman:** If we operate on the principle that a saving clause can never be too clear, we would still leave in subparagraph 3, making the assurance doubly sure.

**Mr. Poissant:** I am not a lawyer but I have been in close contact with lawyers. I felt there was some benefit in having 56(3). They say that it is not the intention of the minister to apply it, but it should be there in any case. Section 163(2), which was the old 53(2), and refers to the minister requesting or demanding information. If one fails to answer that demand, it might be deemed to be a misrepresentation and he will be subject to the penalty provided under 163(2). Perhaps I am going too far, because a legal opinion is required.

**The Chairman:** It is a matter of osmosis. By being in the area where legal viewpoints have been expressed around you, you may have absorbed some of it. Therefore I am interested in your views.

**Mr. Poissant:** Section 163(1) says:

Every person who wilfully attempts to evade payment of the tax payable by him under this Part by failing to file a return of income as and when required by subsection 150(1).

That is the normal requirement—

Is liable to a penalty of 50 per cent.

That used to be 25 per cent—

of the amount of tax sought to be evaded.

That is the old 53(1) except for the rate. Section 56(2), the new section 163(2), says:

Every person, who knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made, or has participated in, assented to or acquiesced in the making of a statement or omission in a return, certificate, statement or

answer filed or made as required by or under this Act or a regulation, as a result of which the tax that would have been payable by him for a taxation year if the tax had been assessed on the basis of the information provided in the return, certificate, statement or answer is less than the tax payable by him for the year, is liable to a penalty of 25% of the amount by which the tax that would so have been payable is less than the tax payable by him for the year.

**The Chairman:** This is an item that the committee should look at in a particular way.

**Senator Molson:** In fact, the whole of section 14.

**The Chairman:** On 15 we are dealing with the evaluation date. That has been taken care of.

**Mr. Poissant:** We come now to the pulp and paper industry:

(a) the concept of "earned depreciation" should be introduced or, alternatively, additional capital cost allowances should be granted.

(b) expenditures for the control and abatement of pollution should be financed by government grants or long-term interest-free loans or by special capital cost allowances.

Your committee received quite a lengthy brief from the pulp and paper industry, which wanted a reduction in their taxable profit in order to reduce their income tax. However, your committee felt that there was not enough justification to support such a request which, in fact, meant a reduction of their taxable profit by one-third. In (a), (b) and (c) on the same page the government has not come out with anything for the pulp and paper industry. However, they said they would reduce the income tax rate, as Senator Molson mentioned, for manufacturing and processing profits to 40 per cent. This industry should qualify.

**Senator Burchill:** Why would it not qualify? You used the word "perhaps". I thought that was specially intended for the pulp and paper industry.

**Mr. Poissant:** It would seem to me that part of the pulp and paper industry is sometimes excluded from that type of special treatment. I recall, for instance, when there was a special tax under section 40A. The logging operation of the pulp and paper industry had been excluded from that incentive.

**Mr. Mitchell:** I would assume that the industry will qualify for it. However, the ways and means motion which has been tabled excludes certain enumerated types of companies which will not qualify for the abatement. In addition, it says:

such other activities as may be prescribed by regulation

Will not qualify. We have no idea what companies may be excluded. My assumption is that they should qualify.

**Senator Connolly:** What resolution is that?

**Mr. Mitchell:** The Ways and Means resolution No. 15 of the Income Tax Act.

**The Chairman:** You can see why the word "perhaps" was used, Senator Burchill.

**Mr. Poissant:** The regulation has not been published yet. There may be exceptions there.

**Senator Burchill:** Did not the minister explain in the other place that this was specially applicable to those industries that were competing against other industries?

**The Chairman:** When you have a statutory provision, with exceptions that may be provided by regulation, one must at least sound the word "perhaps" when you do not know what they are.

**Senator McIlraith:** There is some confusion here. You can relate it to two things: to manufacturing in Canada or to manufacturing for sale in Canada.

**The Chairman:** The pulp and paper industry exports. It is their operations in Canada which produce the product which they sell. The question is whether the profit from those operations, since the actual proceeds of sale are gained abroad, has been earned in Canada.

**Mr. Mitchell:** I do not think there is any ambiguity in the resolution itself.

**Senator McIlraith:** Not in the motion, no, but in the summary; there is a possibility of that.

**Mr. Mitchell:** I agree.

**The Chairman:** What resolution is that?

**Mr. Mitchell:** That is resolution 15.

**Mr. Poissant:** The exclusions are listed at the bottom of the resolution, so logging is excluded but not the pulp and paper industry; therefore, they should be entitled to the reduced rate. They will have to make an allocation between their logging operation and their pulp and paper. I have no hesitation in thinking that they should qualify amply.

**The Chairman:** I notice the point in connection with "earned in Canada" is that you find it well down in resolution 15, where it says:

... for the purposes of this provision, the manufacturing or processing of goods for sale or lease does not include

Then there are exclusions. There still might be some question of tidying up the language. First of all, the amount is to be "determined under rules prescribed for that purpose by regulation". What that will be I do not know, and I would not take a running broad jump at it. As for "a corporation's income for a taxation year from the manufacturing or processing in Canada by it of goods for sale or lease", I suppose if they manufacture or process in Canada goods for sale or lease anywhere, that would meet that.

**Senator McIlraith:** That meets the point in the summary. It is not related clearly to manufacture. It can be argued it is related to sale.



**The Chairman:** What triggers the benefit of the tax is that you have manufacturing or processing operations in Canada to produce a product for sale or lease. It does not say to produce a product for sale or lease in Canada.

**Senator McIlraith:** But the summary does.

**The Chairman:** In the memo, I agree, those words are misleading.

**Senator Lang:** I suggest that the budget proposal is not really directed towards meeting our recommendation, but arises out of a much broader policy decision.

**The Chairman:** Oh yes.

**Senator Lang:** It may only incidentally impinge on our recommendation.

**The Chairman:** I think the committee should know that the pulp and paper industry when they appeared before us were very frustrated. Actually what they presented to us could only have been the result of frustration, because it just did not seem to tie together and they could not give adequate reasons. We devoted some time to study and came up with a proposal. I had letters from the industry and some of the company members of the industry association afterwards. They said it was only after they had been here, and after we had made the recommendations we did, that they were able to get what they felt was full and serious consideration of their problem. That is a matter of record. Maybe we are reaching out and trying to take too much credit, but obviously it did focus attention in a very serious way on their problem. They are one of the largest employers of labour industry in Canada, so their position is important to Canada. We did emphasize that. I am not saying we claim that the 40 per cent is the result of the representations we made, but it is a recognition of the problems in the pulp and paper industry as one of the manufacturing and processing operations.

**Senator Connolly:** Only time will tell, I suppose, how helpful the reduction of 40 per cent will be.

**The Chairman:** That is right, and whether the 40 per cent is enough or not. I see some announcements by some of the people in that industry that they are going to extend into mining because they think there is more future in mining operations than in pulp and paper. You may have noticed the interview in the paper with the President of Abitibi.

**Senator Lang:** They have had an unfortunate experience at Abitibi.

**The Chairman:** That is right.

**Senator Connolly:** Certainly this concept of earned depreciation was raised with them when they were here, and they seemed to feel it was a new idea.

**The Chairman:** I think it was a new idea in relation to this industry. However, our main concern, I guess, is the benefits

accrued, and we may have been around when that happened. The benefit as far as we were concerned may have been contributed just by association with them.

**Senator Carter:** Are you entertaining any briefs on this point, or any further presentation or submissions from the pulp and paper industry?

**The Chairman:** It is a little early to figure out yet. It could well be that there might be some briefs by some of the mining and petroleum industry. I would doubt if the pulp and paper industry would appear. They may feel that they want to work with what benefits they have. That may be it. There has been no indication.

**Senator Cook:** As a matter of interest, I assume we would not press (b):

Expenditures for the control and abatement of pollution should be financed by government grants or long term interest-free loans or by special capital cost allowances.

Really, special capital cost allowances are more important as far as income tax is concerned. The other two go outside it, do they not?

**The Chairman:** Is it not part of this relief so-called that is being given in mining and processing, the special capital cost allowances?

**Senator Cook:** I say that is the important thing, but to recommend expenditures should be financed by government grants is outside income tax really, is it not?

**The Chairman:** We have a limit to what we can say. We cannot direct the government to spend the money.

**Senator Cook:** Really we should put it the other way, and it should start off by saying "capital cost allowances or", instead of putting it at the end.

**The Chairman:** I would think if we were going to carry it any further we would have to be very careful. We are not going to propose an amendment to the bill to permit the government to spend money. We have to be careful where we reach and how.

**Senator Connolly:** Mr. Chairman, we have five more points. Are any of them likely to take a long time?

**The Chairman:** It is now ten minutes after twelve. Would 12.30 be a satisfactory time to adjourn?

**Senator Connolly:** What is the position this afternoon? What about the motion to sit?

**The Chairman:** We will have to adjourn until next Wednesday, because last night we asked the Senate for leave to sit this afternoon if necessary in order to complete our study, when we had brought these people here, but there was a dissenting voice so leave was not granted to put that motion. As far as I am concerned, I do not propose to go back to the Senate and ask for leave again.

**Senator Carter:** You do not have to ask for leave today because you gave notice yesterday; there is no leave required.

**The Chairman:** I have not seen *Hansard* so I do not know how it is reported.

**Senator Connolly:** We can go on until 12.30.

**Senator Beaubien:** If we wanted to sit this afternoon I think we could probably get the Senate to give consent.

**Senator Connolly:** Let us see how we get along in the next 20 minutes.

**The Chairman:** We will go until 12.30 and then decide. Then we might run into some more speeches, of the character of those of yesterday evening.

This may be a good place for me to insert a statement of fact.

This committee, in considering the bill before the bill itself came to us—had 18 sittings, and then it had quite a number of briefs submitted as well, in respect of which witnesses did not appear. So, in view of the statement which Senator Croll made this morning, I just had his attendance checked at those committee meetings. He was present on three occasions—at the general meeting on November 4, at the *in camera* meeting on December 9, and at the meeting at which Mr. Benson appeared on December 13. So there were some pretty large assumptions that he made for such a slim record of attendance.

Now, can we go ahead with these items?

**Mr. Poissant:** We are at No. 17, on page 9. The Senate committee recommendations were:

#### 17. Tax-Exempt Non-Resident Investors.

The exemption accorded to tax-exempt non-resident persons under the former Income Tax Act should be continued in the present Income Tax Act (this area pertains to the U.S. teachers group which had a pension fund invested in land in Canada.)

**The Chairman:** That was one of our priority items.

**Mr. Poissant:** In regard to the budget proposals, the remark is:

Effective January 1st, 1972, the Minister may issue a certificate of exemption to any non-resident person that meets the requirements of section 212(14)(b) of the Act, that is a trust or corporation established or incorporated for the principal purpose—

This is a key phrase here, for the “principal purpose”, whereas before the word was “solely”. So this is the distinction. It continues:

—of administering, or providing benefits under an employees pension plan and that throughout the three taxation years immediately preceding the taxation year in which its application for the certificate was made not less than 80 per cent of its property was held by it for the purpose of

providing such benefits. This provision may well alleviate the problem faced by the U.S. teachers fund.

**The Chairman:** You will recall that we dealt with this and made a specific recommendation. At that time I referred you to the speech which the then Minister of Finance, Mr. Walter Gordon, made when he introduced the amendments which gave this organization the exemption. Bill C-259 was taking away that exemption. That time limit within which they would continue to enjoy it was not enough to enable them to liquidate their holdings, because their investments were in the types of securities that did not have any ready market. They were not interested from that point of view; they were interested in security. One of the illustrations was that they had provided the money to finance all the fuel installations, for instance, at Malton Airport in Toronto. They said, “We are only interested in security, because we are interested only in the income; we are not subject to any tax in the United States and up to this moment we have not been subject to any tax in Canada, because we have been buying government bonds”. Mr. Walter Gordon thought that was a good idea. I guess that his view has not changed, because he supported it at that time and introduced the amendment to exempt them because it was debt securities they were dealing with and not with equity.

That is still their position. This amendment will continue their position. Otherwise, they would be discriminated against and very heavily penalized because they could not regulate the interest rate on all the advances that they had made to take care of a possible incidence of tax. It would be too late to do that. That is one that went over a hundred per cent.

Now we turn to No. 18.

**Mr. Mitchell:** Paragraph 18. The Senate recommendation was:

#### 18. Mining and Petroleum (non-operators).

The 25 per cent automatic depletion now allowed to non-operators in respect of income derived from a royalty or other similar interest in a resource property should be continued for royalties received prior to 1981 in respect of interests which the taxpayer owned at June 18th, 1971, or which he was obligated at that date to acquire.

There was no comment at all made in the proposal by the Minister of Finance, in this respect.

**The Chairman:** That is a 25 per cent automatic depletion.

**Mr. Poissant:** Not now allowed.

**The Chairman:** It was allowed under the original Income Tax Act, but it was amended by Bill C-259.

**Senator Cook:** It says which is “now allowed . . . should be continued”.

**Mr. Poissant:** We are talking about the time this recommendation was made, and it was allowed at that particular time.

**Senator Beaubien:** It is not allowed any more.

**Mr. Poissant:** The chairman has made a good point, that it was allowed in the original Income Tax Act, that it is not allowed now, but at the time the committee made its report it was allowed.

**Senator Molson:** The government has taken a stand on this; the government does not want to do anything about it.

**The Chairman:** It would appear so, but what we have to decide, when the bill comes over is—

**Senator Molson:** Whether we want it to come back.

**The Chairman:** When we look at all the material.

**Senator Lang:** Was not our concern based on the point that the proposal would have a retroactive effect, that it would have an effect on the ongoing operation of commitments made under the old act?

**The Chairman:** This was an aspect that we stressed at the time. That is why we suggested a date down to 1981, to let all these commitments run out which they made when they enjoyed the favourable tax position. There is this unfairness of retroactivity in doing away with this allowance at this time.

**Senator Connolly:** How did we draw the line at 1981?

**The Chairman:** I think the evidence we had before us, which the association and the industry gave, was that this was the period of time which it would take for these things to run out.

**Senator Molson:** Ten years.

**The Chairman:** That is why we picked the year 1981.

**Senator Connolly:** This was a matter of fact, that the arrangements would expire in 1981?

**The Chairman:** We thought that they would have expired by 1981, and that is why we selected 1981. There is involved in our consideration of this the retroactive feature. People make commitments and they are stuck with them. Then the law changes.

**Senator Connolly:** Changing the rules in the middle of the game.

**The Chairman:** Then they need a fair run, to get out of their position.

We turn now to No. 20.

**Mr. Poissant:** The Senate committee recommendations are:

20. Non-Resident-Owned Investment Corporations.

**Senator Connolly:** Where are you reading from?

**Mr. Poissant:** No. 20.

**Senator Cook:** You skipped No. 19.

**Mr. Poissant:** Oh yes, we skipped No. 19 because this we referred to before. Section 19 was where all the Senate committee recommendations were implemented in the budget.

**The Chairman:** Very well. Paragraph 20.

**Mr. Poissant:** The Senate recommendations in Paragraph 20 were:

“The act should ensure that there is neutrality of tax treatment as between non-residents who invest directly in Canada and those who choose to vest through the media of a non-resident owned investment corporation, particularly with respect to the treatment of capital gains.

Here the committee asked simply that this should be the same treatment, neutrality. In one or two cases I remember, there would be a capital gain treatment given if the matter was held to be foreign investments.

**Senator Cook:** That would be the Guinness People.

**Mr. Poissant:** And they would be subject to withholding tax at source when capital gain is to be paid out by way of dividend.

**Senator Cook:** There would be no difference between what they were doing or achieving, and what the other people were doing?

**Mr. Poissant:** That is right, they should go through the normal channels. This is all it asks.

**The Chairman:** We quoted the department against itself, because in their first summary in dealing with the NRO's they said that they asserted a principle that the treatment of investment by a non-resident of Canada and by a non-resident-owned investment corporation, in other words, whether it is in individual or corporate form, should be the same. We quoted that from their own chapter, but make no comment.

**Senator Cook:** That is certainly one we considered to be very important and which should be continued.

**The Chairman:** Yes, it was No. 7 in our top priority recommendations.

**Senator Cook:** Because it is a prime source of capital coming into the country.

**The Chairman:** That is right.

**Mr. Poissant:** One of the objections was that the NRO is considered to be a “Canadian taxable property” and at the time of death would be subject to a deemed realization. It should not be treated as a “Canadian taxable property”, because it is held by non-residents who hold non-resident shares.

**The Chairman:** This was one of our top priority items. We felt strongly on it and should take note of that.

**Senator Cook:** The whole country benefits from it.



**Senator Lang:** The philosophy behind the NRO's is not entirely incompatible with the philosophy behind the legislation we are about to receive. I would say there is a linkage there.

**The Chairman:** I would say if we were to correlate the Income Tax Act dealing with NRO companies and with non-residents, the individuals, to what would appear to be the ideas of those who support the foreign ownership bill, we should repeal all these preferences, or conditions for non-residents bringing money into Canada. I can imagine the howl of disapproval that would go up from coast to coast of any such course.

**Senator Lang:** There is a self-evident relationship.

**The Chairman:** Yes, but the minister may have considered this to be a very sensitive area and therefore would do nothing to focus attention on it. After all, in their first summary of tax reform one paragraph focused attention on this and stated the principle that the treatment of the non-resident in corporate form should be the same as that of an individual.

**Senator Carter:** Do we know the reasoning behind the distinction made by the department?

**The Chairman:** No, we have had no answer of any kind. Mr. Benson made a comment on December 13 when I asked him with respect to this.

**Senator Connolly:** I thought this was an item he said would receive further consideration.

**The Chairman:** It is at page 51:29 of the proceedings, where the following appears:

The Chairman: Mr. Minister, one of the recommendations we made had to do with non-resident-owned investment corporations, and we felt that what you said in the summary was exactly what we thought should happen; that is, because you are in corporate form instead of individual form your position should be equative. But the legislation does not do that.

Hon. Mr. Benson: I will let Mr. Cohen answer that.

Mr. M.A. Cohen (Assistant Deputy Minister, Department of Finance): Mr. Chairman, if you take into account the amendments that were tabled by the Government you get a situation where, by and large—I cannot say 100 per cent, but by and large—the treatment of a foreigner investing in Canada, whether directly or indirectly through an NRO, is to a large extent . . .

You will notice the qualification again.

. . . the same. Where you have significant differences is where you have an individual from one country investing in a third country using Canada as an intermediary and using an NRO for that purpose. There there are differences. But for an individual investing into Canada, by and large the treatment

is the same, given the amendments that were put in to permit the flow-through of the capital gains. I think that was the main criticism made to us by people who were involved in NROs and the Government responded to that criticism.

**The Chairman:** Well, if you read the submissions that we received, these people who were affected were substantial people carrying on substantial operations and representing very substantial investment of non-resident funds in Canada, and they were getting unequal treatment as against what an individual would get. And they referred to the capital gains situation.

Hon. Mr. Benson: That is taken care of in one of our amendments. It was taken care of in the house recently. Their main complaint in dealing with us was about the gains situation and we have taken care of that.

The position is that we have not found where that has been taken care of in the amendments.

**Senator Connolly:** They did at least give us some idea of why they were doing this, but then the minister said it has been corrected anyway.

**The Chairman:** Yes, so this is something we should really note.

**Senator Beaubien:** We should see that it is corrected now.

**The Chairman:** We now come to item 21. It was in this respect that Senator Lang posed a critical question with respect to life insurance and received an answer which seemed to be adequate. It is at page 51:37, where Senator Lang addressed the following to Mr. Benson:

The final one was the recommendation with respect to life insurance corporations, and in this regard we made the following recommendation:

. . . that corporate dividend income received and arising from investments made by a life insurance corporation out of its non-segregated funds in shares of capital stock of corporations be excluded from the allocation of investment income formula set forth in the proposed legislation.

We made a recommendation with respect to that. The minister replied:

We are presently talking to the industry about this. It is a technical amendment which would be of some advantage to them. That law has been running for two or three years now and this legislation has just shaken it down so that they now know where they stand. As I say, we are presently discussing this matter with them.

Therefore I would think that we could conclude that it may well be that if the life insurance companies, having gained consideration by the department, may come back to see us. However, the minister agreed at the time that this has developed enough that it is time to deal with this item.

Item 22 is the final one. What do you have to say, Mr. Poissant?

Mr. Poissant:

22. Private general insurance corporations.

(a) Special provisions should be introduced to alleviate the position of those private corporations which cannot take advantage of "refundable tax" by reason of any conflicting or inconsistent statutory law governing their conduct.

(b) Special provisions should be introduced to provide that in the case of a private general insurance corporation, compliance with the investment requirements of governing federal or provincial legislation should not constitute "ineligible investments".

**The Chairman:** I remember what that was. There was a conflict between the limitation on investment in a small business corporation and where you have a small insurance company. The latter's investment requirements are set out in the Insurance Act. You could have the situation where the insurance investments were perfectly legal investments under the Insurance Act, but would be ineligible investments under the Small Businesses Act. We thought they had better get together. It should not be difficult to do this, because the administration is in the same department, the Department of Finance. We made this recommendation. There is no comment. This is something that we should look at again.

We have come to the end of the road for this morning. We should plan to have a meeting on the same day next week, at the same time, to decide where we are going from here, whether in relation to any of these changes at this time we want to ask the minister or some other departmental official the reasons for not considering our recommendations.

We have to be careful, in the light of Senator Croll's statement. He seems to think that this would represent pressuring. I do not think it is the view of the committee that there would be any pressuring. We made recommendations, and we would like to know why they were not accepted. We could be given an explanation, or we could be told that it is government policy. If we are told that it is government policy, we will have to use our own judgment on whether we think there should be amendments. Government policy would be on display in a big way if we made amendments. If the Senate supported them, the bill would have to go back to the Commons.

**Senator McIlraith:** When do you anticipate the bill will come to us?

**The Chairman:** My own guess would be in a new Parliament.

**Senator McIlraith:** That being so, it seems to me that there is the obvious matter of there being insufficient time to consider some of these comments.

**The Chairman:** If there is not sufficient time, then they owe it to us to tell us so.

**Senator Connolly:** I am wondering whether it would be a good idea for you, as chairman, to write a letter to the minister enclosing a copy of this morning's proceedings for his consideration.

**The Chairman:** I am ready to do that. Certainly I think there should be a memorandum. There would, of course, be a little more freedom in my seeing him and discussing the matter with him. Where there is no comment in relation to our recommendations, I think that at some stage—perhaps that stage is when the bill comes to us—we are entitled to be told why. We may decide that the answer is a good one or is not.

**Senator McIlraith:** It seems to me that the time for making that decision would be at a later stage. We may be premature.

**The Chairman:** The effect of the decision would have to come when the bill is before us. The whole object of this exercise now is to prepare ourselves so that we may deal with the bill expeditiously.

**Senator Connolly:** Do you intend to make a report of this meeting?

**The Chairman:** There is a *Hansard* report of the meeting.

**Senator Connolly:** I mean a report to go to the Senate.

**The Chairman:** We should do what we did on the last occasion, and make a report.

**Senator Connolly:** You could tie up the comments in a neat package. Perhaps you could leave with the minister a copy of our proceedings of this morning. In that way you would be following the procedure adopted in respect of the White Paper and the Tax Reform Bill.

**The Chairman:** The committee does not have to make a decision today. Are we going to call anybody from the department and ask for an explanation at this stage? There is in the budget proposals and in the matters relating to the income tax legislation viewpoints expressed by the government in relation to those recommendations which were accepted, and there has been no comment on other items. In connection with some items, they have provided comment on recommendations which have not been accepted, namely those in connection with pensions and retirement savings plans, and coupling the deferred profit-sharing plans with that. They say that the whole subject matter should be reviewed. Perhaps that is enough for us, and we should decide whether this is something that should stand or whether we should insist on amendments. On other items on which we made recommendations there has been no comment.

**Senator Burchill:** We should decide that at the next meeting.

**Senator Molson:** Will you mention these discussions to the minister? If there is no acknowledgement or response by the time the bill comes forward, there is every opportunity for this committee to take whatever action it considers necessary.

**The Chairman:** We cannot take any effective action until we have the bill. However, our process of education should be a continuing one, and it would be very helpful and valuable for us to know why these particular items, which we thought were important, were not dealt with and not commented on.

**Senator Beaubien:** A chat with the minister would enlighten you. He may say that he has not had time to go into these things.

**The Chairman:** If you have time to consider the recommendations, to adopt some of them and make comments on others which are not being adopted, and you can ignore another group, then I am not sure to what extent the element of "not sufficient time" exists.

**Senator Lang:** If a memorandum went forward, that would be adequate at the present time.

**Senator Carter:** Would there be any objection to our having this very useful little summary appended to the report of today's proceedings?

**The Chairman:** No; it would be a suitable place to have it.

*(For text of summary, see Appendix)*

**Senator Molson:** Mr. Chairman, before we adjourn, may I say that I very much regret that there should have been an element of personality introduced into this morning's proceedings. I am sorry that Senator Croll is not here at the moment. I feel that such a matter should not have occurred in this committee. I am sure that I speak for all members of the committee, with the possible exception of one, when I say that I would never question your integrity or good faith in your handling of the affairs of this committee. As far as I am concerned, you have my confidence and support.

**Hon. Senators:** Hear, hear.

**Senator Lang:** Make that unanimous.

**Senator Connolly:** Make that unanimous.

**The Chairman:** We will now adjourn until Wednesday of next week at 9.30 a.m.

The committee adjourned.



## APPENDIX

COMPARISON OF MAY 8, 1972 BUDGET PROPOSALS AND RECOMMENDATIONS OF  
STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCESENATE COMMITTEE  
RECOMMENDATIONS

## BUDGET PROPOSALS

1. Passive Income	<p>(a) Definition of term "foreign accrual property income" be amended to exclude possible taxation of passive income arising out of investment of business earnings invested over a short term, interest on trade receivables, etc.</p> <p>(b) The de minimus rule be broadened.</p> <p>(c) The term "foreign affiliate" be redefined to include only those corporations which are controlled directly or indirectly by Canadians.</p> <p>(d) The effective date of implementation of the passive income rules be deferred one year.</p>	Introduction of rules for taxing passive income deferred from 1973 to 1975 to permit further examination of their impact.
2. Dividends Received from Foreign Affiliates	All dividends received by Canadian corporations from foreign affiliates should be exempt from tax regardless of whether the affiliate is located in a treaty country or not.	No comment (however these rules will not come into force until 1976).
3. Farmers	<p>(a) Provision be made for the continued recognition of a farmer's "basic herd" as a capital asset.</p> <p>(b) Permit a rollover of farm land and any other capital property used by an individual in a farming activity (no deemed disposition at death).</p>	<p>No comment.</p> <p>No comment.</p>
4. Employees Profit Sharing Plans	<p>(a) Permit a rollover of property distributed in specie by the trustee of an employee's profit sharing plan to a retiring member.</p> <p>(b) Do not tax the employee until he ultimately disposes of such property, at which time any gain should be given capital gains treatment.</p>	Senate Recommendations adopted in full.
5. Deferred Profit Sharing Plans	<p>(a) Averaging provisions are inadequate.</p> <p>(b) Amounts distributed to a retiring employee should be accorded capital gains treatment to the extent that they include capital gains realized by the trust.</p> <p>(c) Property distributed in specie to an employee should be permitted a rollover.</p> <p>(d) The employee should not be taxed until he ultimately disposes of the property, at which time any gain should be accorded capital gains treatment.</p>	<p>(a) Government sees no reason for not treating these plans in the same manner as pension plans and registered retirement savings plans.</p> <p>(b) Government to conduct a general review of the taxation of retirement income plans, including deferred profit sharing plans.</p> <p>(c) Amounts in a deferred profit sharing plan to the credit of an employee as of January 1st, 1972 (as opposed to amounts vested) are to be eligible for averaging under the old section 36 rules.</p> <p>(d) An employee who takes advantage of the section 36 averaging will be able to use the income averaging annuity provisions of the Act in respect of other income (this deficiency was noted in the Senate Committee's report).</p>

# SENATE COMMITTEE RECOMMENDATIONS

## BUDGET PROPOSALS

### 6. Departure Tax

(a) Minister should have discretion to grant relief in respect of a departure caused by illness, by the transfer of an employee at the direction of an employer, or by any other deserving reason.

(b) When a taxpayer ceases to be a resident of Canada he should be deemed to dispose of all his assets at fair market value and should have to pay tax at a fixed rate of say 20% on such gains.

(c) If the taxpayer elects to defer payment of this tax, he should not be obliged to pay Canadian tax on his world income if he is not in fact resident in Canada in the year of actual realization (as the Act presently provides). Instead the taxpayer should be subject to Canadian tax on taxable capital gains in the same manner as other non-residents (ie. only on the gains actually realized).

### 7. Gifts, Bequests and Devises to Charities

Where capital property is transferred to a charitable organization by way of gift, bequest or devise the taxpayer should be considered to have disposed of the property at its "cost amount".

(a) Mr. Turner has concluded that the departure tax rules may be too harsh. He will introduce amendments to change the rules so as to permit a taxpayer to pay the tax on a deemed realization in six equal annual instalments with interest, subject to the provision of satisfactory security. Alternatively a taxpayer may elect to have any particular capital property treated as taxable Canadian property, in which event he will be taxed only when the property is disposed of and only on the actual gain realized.

(b) Where a person leaves Canada and has not been resident in Canada for more than 36 months over the preceding 10 years, any accrued gains on property which he owned when he entered Canada will not be subject to tax when he leaves.

(a) Where property is gifted to a charity and is suitable for actual use in the charity's activity, the donor may elect to value the property at any amount between its cost and its fair market value.

(b) Any bequest to a charity will be regarded as having been made in the taxation year in which the taxpayer died, in order to enable the taxpayer to deduct the value of the gift from his income in the year of death (subject to the normal limit on deductible charitable donations).

### 8. Mining and Petroleum

#### (A) Earned Depletion

(a) All Canadian exploration and development expenses should qualify to earn depletion, as should depreciable mine assets (whether new or used), depreciable production equipment and natural gas plants, and expenditures on new buildings and machinery as well as on expanded buildings and machinery. Therefore any expenditure which is required to reduce the profit from which depletion may be deducted should qualify as an eligible expenditure.

(b) The transitional period to convert from automatic depletion to earned depletion should be extended to 1980, or alternatively, companies should be permitted to "bank" eligible expenditures whenever incurred after deducting from such "bank" all depletion previously allowed.

The class of expenditures which earn depletion are to be extended to include all equipment acquired after May 8th, 1972 for the purpose of processing in Canada mineral ores after extraction and up to the prime metal stage. This will include all processing, whether or not related to a new mine or a major expansion, as well as custom processing. All income from such processing operations will be considered as income against which depletion may be claimed and in respect of which the 15% provincial abatement will apply.

SENATE COMMITTEE  
RECOMMENDATIONS

## BUDGET PROPOSALS

(B) Accelerated Capital Cost Allowance	The recommendations were mainly technical in this area, such as a broadening of the definitions of "building", "mining machinery and equipment", "social capital transportation costs" and "major expansion of an existing mine".	No comment.
(C) Transfers of Resource Properties	The transfer of Canadian resource properties between related companies should be permitted to occur without incidence of tax.	No comment.
9. Rollovers	The rollover provisions should be broadened to include all situations where the underlying ownership remains the same.	Rollovers to be broadened for persons leaving Canada who resided in Canada over a short term only, for distributions of property out of an employee's profit sharing plan, and to perfect the spousal trust exemption in cases where a spousal trust is required to pay death duties.
10. Designated Surplus	The special tax on dividends paid out of designated surplus should be withdrawn.	No comment.
11. Consolidated Returns of Income	Corporations which are members of a qualifying group should have the right to elect to file on a consolidated return of income basis, or alternatively, a scheme of subvention payments similar to that formerly used in the U.K. be implemented.	No comment.
12. Construction Industry	The completed contract method on fixed sum contracts of under two years' duration should be incorporated in the proposed legislation as an accepted method to determine a construction business' taxable income for year.	No comment.
13. Caisses Populaires and Credit Unions	These organizations should not be required to include in their "cumulative deduction account" such portion of their taxable income as is set aside in the year as a reserve to the extent that such reserve is not available for distribution to members.	No comment.  NOTE: The amendments to Bill C-259 alleviated this problem.
14. Administration and Enforcement	(a) A hearing officer should not be an official of the Department of National Revenue.  (b) Taxpayer should be entitled to cross-examine all witnesses and to receive a copy of the transcript of all evidence.  (c) Any order excluding from an inquiry the taxpayer or his counsel should be subject to immediate review by a Judge of the Federal Court.  (d) If the Minister elects to proceed against a taxpayer by way of information or complaint, the Minister should not as well be permitted to levy a penalty.  (e) The saving provision found in section 56(3) of the former Act should be introduced into the present Act.	No Comment.



SENATE COMMITTEE  
RECOMMENDATIONS

## BUDGET PROPOSALS

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| 15. Valuation Day                        | Property acquired by way of gift, bequest, or devise prior to June 18th, 1971 should be deemed to have been acquired at an amount equal to its fair market value at the date of acquisition for the purpose of calculating any taxable capital gain but not for the purpose of calculating any allowable capital loss.                 | Note that this deficiency was rectified prior to the enactment of Bill C-259.   |
| 16. Pulp and Paper Industry              | <p>(a) The concept of "earned depreciation" should be introduced or, alternatively, additional capital cost allowances should be granted.</p> <p>(b) Expenditures for the control and abatement of pollution should be financed by government grants or long term interest-free loans or by special capital cost allowances.</p>       | <p>(a) The rate of corporate tax on manufacturing and processing profits earned in Canada will be reduced to 40%. Perhaps this industry would qualify.</p> <p>(b) The cost of all machinery and equipment purchased after May 8th, 1972 by a taxpayer to be used for the purpose of manufacturing or processing goods for sale or lease in Canada may be written off in two years. This may be of benefit to the pulp and paper industry.</p> <p>(c) The existing provisions permitting a fast write-off of capital expenditures made by manufacturers or producers to provide air and water pollution control will be extended for one further year. Thus such machinery and equipment purchased at any time before the end of 1974, and buildings to house pollution control equipment which are started before the end of 1973, will be eligible for the fast write-off. These fast write-off provisions will be broadened to cover the cost of buildings, machinery and equipment acquired by independent companies providing pollution control services.</p> |
| 17. Tax-Exempt Non-Resident Investors    | The exemption accorded to tax-exempt non-resident persons under the former Income Tax Act should be continued in the present Income Tax Act (this area pertains to the U.S. teachers group which had a pension fund invested in land in Canada.)   | Effective January 1st, 1972, the Minister may issue a certificate of exemption to any non-resident person that meets the requirements of section 212(14)(b) of the Act, that is a trust or corporation established or incorporated for the principal purpose of administering, or providing benefits under, an employees pension plan and that throughout the three taxation years immediately preceding the taxation year in which its application for the certificate was made not less than 80% of its property was held by it for the purpose of providing such benefits. This provision may well alleviate the problem faced by the U.S. teachers fund.  |
| 18. Mining and Petroleum (non-operators) | The 25% automatic depletion now allowed to non-operators in respect of income derived from a royalty or other similar interest in a resource property should be continued for royalties received prior to 1981 in respect of interests which the taxpayer owned at June 18th, 1971, or which he was obligated at that date to acquire. | No comment.   |

SENATE COMMITTEE  
RECOMMENDATIONS

BUDGET PROPOSALS

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| 19. Transitional Averaging Provisions Concerning Lump Sum Payments out of Pension Plans and Deferred Profit Sharing Plans. | <p>(a) Section 36 averaging should be available in respect of the portion of a lump sum payment received in a taxation year ending after 1973 out of the pension plan or deferred profit sharing plan which the taxpayer would have received pursuant to such a plan if he had withdrawn therefrom on January 1st, 1972.</p> <p>(b) The general and forward averaging provisions of the Act should be available in respect of the portion of such payments which have been vested after 1971.</p>                    | Senate Committee recommendations fully implemented. |
| 20. Non-Resident-Owned Investment Corporations   | The act should ensure that there is neutrality of tax treatment as between non-residents who invest directly in Canada and those who choose to vest through the media of a non-resident owned investment corporation, particularly with respect to the treatment of capital gains.   | No comment.   |
| 21. Life Insurance Corporations  | Corporate dividend income received and arising from investments made by a life insurance corporation out of its non-segregated funds in shares of corporations should be excluded from the allocation of investment income formula set forth in the act.   | No comment.   |
| 22. Private general insurance corporations.  | <p>(a) Special provisions should be introduced to alleviate the position of those private corporations which cannot take advantage of "refundable tax" by reason of any conflicting or inconsistent statutory law governing their conduct.</p> <p>(b) Special provisions should be introduced to provide that in the case of a private general insurance corporation, compliance with the investment requirements of governing federal or provincial legislation should not constitute "ineligible investments".</p> | No comment.   |

TAX TREATMENT OF DEFERRED  
PROFIT SHARING PLANS

## Treatment Under Former Income Tax Act

Under the former Income Tax Act an employee who belonged to a deferred profit sharing plan was not taxed currently on any amounts which his employer contributed to the plan on his behalf nor on the income earned annually by the plan. Instead, the employee was subject to tax on the full amount received on his withdrawal from the plan minus any portion representing a refund of contributions paid by the employee into the plan. The exclusion of the employee's contributions follows from the fact that the employee is not permitted a deduction from his income in respect of contributions to the plan, but is obliged to make such contributions out of tax-paid dollars.

Accordingly an employee is taxed, upon withdrawals from the plan, on his share of the employer's contributions, his share of all income earned by the plan, and his share of any net capital gains of the plan. This treatment was acceptable to employees under the former Act because of the relatively generous tax averaging provisions of section 36 in respect of lump sum payments.

Treatment under New Income Tax Act  
(As amended by May 8th, 1972 Budget)

Under the new Act, the lump sum distribution from a deferred profit sharing plan will continue to be treated as ordinary income and the employee will be taxed upon his share of the employer's contributions, his share of all income accumulated by the plan and upon his share of capital gains both realized by the trust and unrealized (in respect of property distributed in specie to the employee).

An employee will be entitled to utilize the tax averaging provisions equivalent to the former section 36 in respect of any amount to which he would of been entitled under a deferred profit sharing plan on the assumption that:

- (a) he had withdrawn from the plan on January 1st, 1972;
- (b) there had been no changes in the terms and conditions of the plan after June 18th, 1971 and before January 2nd, 1972; and
- (c) there was no term or condition of the plan limiting, by reference to the period of service of a member, the amount of any payment or payments that may be made to him in the event of his withdrawal from the plan.

Furthermore, an employee who enjoys the benefit of the foregoing averaging provisions will not be precluded thereby from also

utilizing the forward averaging provisions of section 61 (by purchasing an income averaging annuity).

These two concessions, which are contained in the budget of May 8th, 1972, were measures which the Honourable E. J. Benson had promised to implement.

Recommendations of the Standing Senate Committee on Banking,  
Trade and Commerce

In its report tabled November 4th, 1971 the Committee recommended the following:

1. that any amount distributed by the trustee of a deferred profit sharing trust out of capital gains realized by the trust should qualify for capital gains treatment in the employee's hands;
2. that where property is distributed in specie to an employee by the trustee, the trustee should be deemed to have disposed of the property for proceeds equal to its "cost amount" (as defined) to the trust;
3. that the employee should be deemed to have acquired the property at the "cost amount" to the trust; and
4. that the employee should not be taxed until he ultimately disposes of the property, at which time any gain should be accorded capital gains treatment.

In the May 8th, 1972 budget speech, the Honourable J. N. Turner stated that he had not yet been persuaded that a lump sum payment out of a deferred profit sharing plan should enjoy any special treatment. He stated that payments out of such a plan should be treated in much the same manner as payments out of pension plans and registered retirement savings plans. All three of these types of plans have in common the deferral of income tax on the contributions to and the income of the plan. (It should be noted that Mr. Turner declined to mention that, unlike pension plans and registered retirement savings plans, members of deferred profit sharing plans enjoy no deduction for contributions made to the plans.) Apparently the government considers that the price which members of deferred profit sharing plans will have to pay for a deferral of tax on both the employer's contributions and on the income earned annually by the fund is that capital gains treatment upon distribution must be sacrificed. This appears to ignore that employees who receive a lump sum payment out of a deferred profit sharing plan in the year of retirement will be subjected at that time to a heavy tax cost.















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